A PORTION

OF THE

Hickory Presentio -

· #

REPORT

OF THE

COMMISSIONERS APPOINTED TO DRAFT, REVISE AND ARRANGE

CODE OF LAWS

A

FOR THE

STATE OF IOWA.

Ordered to be printed by House of Reps.

artisted to expend any money of the county, and beinquire them to render their accounts as directed by law :

69

26

CODE OF LIWS

AWOING TATE

deres to an printed by didn't

Forces To keep a distinct account with the transition of the count to for each several **T R O P P R** when be tested, commenting trom, the day on when the force are becomes qualified as treasures, opnimular until the same or another person is qualified as treasures, in which account he shall choice the reasures with the county tay list, and with all sums puid him and for which he is account ble to the form it all vote here presented by him, with all commissions, and hedge with all vote here presented by him, with all commissions and hedge tions allotted him, with all .5 RETARD or finds paid over to his suctions allotted him, with all other good travely which he is to be eccented in eccents.

SECTION. 1. The county judge shall be elected at the first election holden in August after this statute has been in force thirty days, and if such election does not take place in the year 1851, the county judges elected in 1852 shall hold for the term of three years, and a new election shall take place at the August election in 1855, and every four years thereafter.

2. The county judge is required to keep his office at the county seat, and it is to be kept open for business at all usual times, and he is the keeper of the county scal.

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

4. He is the accounting officer and general agent of the county, and as such is authorized and required—

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

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

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

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

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

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

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

EIGHTH. To institute and prosecute civil actions brought for the benefit of the county :

NINTH. To superintend the fiscal concerns of the county and secure their management in the best manner ;

TENTH. To keep an account of the receipts and expenditures of the county, and on the first Monday of July annually, cause a minute statement of them for the preceding year to be made out, with an account of all debts payable to and by the county, and the assets of the county, and have a copy of the same posted at the court house door and at each of two other public places in the county, and cause the original to be filed. ELEVENTH. To provide the necessary rooms, books, stationary, and furniture for his office, and those of the treasurer and clerk of the District Court, and books for the county Surveyor, and rooms and fire for the District Court, at the expense of the county, and when there is a public building, rooms for such other county officers as he may allow.

5. As the judge issues warrants from time to time, he is required to deliver to the treasurer a memorandum of the number, date, amount, and drawers name of each.

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

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

8. He has authority to administer oaths and take the acknowledgement of instruments whenever the same is required or permitted by law, and in the performance of such acts the county seal shall be his seal of office.

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

10. The judge is required to procure for his county (where it has not been done) a copy of the field notes of the original survey of his county, by the United States, and cause a map of the county to be constructed in accordance therewith, on a scale of not less than one inch to a mile, and laid off into congressional townships and sections, to be kept open in the office of the judge, and the field notes to be deposited in the same. 11. The said judge i further required to cause a plat of each congressional township in his county to be constructed, on a scale of not less than two and a half inches to a mile, and divided into sections and quarter sections, and subdivisions as subsequent occasion may require, and cause the letter S, or some other suitable letter, to be marked on each division and subdivision, which appears to be sold according to the returns transmitted by the Auditor of State, as obtained from the Land Offices.

12. The county judge may submit to the people of his county, at any regular election, or at a special one called for that purpose; the question whether money may be borrowed to aid in the erection of public buildings; whether the county will construct, or aid to construct, and road or bridge which may call for an extraordinary expenditure, whether the county will subscribe to any work of internal improvement; whether stock shall be permitted to run at large, or at what time it shall be prohibited; and the question of any other local or police regulation, not inconsistent with the laws of the State. And when the warrants of a county are at a depreciated value, he may in like manner submit the question whether a tax, of a higher rate than that provided by law, shall be levied.

13. 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 so set forth, and the penalty for its violation if there be one, is to be published at least four weeks, in some newspaper printed in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each township in the county, and in all cases, in at least five among the most public places in the county including the above, and one of them in all cases at the door of the court house, during at least thirty days prior to the time of taking the vote. All such notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of the election.

14. 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 addi-

doposited in the same.

tion 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.

7

15. The rate of the tax shall in no case be more than one per cent. on the county valuation, in one year. When the object is to borrow money for the erection of public buildings, as above provided, the rate shall be such as to pay the debt in a period not exceeding ten years. When the object is to construct, or to aid in constructing any road or bridge, the annual rate shall be not less than one mill on a dollar of the valuation; and when the object is to subscribe to any work of internal improvement, the subscription must be of such sum as will be produced by a rate named for a given number of years, and which rate and number of years shall not cause the total sum to exceed three per cent., on the valuation of the fiscal year in thich the subscription is made, and the county shall be held to no further payment than the sum which such rate produces annually; but any of the above taxes becoming delinquent, shall draw the same interest with the ordinary taxes.

16. The mode in which individuals may acquire stock thus subscribed by the county, in any corporation or company, may be regulated by the county judge, under the laws of the company or corporation.

17. 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.

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

19. 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. In the second day become not soup of guilded atte

20. The judge may submit the question of the adoption or recission of such a measure, upon his own motion; and it is his duty so to do, when petitioned therefor by one-fourth of the voters of the county.

21. The record of the adoption or recission of any such measure, shall be presumptive evidence that all the proceedings necessary to give the vote validity, have been regularly conducted.

22. 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.

23. 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.

you than thu aun which much rate produces annually; but any of the user than the same interest with

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

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

26. Matters requiring a notice shall be heard in session only : but the judge may continue any business from a session to an intermediate day : and any matter may be heard out of session (the judge assenting) if all parties consent in writing, or if the record shew that they are present and assenting. Other matters than those requiring notice, and orders of an intermediate nature not affecting the merits of matters requiring notice, may be heard and acted upon at any time. Solon and note that the matter of the merits of matters requiring notice, may be heard and acted upon at any time. Solon and note that the matter of the merits of matters require the merits of matters require the merits of matters and acted upon at any time. Solon and note that the matter of the merits of matters require the merits of matters require the merits of matters are presented to be a set of the merits of matters are presented to be a set of the merits of matters are presented to be a set of the merits of matters are presented to be a set of the merits of matters are presented to be a set of the merits of the merits of the merits of matters are presented to be a set of the merits of the merits of matters are presented to be a set of the merits of the records of probate business, constitute the records of the county court. 28. The county judge has authority to provide for the erection and reperation of court houses, jails, and other necessary public buildings within and for the use of the county; and such authority in relation to roads, ferries, the poor and cases of bastardy, as is given in the chapters relating to those subjects, and has such other powers as are or may be given him by law. He shall determine the amount of tax to be levied for county purposes, according to the provisions of law in force at the time, and cause the same to be collected. 29. All questions in the county court shall be tried by the court, except when it is otherwise provided.

30. An appeal is allowed (except when otherwise expressed) from all decrees and decisions of the county court on the merits of any matter, affecting the rights or interests of individuals as distinguished from the public, including an intermediate order involving the merits, and necessarily affecting the decree or decision. The appeal shall be taken within thirty days from the day on which the decision was made, and shall be taken by claiming the appeal and filing in the county office a bond with one or more sureties, and in a penal sum, to be approved by the county judge or clerk; which approval shall be endorsed thereon, and with a condition in substance as follows : that the appellant will prosecute the appeal with effect; that if the appeal be dismissed, or the judgment below affirmed, he will comply with the judgment and the orders made by the court below, and that he will pay all costs and sums of money which may be adjudged against him in the court appealed to, and will comply with the orders of that court. But the appeal shall be taken to the next term of the district court in the county if there be ten days between the day when the judgment was rendered by the county court and the day of the sitting of the district court, and the matter shall stand for hearing at that time if required by the appellee, subject to the ordinary rules of practice, if they have no property by which to pay costs ".soften.

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

32. If more than one person be concerned in the matter of the decision from which the appeal is taken, any number of them may take the appeal as above provided; but, if the nature of the case admit of it, the decision may be carried into effect as it regards those who do not join in the appeal bond. If the party entitled to an appeal fails, without fault on his part, to claim or perfect or prosecute his appeal, he may apply to the district court, which, upon being satisfied of the above matter and that the case requires revision, may authorize an appeal to be taken upon such terms as it deems reasonable, and may take such order as may be requisite to give it effect. But no appeal shall be thus allowed without due notice to those adversely interested nor after one year from the act complained of.

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

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

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

36. As the judge of probate, the county judge has jurisdiction of the probate of wills, the administration of the estates of deceased persons, and of the guardianship of minors and insane persons.
37. The probate records shall be kept in books separate from those of the other business of the county court.

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

PART ONE-TITLE III.

indemonts of e-annear of decrement recorded. the said amonine of

CHAPTER 6.

CLERK OF THE DISTRICT COURT.

SECTION. 1 The Clerk of the District Court is ex-officio the clerk of the county Court and the register of Probate.

2. He shall keep his office at the county seat, shall attend the session of the District and county Courts himself or by deputy: keep the records, papers, and seal of the District Court, and keep a record of the proceedings of each of those courts in separate sets of books, as may belong to his office, and as required by law under the direction of the Judges of those courts severally.

3. The books and stationary of his office shall be procured at the expense of the county.

4. The records of the District Court consists of the original papers constituting the causes adjudicated or pending in that court, and the books prescribed in the next section.

5. The Clerk is required to keep the following book for the business of the District Court.

FIRST. 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 refering to each proceeding in each cause under the name of the parties both plaintiff and defendent, and under the name of each person named in either party;

SECOND. 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 recorded, the cost, 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

paid, to a hom, original automati interest: and on receiving the memoranda of warrants [.111]] [17] [] O(TRAP the particulars contained in the memoranda, and on payment of the warrants, to enter the remainent particulars. 7 RETARD

7. The tensure shall keep a second standard for the several standard several several several several several several several and the several s

and it is his duty to record at length, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law.

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

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

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

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

6. The treasurer is directed to keep a book ruled so as to contain a column for each of the following items in relation to the warrants drawn on him by the judge; the number, date, drawee's name, when

docket," and is to have an index like that required for the record book;

THERD. A book in which to enter in detail the costs and fee 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;"

FOURTH. 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; viz, the title of the action, the date of the judgment, the amount of damages recorded, the total amount of costs, and the officers return in full; which book may be known as the "sale book," and is to have an index like those required above;

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

SIXTH. A book in which to enter the proceedings in tax suits.

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

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

8. 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 offence and the sentence of punishment, the occupation of the convict and whether he can read and write and his general habits, and also the expenses of the county for criminal prosecutions during the year, including but distinguishing the compensation of the prosecuting attorney.

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

of each person named in either party :

Nerverse. A book containing an abstract of the judgments having in separate and appropriate colurans the names of the parties, the date of the judgment, the damages recorded, the cast, the date of the issuance and return of executions, with the entry of statisfaction, and other memoranda; which book may be known as the "judgment 14

paid, to whom, original amount, interest; and on receiving the memoranda of warrants issued by the judge, to enter the particulars contained in the memoranda, and on payment of the warrants, to enter the remaining particulars.

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

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

9. At the July session of the court, or at such other period as the court may direct, annually, he is required to present a full account of the finances of the county as connected with his office, from the last annual account, including the balance of taxes due on the tax list, and he shall settle his accounts, and his vouchers being allowed, shall be cancelled by having the word "cancelled" written on the face of them, and be filed in order, and kept in the county office, and the treasurer shall be credited their amount on the books of the county.

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

The treasurer is required to make weekly returns to the county judge of the number, date, drawee's name, when paid, to whom paid, original amount, and interest, as kept in the book before directed.
 A person re-elected to, or holding over, the office of treasurer, shall keep seperate accounts for each term of his office.
 No person holding the office of judge or clerk of the supreme or district court, county judge, prosecuting attorney, or sheriff, shall hold the office of county recorder, and if any person is elected to both offices, his qualification for the one shall be a refusal of the other.

PART ONE TITLE III. PROSECUTING ATTORNEY.

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

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

3. It is also the duty of the prosecuting attorney, to give legal advice to the state and county officers, in matters pertaining to his own county.

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

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

6. The county judge may employ other counsel, with the prosecuting attorney, when he deems it advisable.

7. Each county shall compensate its attorney, for county business and for criminal prosecutions, and his compensation, when it is not defined by law, shall be such as may be allowed by the county court, either by way of annual salary or upon bill rendered. For civil business, in the name of the State, and for proceedings in quo warranto and mandamus, when not prosecuted in behalf of an individual exclusively, the State is held to compensate him. But when the prosecuting attorney acts in the place of the county judge, he will be entitled to receive two dollars a day, to he paid from the county treasury.

prison charged or convicted of <u>public</u> offence, the presecution bring in his county and in the entrem court in any of the above proceedine in the county in any proceeding brought to his county from an the base county in any proceeding brought to his county from an offence is reacting of vertices of the peace in the initiatory proceeding in counting cases.

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

2. 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.

3. 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.

4. 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 on any person to their aid; and, when necessary, the sheriff may summon the power of the county.

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

6. 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.

7. No sheriff, nor his deputy, 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.

8. 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 occuring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands and return the same as if the sheriff had continued in office and he and they will remain liable under the provisions of law as in other cases.

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

10. On the election or appointment of a new sheriff all new processes shall issue to such new sheriff.

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

12. To aid in his duties as assessor he is required to make and keep a plat of each Congressional township of his county, protracted on a scale to be directed by the county judge, but not less than two inches to a mile, divided into sections and quarter sections, and to be sub-divided as occasion may require, on which he shall mark out each parcel of land sold, and enter the owners name, which may be altered from time to time, as the ownership of the property changes, and such plats shall be arranged in order and put together, and the whole shall be renewed at least as often as an assessment of real estate is made.

In the name of the State of leva you are hereby required to $\mathbf{g}_{\mathbf{x},\mathbf{y}}$

13. The stationary and printing requisite in the discharge of the duties of the assessor shall be paid for from the county treasury.

cours held by the county judge, when required by him. 6. No sheriff, deputy sheriff, coroner or constable, shall apprais PART ONE-TITLE III. ad such writing or process, made by any of them, shall 7. No sheriff, nor his deputor Sarrafta? constable, shall become the ourch as a sittler directly or indirectly, of any property by him exposd fa sale under gary process of second corry such postane is also

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

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

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

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

5. The warrant may be in substance as follows : STATE OF IOWA.) and such plats shall be arranged in order and t

---- County. To any Constable of the said County, greeting : In the name of the State of Iowa you are hereby required to summon forthwith, three lawful men of your county, to appear before me at (name the place) at (name the day, hour, or say forthwith.) then and there to hold an inquest upon the dead body of _____ there lying, by what means he died. Witness my hand this — day of — A. D. 18—.

(Signed)

A. B., Coroner of —— county.

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

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

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

8. 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 coroner has the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his process as a justice of the peace has when his process issues in behalf of the State.

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

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

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

11. 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, so 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 felloniously.) In testimony whereof the said jurors have hereunto set their hands

the day and year aforesaid; which shall be attested by the coroner.

12. 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.

13. 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.

14. 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.

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

16. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice instead of a complaint.

17. The corner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testify material matters.

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

19. 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.

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

by oligine and table and tog radio bue remnied view out at T .8 and beauge and PART ONE TITLE III. and you to be remain and the chapter 11-mid of stores bue rays run at of chapter and the chapter 11-mid of stores bue rays run

COUNTY SURVEYOR.

SECTION 1. It is the duty of the county surveyor to make all surveys of land within his county which he may be called upon to make, and his surveys shall be held as prima facia correct.

2. The field notes and plates 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.

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

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

5. It is his duty when requested, to furnish the person for whom the survey is made, with a copy of the field notes and plat of the survey, and such copy, certified by him, and also a copy from the record, certified by the county judge, or clerk with the seal, shall be prima facie evidence of the survey, and of the facts herein required to be set forth and which are stated accordingly, between those persons who join in requesting it, and any other person then concerned who has reasonable notice that such a survey is to be made and of the time thereof. 22

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

7. 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.

8. 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.

olam of nogu bells PART ONE-TITLE III. and which to say and his surveys shall be held as priced locia correct. 2. The field notes and plates made by the county surveyor shall

out to noisbroo SALARY OF CERTAIN COUNTY OFFICERS. surveyor, when desired by a person interested, and at his expense. 1. The county judge, the clerk of the district court and the recorder, are each entitled to receive as the only compensation for the performance of the several duties of their offices, (unless as otherwise expressed) an annual salary to be paid quarterly from the county treasury, and to be ascertained and graduated as follows ;

It shall in no case be less than three hundred dollars; and if the latest census taken by the state or the United States shew a population in the county of between two and three thousand inhabitants, the salary shall be four hundred dollars ; if a population of between three and four thousand inhabitants, five hundred dollars; if between four and five thousand fnhabitants, five hundred and fifty dollars; if between five and six thousand inhabitants, six hundred dollars; and when the population amounts to six thousand the salary shall be increased twenty-five dollars for each additional thousand inhabitants. 2. Each of the above officers is required to keep an account of all the fees received by him as prescribed by law for his office, entering the date, amount. and name of the person paying them, and the book

containing such account shall be opened to the inspection of any person, and be permanently preserved in his office.

3. The said officers may receive such fees to their own use jointly, to the extent of their several salaries, and to that end shall have an accounting together as often as once in each quarter at the sessions of the county court in January, April, July, and October, when they shall make an exhibit of the amount of money received by each. which shall be entered in the minute book, and the amount of money received by all, shall be equally divided between them, the amount received in one year not exceeding the amount of their salary for the year. If the money is less than the amount due them in any quarter, they may draw the balance due for the quarter from the county treasury. or they may await the event of future accountings, and draw at any future quarter. Each of them shall make a general settlement of the above accounts at the end of his term of office.

4. When the county warrants are at a depreciated value, the said officers will be entitled to receive them at their depreciated value, and be allowed an additional rate, corresponding with the rate of depreciation, but the rate of depreciation must first be certified by the proseeuting attorney, or in his absence, by the sheriff, and the certificate be entered in the minute book of the county court.) When there is a balance of fees above the amount due the above officers for the year, it shall be paid into the couuty treasury.

5. The above accounts of fees shall be examined and approved at least once in each year, which shall be at the July sessions of the county court, or at such other time after that as the court directs. The judges account shall be examined and approved by the prosecuting attorney.

6. The judge of any county may submit to the people of the county the question whether the salary of the above officers, or any of them, shall be raised, in the manner provided in chapter five, for submitting 8. Any person elected to a township office, other questions. and serve, shall forfeit the sum of ten dollars, which may be recover ed by action in the name of the county, and to the use of the school

It is the data of the town hip clerk to I erp accurate records of

containing such according ALTER - ANO, TRAC inspection of any percon, and be permanently preserved in his office.

CHAPTER 13. CHAPTER 14. CHAPTE

ject to alteration, as provided in this chapter. 2. The county court, of each organized county, shall divide the

same into townships, as the convenience of the citizens may require, accurately defining the boundaries thereof, and may from time to time make such alterations in the number and boundaries of the townships as it may deem proper, but no township shall be less than six miles square, and when practicable, is required to conform to the congressional townships. 3. The description of the boundaries of each township, and all alte-

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

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

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

6. They shall cause the clerk to keep a record of their proceedings. 7. The township trustees are the overseers of the poor and fence viewers.

8. Any person elected to a township office, and refusing to qualify and serve, shall forfeit the sum of ten dollars, which may be recovered by action in the name of the county, and to the use of the school fund in the county.

CLERK,

9. It is the duty of the township clerk to keep accurate records of

all the proceedings and orders of the trustees, and to perform such other acts as may be required of him by law.

10. 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.

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

called, and such faturate and he classed at any subsequent meeting

CONSTABLES.

12. 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.

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

ORGANIZATION OF NEW TOWNSHIPS.

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

15. The court shall issue its warrant for such first election, stating the time and place of the same, the officers to be elected, and any other business which is to be attended to, and no other business shall be done than such as is so named.

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

REVISED CODE,--4

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

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

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

PART ONE-TITLE IV.

"The constables shall, each of a narrable, notenes, and other is hurthily directed to them by any second second of the torm

Of elections, qualification for office, contested elections, vacancies, &c.,

CHAPTER I.

ELECTIONS, OFFICERS AND THEIR TERMS.

SECTION 1. For the purposes of this title, the term "general election" means the election at which the members of the General Assembly are regularly chosen; the term "August election" means that holden on the first Monday of August, in the years alternate with the years of the general election; the term "April election" means that holden annually on the first Monday of April; and the term "special election" means elections by the people called at other times.

2. The provisions of this title in relation to notifying, and the mode of conducting, the general election, govern in relation to the August election, so far as applicable.

WHAT OFFCERS ARE TO BE ELECTED, AND AT WHAT ELECTIONS.

3. The following officers shall be chosen, and at the elections here prescribed.

1. At the general election ; the Governor ; the Secretary, Treasurer and Auditor of State, members of the General Assembly, Representatives to Congress, Prosecuting Attorneys, and Clerk's of the Distriet Court.

2. At the August election; the County Judge, Sheriff, Coroner, Recorder, Surveyor, and Supervisor of Roads.

3. At the April election; the Judges of the District Court, the Superintendent of Public Instruction, and three Township Trustees, a Township Clerk, two Justices of the Peace, and two Constables in each township. But three or four Justices of the Peace may be elected, if the Trustees so direct by the notice of election, in each township which includes an incorporated town.

IN WHAT YEARS CHOSEN, AND THEIR TERM OF SERVICE.

4. The following shall be the years of the election, and the terms of service of the respective officers.

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

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

At the general election; Λ secretary, treasurer and auditor of State; the prosecuting attornies, clerks of the district court, representatives

to General Assembly and to Congress, each for the term of two years; and Senators, in the General Assembly from the proper districts; for the term of four years.

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

In the year 1854; at the April election; A superintendent of public instruction, for the term of three years.

At the general election; A governor for the term of four years. 5. Every civil officer except representative officers, may continue to hold his office until his successor is elected and qualified.

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

7. No election shall be held void because any of the notices herein required have not been given as directed, if the election takes place at the time appointed therefor by law, whether it be the regular election of the officers or an election to fill a vacancy.

8. Justices of the peace and constables, are county officers for all the purposes of this title except that of election.

a cash county, at the council clobion in the year 1852, the county

PART ONE-TITLE IV.

(1) start the again elected in the year [853] and each two years thereafter; and a county judge is gargano 1856, and each four years thereafter. And from the time of the qualification of the county judge

OF THE GENERAL ELECTION.—OF NOTIFYING GENERAL ELECTIONS.

SECTION 1. On or before the first day of May in any year in which a governor, secretary, treasurer or auditor of State; senators in the general assembly; representatives in congress; or electors of president and vice president are to be elected, the secretary of State shall issue a circular to the several county judges giving notice which of the above offices are to be filled, which circular may be sent by mail or other safe conveyance.

2. Thirty days at least before the day of the election, the county judge is directed to deliver to the sheriff two written notices of the

election for each township in his county, stating the time of the election and all the officers to be chosen.

3. The notices are directed to be in substance as follows :

GENERAL ELECTION.

Notice is hereby given that on Monday the —— day of August next at the proper place of holding elections in ———— township in ______ county, an election will be holden for the following officers [naming the State, district, and county officers to be elected.] Dated at —— county this —— day of —— A. D. —— (signed) A. B. judge of —— county.

4. Twenty days at least before the day of the election, the sheriff is required to post up two of the notices in two of the most public places in each of the townships of his county, one of which places shall be the usual place of holding elections, and to return his doings to the county judge.

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

MANNER OF CONDUCTING THE GENERAL ELECTION AND THE CANVASS OF THE VOTES.

6. At the general election, a poll shall be opened at the place of election in each township of each county.

7. The trustees of each township are the judges of election in the same.

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

9. There shall be two clerks of the election, one of whom shall be the township clerk, and the other some elector named by him and approved by the judges of election.

10. Before opening the polls, each of the judges and clerk's 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.

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

12. 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.

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

14. 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 clerk's 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 time not exceeding twenty-four hours—but they shall permit him to vote.

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

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

17. The ballots shall designate the office for which the persons therein named are voted for.

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

 Any person offering to vote may be challenged, as unqualified by either of the judges, or by any person who is an elector in this State, and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified.
 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 the person insists that he is qualified and the challenge is not withdrawn, one of the judges shall tender to him the fol-

lowing oath: "You do solemnly swear that you are a citizen of the United State, that you are a resident of ——— (town or township) in this county, that you are twenty-one years of age as you verily believe, that you have been a resident of this county twenty day, and of this State six months next preceding this election, and that you have not voted at this election"—and if he takes such oath, his vote shall be received.

21. 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.

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

dot as distant THE CANVASS BY THE JUDGES OF ELECTION.

23. 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 shall be found or made to agree. If two or more ballots are found so folded together as to present the appearance of a single ballot and to convince the judges that they were cast as one, they shall not be counted, but shall have the words "rejected as double" written upon them, be folded together again and kept as herein directed.

24. 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 town-

ship where the error occurred would change the result in relation to a county officer if the person elected were deprived of so many votes, then the election shall be set aside as to him and a new election ordered; but if the error 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 canvassers, and if it be found that the error would affect the result as above, a new vote shall be ordered in the county where the error happened, and the canvass be suspended until such new vote is taken and returned. When there is a tie vote, and such an excess, there shall be a new election as above directed. 25. 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.

26. 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 of voters, it shall be rejected as to that office the cause of rejection 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.

27. As a check in counting, each clerk shall keep a tally list.

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

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

A. B. had <u>votes</u> for governor.

C. D. had —— votes for governor. (and in the same manner for any other officer.)

ATTEST,

A true return, oning "alduch as botogor claure wit R. S.) Clerks of the election. build migraal an topol hour minure of T. U.(14. If the ballots for (.M olicer are found to er at the number of and any of this ball two of flore to N, O, Judges of the election. \cdots is even in the rotation $\mathbf{Q}_{11}\mathbf{q}_{11}$ it be found there are vote of the town33

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

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

THE COUNTY CANVASS.

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

32. As soon as the returns from all the townships are received, the county judge, taking to his assistance two justices of the peace of his county, shall open and examine the several returns and make abstracts stating in words written at length the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office. 33. The abstract of the votes for each of the following classes of officers shall be made on a different sheet.

FIRST-Governor.

SECOND-Secretary, Treasurer, and Auditor of State, and Superintendent of Public Instruction.

THIRD—Representatives in Congress.

FOURTH-Senators and Representatives in the General Assembly from the county alone.

FIFTH-Senators and Representatives in the General Assembly by districts.

Sixrn-Judges of the District Court, naming the district. SEVENTH-County officers.

REVISED CODE -5

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

34. The person having the greatest number of votes for any office is to be declared elected.

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

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

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

38. The judge shall also by the twelfth day after the election day, deliver to the sheriff or a constable of the county, a precept, requiring him to notify the persons therein named, that they have respectively been elected to the offices named; and that they (except Senators and Representatives in the General Assembly) are required to appear before the county judge at his office within thirty days from the day of election, and give the bond and take the oath of office.

39. It is the duty of the sheriff or constable to whom such precept is directed, to serve within three days (Sunday excluded) by personal service, and return the same to the county office with his doings thereon; for which he shall be entitled to the same fees from the county, as for the like service of legal process.

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

STATE OF IOWA.)

———— county) At an election holden in said county on the first Monday of August, A. D. A. B. was elected to the office ——— of the above county, for the term of two years from that day (or, if he was elected to fill a vacancy, say until such an election) and until his successor is elected and qualified; and he has qualified by giving bond and taking the oath of office as required by law.

(L. S.) C. D. County Judge. Which certificate shall be prima facie evidence of his election and qualification.

41. The certificate of Senators and Representatives in the General Assembly, may vary from the foregoing according to the nature of the case, and the requirements of this title in relation to their offices, and is to be delivered to them on request.

42. The certificate of the county judge, is to be signed by the clerk.

43. When the person elected is chosen to fill a vacancy, the certificate shall state for what time he is elected.

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

45. The county judge shall notify the persons who were the canvassers with him—or in case of their absence or inability, the prosecuting attorney, recorder or sheriff—of such lot, and on the day fixed the parties interested shall determine by a lot fairly arranged by the three officers, which of them is to be declared elected, and the three officers shall certify such lot and its result, under their official names and the seal of the county, (to be affixed by the county judge or clerk) and the certificate shall be recorded in the election book, and the person elected notified to appear as directed in section 38 (unless he was present at the determination of the lot, in which case he shall take notice of the result) and the judge shall deliver him his certificate of election on the terms prescribed in this chapter.

sembly is to be elected by a district formed of more than one county, the abstract of votes in each county for such office shall be made as directed in relation to the general election, and delivered to the county judge; and on the Wednesday following the second Monday after the day of the election the judges of the several counties constituting the district shall meet at the county seat of the oldest county.

38

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

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

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

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

PART ONE-TITLE IV:

OF THE ELECTION OF ELECTORS OF PRESIDENT AND VICE PRESIDENT.

SECTION 1. On the Tuesday next after the first Monday in the month, of November, in the year eighteen hundred and fifty-two, and every four years thereafter (or on such day as the Congress of the United States may direct) a poll shall be opened in each of the townships of the state for the election of electors of President and Vice President of the United States, the number of whom is to be equal to the number of Senators and Representatives in Congress to which this state may be entitled. electors to be chose

2. The names of all the electors to be chosen shall be written c_{\perp} 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.

3. The duties of the secretary of state, county judges and sheriffs, shall be the same in regard to the manner and length of time of giving notice of the election as is provided in relation to the general election.

4. This election shall be conducted and the returns made as nearly as may be as directed in relation to the election of state officers and representatives in Congress, except as herein otherwise expressed.

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

6. The judge shall envelope and seal up the abstract and endorse and direct it as provided in the above mentioned chapter, and before ten o'clock A. M. of the sixth day after the day of the election, shall deliver the same to the sheriff of his county, whose duty it is to deliver the abstract to the Secretary of State within ten days, including the day he receives it.

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

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

9. The Governor, or in his absence the Secretary, shall issue a certificate of election under his hand and the seal of the State, and cause it to be served on each person elected notifying him to attend at the seat of government at noon of the Tuesday preceding the first Wed-

39

nesday of December next after his election and report himself to the Governor as in attendance.

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

11. Such choice being certified to the Governor he shall cause the person chosen to be notified immediately.

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

13. The electors shall receive the same compensation for their travel and attendance as the members of the General Assembly.

PART ONE_TITLE IV.

- dialo at a grad a solar offit CHAPTER 5. Takes publication of a data water of a solar a

endone and enclose and seed up the abstract and endone

OF THE APRIL ELEECTION.

SECTION. On or before the first day of February in any year m which there is to be an election of any of the judges of the district court or of the superintendent of public instruction, the secretary of state shall issue a circular in relation to these offices in manner provided in relation to certain other officers in section 1, chapter 2 of this title.

2. Thirty days before the day of election the county judge shall deliver a precept to the sheriff requiring him to notify a trustee or the clerk of each township in the county, that such officers are to be elected; and the sheriff shall serve the same twenty-five days before the day of election, and the trustees shall include a notice of the election of such officers in the notice of the election.

3. Twenty days before the election the trustees shall cause notices to be posted in manner and form similar to those required in section 3, chapter 2, of this title.

4. When the judges or a superintendent are to be elected, the county clerk shall furnish poll-books as directed in section 16, chapter 2 of this title.

5. The provisions of chapter 2 of this title shall govern in the April election so far as applicable, and according to their intent.

THE CANVASS.

6. The provisions of chapter 2, of this title shall govern in the canvass of the April election, according to their intent; except that a return of the ballots for township officers need not be made to the county judge.

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

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

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

10. The abstracts of votes for judges of the district court and for superintendent are to be transmitted to the secretary of state and canvassed by the state canvassers as provided in chapter 2 of this title in relation to other state officers.

REVISED CODE.-6

42

CHAPTER 6.

OF QUALIFICATION FOR OFFICE.

SECTION 1. No civil officer elected by the people is empowered to enter on the duties of the office to which he is elected until he has qualified himself as required in this chapter.

2. The Governor, by taking an oath in the presence of both houses of the General Assembly, administered by the presiding officer of such convention, to the effect that he will support the constitution of the United States and the constitution of the State of Iowa and will faithfully, impartially and to the best of hisknowledge and ability, discharge the duties incumbent upon him as the governor of this State.

3. Members of the General Assembly by taking the oath prescribed for them in the fourth article of the constitution.

4. The judges of the Supreme and District courts, by taking and subscribing before the Governor or Secretary of the State, an oath in writing to the effect that they will support the constitution of the United States and that of the State of Iowa, and that without fear, favor, affection, or hope of reward, they will to the best of their knowledge and ability administer justice according to the law, equally to the rich and the poor; and they shall likewise be commissioned by the governor.

5. County judges and township officers are not required to give bond.

6. Every civil officer not before mentioned in this chapter, (except the members of congress,) is required to give bond with surety and in a penal sum as hereafter required, with a condition in substance as follows;

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

7. The bonds of State and district officers shall be given to the State, those of county officers to the county.

8. The bond of the treasurer of State shall be in the penal sum of fifty thousand dollars; that of the auditor of public accounts, in the sum of ten thousand dollars; that of the Superintendent of Public Instruction in the sum of twenty-five thousand dollars; those of the Secretary of State and the clerk's of the district court, in the sum of five thousand dollars each; those of prosecuting attornies and recorders of counties, in the sum of two thousand dollars each; those of coroners and surveyors, in the sum of one thousand dollars each.

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

10. The bond of the superintendent of public instruction, of the treasurer of State, and of each county treasurer, shall be given with at least four sureties; and every other official bond shall be given with at least two sureties.

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

12. The bonds of the State officers are hereby required to be approved by the Governor before they can be filed, and those of the county officers by the county judge; which approval shall be endorsed upon the bond and signed by the approving officer.

13. 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 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.

14. Those civil officers who are not required to give bond except the

45

CHAPTER 7.

OF CONTESTING ELECTION .---- CONTESTING THE ELECTION OF COUNTY OFFICERS.

SECTION 1. The election of any person declared duly elected to a county office may be contested by any elector of the county;

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

2p. When the incumbent was not eligible to the office at the time of the election.

3D. 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.

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

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

6TH. For any error or mistake in any of the boards of canvassers in counting the votes or declaring the result of the election, if the error or mistake would effect the result.

7_{TH}. For any other cause (though not enumerated above) which shows that another was the person legally elected.

2. The term "incumbent," in this chapter, means the person whom the canvassers declare elected.

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

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

5. The court, for the trial of contested county elections, shall be thus constituted:

44

Governor, members of the General Assembly, and of Congress, and judges of the supreme and district courts, are required to take and subscribe in like manner an oath the same in substance with the condition of the official bond before provided for.

15. The bonds and oaths of the State officers shall be filed and kept in the office of the Secretary of State, except those of the secretary, which shall be filed and kept in the office of the auditor; those of the county officers in the county judge's office, except those of the clerk of the district court and of the county judge, which shall be kept in the county treasurer's office; and those of the township officers in the township clerk's office.

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

17. But if such officer has not received notice of his election as follows—State officers twenty days, county officers ten days, and township officers five days before the time prescribed in the preceding section for qualification, he shall have the above time after notice to qualify.

18. When any election is contested the person elected shall have twenty days in which to qualify after the day of the decision.

19. The bonds of officers shall be construed to cover duties required by law subsequent to giving them.

20. No official bond shall be void for want of compliance with the statute, but shall be valid in law for the matter contained therein.

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

The county judge shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. But when the county judge is one of the parties, the prosecuting attorney shall preside.

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

7. The contestant shall file, in the county office, within twenty days after the day when the votes are canvassed, a written statement of his intention to contest the election, setting forth the name of the contestant, and that he is an elector of the county, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest; which statement shall be verified by the affidavit of the contestant, or some other elector of the county, that the causes set forth are true as he verily believes.

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

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

10. If either the contestant or the incumbent fails to nominate, the county judge shall appoint for him.

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

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

13. The testimony may be oral or by depositions, and depositions

may be taken on four days notice in the same manner and for t same causes as in an action in the district court.

14. The county judge and clerk, as well when interested as otherwise, may issue subpænas for witnesses under the county seal.

15. 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.

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

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

18. The style and form of process, the officers by whom served and the manner of service of process and papers and the fees of officers, and witnesses shall be the same as in the district court, so far as the nature of the case permits.

The command to a witness may be to appear at ---- to testify in relation to a contested election wherein A. B. is contestant and C. D. is incumbent.

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

20. This court shall have all the powers incident to the district court which may be necessary to the right hearing, conduct and determination of the matter;

To compel the attendance of witnesses;

To swear them and direct their examination;

To punish for contempt in their presence; an a los la material de

To adjourn from day to day;

And to make any order concerning intermediate costs, and to enforce it by attachment.

21. The court or the county judge may direct the attendance of the sheriff or a constable when deemed necessary.

22. It shall be lawful to 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 require him to answer for whom he voted; and if the witness answer such questions, no part of his testimony on that trial shall be used against him in any criminal action.

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

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

25. The nominated judges shall be entitled to receive two dollars a day from the county treasury for the time occupied by the trial.

26. 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, (except those mentioned in the preceding section, and those specially otherwise ordered by the court.) and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs also.

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

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

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

CONTESTING THE ELECTION OF CERTAIN STATE OFFICERS.

30. The election of any person declared duly elected to the office of secretary, treasurer or auditor of state, judge of the district court, or superintendent of public instruction, may be contested by any eligible person who received votes for the office contested, for any of the causes contemplated in section one.

31. The court for the trial of contested state elections, shall consist of three judges, not interested, of either the supreme or district court, or part from the one and part from the other, as may be convenient.

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

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

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

35. The secretary of state, the several clerks of the supreme and district courts, and any county judge, under their respective seals of office, and either of the judges of the supreme or district courts, under their hands, may issue subpænas for witnesses to attend this court;

REVISED CODE.-7

49

and disobedience to such process may be treated as a contempt, as if it had, been issued by the court itself.

This section does not diminish the power of any officer to summon witnesses before him, to give his testimony by deposition.

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

37. The trial shall take place at the seat of government, unless in a case such as provided in section 19.

38. The judges shall be entitled to receive for their travel and attendance, the highest compensation allowed to members of the general assembly to be paid from the State treasury.

39. A transcript filed in the office of the clerk of the supreme court as provided in relation to the district court in section 27, shall have the like 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.

40. 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.

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

CONTESTING ELECTIONS .- FOR MEMBERS OF THE GENERAL ASSEMBLY.

42. The election of any person declared duly elected to a seat in the Senate or House of Representatives of the general assembly, may be contested by any qualified voter of the county or district to be represented by such senator or representative.

43. The contestant shall within thirty days after the declaration of the canvassers, serve on the incumbent a statement as required in section 7, except the list of illegal votes which shall be served with the notice of taking depositions relative to them, and if no such deposition is taken then twenty days before the day of hearing.

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

45. The provisions of section 13 of this chapter shall be applicable

REVISED CODE -

to, and govern similar cases in faking depositions in the cases now contemplated except that the causes of taking depositions do not apply.

46. A copy of the statement, and of the notice for taking depositions with the service endorsed, and verified by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then with the depositions shall be sealed up and transmitted by mail or otherwise to the Secretary of State, with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before which the contest is to be tried.

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

49. Any elligible person who received votes for the office of Governor may contest the election of any person declared duly elected to that office.

50. 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 directed in section one.

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

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

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

52

FIRST. The names of the members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box; the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their secretary. SECOND. The secretary of the senate, in the presence of the senate, and secretary of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each.

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

54. 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 time as they may designate; and may adjourn from day to day, or to a day certain not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony and 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.

55. The testimony shall be confined to the matters contained in the specifications.

56. The judgment of the committee pronounced in the final decision on the election shall be conclusive.

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

58. The provisions of this chapter in relation to contested county elections are applied to a contested election for Governor when applicable, except as herein otherwise directed.

PART ONE—TITLE IV. CHAPTER 8. REMOVALS FROM OFFICE.

SECTION 1. All county officers, including justices of the peace, may be charged, tried and removed from office for official misdemeanors, in the manner and for the causes following:

FIRST—For habitual or wilful neglect of duty; SECOND—For gross partiality; Tump For apprecian:

THIRD—For oppression; FOURTH—For extortion;

FIFTH-For corruption ;

SIXTH—For wilful mal-administration in office; SEVENTH—Conviction of a felony.

2. Any person may make such charge, and the district court shall have exclusive original jurisdiction thereof by a summons.

3. The proceedings shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter.

4. The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them and be verified by the affidavit of any elector of the state, that he believes the charges to be true.

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

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

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

8. 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 in any office other than that of county judge, that officer shall temporarily fill the office by appointment, similar to appointments provided for hereafter in this title.

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

10. The accuser and the accused are liable to costs, as in other actions.
11. When the accused is an officer of the court, and is suspended, the court may supply his place, by appointment, for the term.

CHAPTER 9. SUSPENSION OF CLERKS AND SHERIFFS BY THE JUDGES OF THE DISTRICT COURT.

SECTION 1. The judges of the district court in their respective districts shall have authority on their own motion to suspend from office any clerk of that court or sheriff of a county, for any of the causes before mentioned in chapter 8, section 1, coming to their own knowledge or manifestly appearing from the papers or testimony in any proceeding in court.

2. Upon such suspension the court may direct the prosecuting attorney to file a complaint, which shall be in the name of the county upon the relation of the attorney, but it need not be verified by affidavit. 3. Such order of suspension shall be entered in the election book by the clerk, or, if he be the accused, it shall be certified to the county judge and be by him entered.

ADDITIONAL SECTION AND THE DESCRIPTION OF SURPRISE

PART ONE—TITLE IV. CHAPTER 10. OF DEPUTIES.

SECTION 1. The secretary, auditor, and treasurer of State, each clerk of the district court, sheriff, and recorder shall appoint a deputy, for whose acts he shall be responsible and from whom he may require bond; which appointment must be in writing and be approved by the the officer who has the approval of the principal's bond, and shall be revocable by writing under the principal's hand, and both the appointment and the revocation shall be filed and kept in the office of the secretary of state and county judge respectively.

2. In the absence or disability of the principal, and in the cases provided for in chapter 12, section 13, 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 place of another officer his deputy cannot supply his place.

3. The secretary, treasurer and auditor of State can neither of them appoint either of the others his deputy; nor can either the clerk of the district court, recorder or sheriff of a county appoint either of the others.

4. The deputy recorder shall be deputy treasurer also; and the deputy of the clerk of the district court shall be his deputy as county clerk.

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

6. Each deputy shall take the same oath as his principal, reciting the condition of his principal's bond, which shall be endorsed upon and filed with the certificate of his appointment.

• 7. When a county officer receiving a salary is compelled by the pressure of business of his office to employ a deputy the county court may make a reasonable allowance to such deputy.

CHAPTER 11.

56

OF ADDITIONAL SECURITY, AND THE DISCHARGE OF SURETIES.

SECTION 1. The officer who has the approval of another officer's bond, when he is of opinion that the public security requires it, and upon giving the officer ten days notice to show cause to the contrary, may require such officer to give such additional security as may be deemed requisite, within a reasonable time to be prescribed.

2. Such additional security shall be by giving a new bond.

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

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

5. The surety shall give the principal at least twenty-four hours notice of the presenting and filing of the petition, with a copy of the grounds of his apprehension. At the expiration of twenty-four hours from the notice, the approving officer may hear the matter, or may postpone the hearing, as the case permits or requires.

6. The testimony of both parties, as well as that of witnesses, may be heard in proceedings under this chapter.

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

8. If the new bond is not given as required, the office of the principal shall be declared vacant, and the order to that effect entered as, directed in the preceding section.
 9. If the proceeding relate to a justice of the peace, and he is re-

moved from office, the county judge shall notify the proper township trustees or clerk, of the removal. 10. The approving officer herein contemplated shall possess all the powers of a justice of the peace to issue subpœnas in his official name for witnesses to compel their attendance and to swear them. 11. When an officer consents to give new security in the above cases it may be taken without further proceeding and with the same effect as above provided.

57

PART ONE—TITLE IV. CHAPTER 12. OF VACANCIES AND SPECIAL ELECTIONS. SECTION 1. Every civil office shall be vacant upon the happening of either of the following events, at any time before the expiration of the term of such office, to wit: FIRST—The resignation of the incumbent; SECOND—His death; THIRD—His removal from office;

FOURTH-His refusal or neglect to take the oath of office, and also to give bond, (when a bond is necessary,) in the time prescribed by law;

FIFTH—The decision of a competent tribunal, declaring his election or appointment void, or his office vacant; SIXTH—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.

SEVENTH—A failure to elect, at the proper election, there being no provision for the incumbent to continue in office until his successor is elected and qualified, or other provision relating thereto.

EIGHTH—A forfeiture of office, as provided by any law of the state; NINTH—Conviction of an infamous crime, or of any public offence, involving the violation of his oath of office.

2. Resignations shall be tendered as follows: de eablity through the first-By the governor to the general assembly, if in session; if not to the secretary of state;

REVISED CODE-8

0

of the office room and of the books, papers and all things pertaining to the office, as follows; to be held until the election or appointment and qualification of a successor.

60

Of the office of the county judge by the county clerk.

Of that of the county clerk or treasurer by the county judge. Of any of the state officers, by the governor ; or in his absence or inability, at the time of the occurrence, as follows ;

Of the secretary by the treasurer. Of the auditor and superintendent of public instruction, by the sec-

retary. At it noises gribborry out at batalquickee esses at al. 01

Ø

V

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 audidor shall take the key of the office room.

PART ONE—TITLE V. Of the property of the State. CHAPTER 1.

THE LANDS OF THE STATE. SECTION 1. All lands held by the state for the purpose of sale shall be sold at a land office established at the seat of government except as otherwise provided.

2. The auditor of state is the register and the treasurer is the receiver of that land office and they are liable on their official bonds as such. The present auditor and treasurer must accordingly execute their official bonds anew before they commence acting as such land officers.

3. The mode of transacting business in the state land office shall be assimilated to that observed in the land offices of the United States as far as the same is applicable and where not otherwise directed by law.

4. For the additional labor and responsibility thus imposed upon

61

the auditor he is entitled to receive annually the sum of two hundred dollars and the treasurer for a like reason is entitled to receive annually the sum of four hundred dollars which sums shall be paid them in the usual way in addition to their regular official salaries.

5. The auditor is also authorized to employ a clerk and pay him such sum as the census board shall allow not exceeding six hundred dollars per annum. And each of said land officers may employ such temporary assistance is found necessary and as the said census board allows.

6. Any head of a family or single person over the age of twenty one years having such a claim to any tract of land belonging to this state as is recognized by law has a right of pre-emption thereto or to any part thereof in regular legal subdivisions not exceeding three hundred and twenty acres in extent at the minimum price established as hereinafter provided upon complying with the terms and conditions prescribed by law of all and stort rollams of it up bial of of 7. Where two or more persons are thus occupying the same tract the right of pre-emption belongs to him who holds by virtue of the earliest settlement and occupancy which has been regularly and constantly kept up by the applicant or his assignors down to the time of making the application on intervet in his opinio. not stol doug yns 8. The purchase must be consumated before the lands are publicly offered for sale or the right of pre-emption is lost. It yangut bas tellob 9. The register and receiver shall,—subject to the approval of the governor,-establish rules for the proof of pre-emptions (including the time of proving them) and for the transaction of other business in their office, and any person who in making an oath in accordance with such rules wilfully swears falsely shall be deemed guilty of perjury and punished accordingly. The said land officers are hereby authorized to administer oaths in connection with the business of their offices lade (nel vd olas mort bovieser each treaze) besitedtus 10. Any person committing waste on the public lands shall pay

treble damages therefor to be recovered by suit before any court of competent jurisdiction or by indictment, the net proceeds therefrom arising to be added to the fund to which the land on which the waste was committed belongs, but the making or keeping up a claim or using timber or other materials in a reasonable way for that purpose creates no such liability.

11. The minimum price of the lands selected and appraised by the

commissioners appointed by virtue of the act of January 15th 1849 shall be two thirds of the value fixed by such appraisement if the minimum so fixed amount to one dollar and twenty five cents an acre.

12. Where the governor is satisfied that the fair value of any land belonging to the state is very considerably greater than the minimum price prescribed in this chapter he may appoint one or more persons to appraise the same and the amount at which it is so appraised shall be its minimum price.

13. The persons so appointed shall be sworn to discharge their duty faithfully, they shall report in writing to the governor and shall receive such compensation as the governor may direct, not exceeding two dollars per day exclusive of necessary expenses, which amount shall be paid out of the fund to which the land so appraised belongs.

0

.

14. The governor may also in his discretion, cause any state lands to be laid out into smaller tracts than the legal subdivisions or into town lots and may cause such tracts or lots or any other town lots owned by the state to be appraised in manner aforesaid which appraisement shall fix their minimum price.

15. The governor may in like manner direct a reappraisment of any such lots or lands whenever in his opinion the same is expedient but the minimum price of no lands shall be fixed at less than one dollar and twenty five cents an acre.

16. Persons occupying and improving any of such lots or tracts may preempt the same in like manner as other lands but no one person shall thus preempt more than two town lots in any one year.

17. The minimum price of all lands belonging to the state except as above provided for shall be one dollar and twenty five cents per acre.

18. All lands which are not purchased by preemption as above authorized (except those reserved from sale by law) shall be offered for sale at public auction and if not sold for a sum at least equal to the minimum price fixed as aforesaid shall be subject to private entry at that price.

19. Public sales are to be ordered by proclamation of the governor which must be published for five weeks 'successively the last publication being made at least fifty days prior to the time fixed for the sale.

20. Such publication must be made in one or more newspapers printed in the county where any of such lands lie, but if there be no newspaper printed in such county then by such other publication as the governor thinks most likely to give the desired information to those concerned.

63

21. Lands are to be thus brought into market at such times and the sales may take place at such places as the governor directs. 22. Where the principal of the sum for which the lands are sold is not wanted for immediate use they may be sold on a partial credit to be prescribed by the governor but not less than one fourth of the purchase money must in all cases be paid down and the remainder must be upon interest payable annually on a day to be fixed in the contract at such rate as may be stipulated but which must not be less than the highest fair rate of interest for money at the time.

23. Where a sale is thus made on a partial credit the purchaser shall receive a certificate thereof stating briefly the terms of the contract and consequences of non-payment of principal or interest and such certificate is assignable in writing endorsed thereon or attached thereto. The interest of the holder descends to his heirs. 24. A failure to pay interest within thirty days after it falls due according to the stipulations of the contract and a failure for the space of six months to pay any instalment of the principal as it falls due works a forfeiture of the contract and of all money paid thereon and

the lands may be re-sold as though no sale had taken place. 25. The governor shall sign and issue patents to the holders of such certificates whenever he is satisfied from endorsements thereon by the treasurer that the amount for which the lands were sold has all been paid,—but not sooner.

26. The certificate of purchase above contemplated at any time before the same is forfeited is the same evidence of title and has the same force except against the state as the ordinary receiver's receipt where lands are sold absolutely, and the signature shall in like manner be presumed genuine.

27. The purchaser of lands on a partial credit is liable for waste committed thereon to the same extent as though he were occupying it as a claim merely. In order to use timber on other materials to a greater extent than such occupancy would warrant he must obtain permission from the judge of the county court of the county in which the land lies—having first given security to the state for the amount of the balance still due on the land to the satisfaction of the judge which security shall be transmitted by the judge to the auditor of state. 28. The auditor shall provide himself at the expense of the state, with

1st. Plats of every township of land in the state as fast as the same can be procured from the proper land office on the same scale and plan as the plats in said office,—to show what lands have been sold and to be bound together and kept in such a manner as to be safely preserved and of ready reference, 2p. A full abstract of all the entries made at all the land offices state and federal within the state which must be entered in books

similar to the tract books used in the United States land offices,
3b. A skeleton map of the state showing the townships and ranges the boundaries of counties and the courses of the principal streams.
29. The abstracts aforesaid must be so arranged that the townships in each county may stand therein in juxta-position and each must show the county to which it belongs and the whole must be provided with a suitable index.

0

6

30. Immediately after the first Monday in May in each year the auditor shall procure from each of the United States land offices in the state a list and an abstract of all the entries made in each and not before procured and mark them off upon his township plats and enter the abstracts in his book kept as above directed.

31. By the first day of July next thereafter he shall cause to filed in the office of the judge of each organized county a copy of the list and abstract above contemplated so far as they are applicable to the respective counties.

32. The census board may make such further regulations as it may deem expedient for the purpose of securing uniformity and of carrying out the objects herein contemplated.

33. The register and receiver must keep separate books in relation to each of the different classes of land sold by them, as—the school—the university—saline—and internal improvement land—and if lands are sold which are appropriated to different public improvements separate books and accounts must be kept in regard to each.
34. The register and receiver must make monthly comparisons of sales and must publish annually the several aggregates received for the different classes of land sold.
35. The books and affairs of their offices shall always be under the supervision of the governor who as often as once in each year shall give the whole a thorough examination and make a report of the condition of said office to each regular session of the general assembly.

36. The proceeds of the lands belonging to the school or university funds shall be paid out on the requisition of the superintendent of public instruction. All other funds derived through the land office shall be paid out on that of the governor. Such requisitions shall in each case be made on the auditor who shall draw his warrant against the appropriate fund accordingly.) edt as renefito doum as bas 37. Such requisitions shall be filed by the auditor and duly recorded by him in a proper book to be kept for that purpose. expedient. 38. Money resulting from the sale of any of the public lands and all books and papers connected with such sales in the hands of any public officer when this statute takes effect must be delivered to the proper officer of the land office and his receipt taken therefore te liste 39. The officers created by this chapter are substituted for those heretofore existing in relation to contracts heretofore made concerning any of the land belonging to the state and the rights of the state may be enforced and its duties and obligations performed by those respectively whose duty it becomes under the provisions of this chapter alener 140. Where a suit in relation to any such contract becomes neces sary it may be brought by or against "the State of Iowa." I ade doidy 41. The office of school fund commissioner is hereby abolished. works of the State and of all the lands held by the State, the proceeds of which are intended for any public state work, except those works or lands connected with the university or common school system. 9. Such reasonable V HITLE HOISTRAY may authorize shall he allowed the Commissioner for furnishing and keeping up an office, and hiring necessary assistants garqAHDall be paid in the same manner as the salary of the Commissioner.

65

THE COMMISSIONER OF PUBLIC WORKS OF THE STATE.

SECTION. 1. The board of public works is hereby discontinued. The powers duties and responsibilities of that board as well as those of the President thereof devolve upon the officers provided for in the next section.

64

3. The salary and compensation aforesaid is payable quarterly out of any fund for the construction of any public work in this State when the census board direct.

66

4. The above named commissioner must report annually to the Governor on or before the last Monday of November in each year and as much oftener as the Governor directs, stating fully all his official doings and recommending such legislative action as he may deem expedient.

5. He shall keep a register of all his public official acts—a copy of all official letters written by him and a file or copy of all letters received by him in connection with the business of his office, all of which shall at any time be subject to the inspection of the Governor.

6. Suits growing out of the action of the commissioner or of the board of public works may be prosecuted by or against him by the name of "The Commissioner of public works of the State of Iowa."

7. The books and papers of the board of public works shall be transfered to the commissioner, excepting those connected with the sale of the lands given for the improvement of the Des Moines river which shall be transferred to the corresponding State Land Officers.

8. The Commissioner has the superintendence of all the public works of the State and of all the lands held by the State, the proceeds of which are intended for any public state work, except those works or lands connected with the university or common school system.

9. Such reasonable sums as the census board may authorize shall be allowed the Commissioner for furnishing and keeping up an office, and hiring necessary assistants, which shall be paid in the same manner as the salary of the Commissioner.

TO THE COMMISSIONER OF PUBLIC WORKS OF THE STATES HILE STATES

PART ONE—TITLE V. CHAPTER 3. OF LOANING CERTAIN FUNDS.

vested in the purchase of any state stocks where such purchase can be made at reasonable rates. 2. If not thus invested they may be loaned by such officer at the highest rate of interest that can be readily obtained on a safe investment.

67

3. In making such loans—where there are different applications—preference shall be given. 1st. To the State. 2nd. To the counties thereof to the extent to which they are authorized to borrow. 3d. To any of its citizens apportioning such loans when convenient as nearly as circumstances will permit among the people of the different counties.
4. The interest on such loans must be payable annually on a day and at a place to be fixed in the contract and a failure to pay within thirty days after the interest becomes due renders the borrower liable at once for the whole principal and treble the amount of interest then due.

0

0.

5. When a county thus becomes a borrower the payments must be made in cash as in other cases, to raise which county orders must if necessary be sold at their cash value.

6. Where the money is loaned to an individual it must be secured by mortgage on real estate of the full unencumbered value of at least twice the amount loaned aside from the homestead and all buildings. 7. The value must be ascertained by the affidavit of the owner of the property, with the certificate of the county clerk relative to the title and the encumbrances if any and stating also his belief (from an inspection of the assessment rolls or otherwise) that the unencumbered value as aforesaid has not been overestimated by the owner in his afconsistent with the provisions of this chapter as they see fit tivabil 8. Suit may if necessary be brought on any contract as above authorized, in the name of the state. Ter doue to donord out to resture those herein provided which regulations and forfeitures being posted one week on the door of the library room shall have the force and effect of law and such forfeitures may be recovered by action in the name of PART ONE-TITLE V. ed flade bus state add 9. The librarian, is required to report to the general assembly at the commencement of each et alTTAHOt of books and other property missing from the library and an account of forfeitures imposed and an article of the state of the state of the library as he in relation to the library as he SECTION 1. The library of the state shall be in the care and custody of a librarian biennially appointed by the governor by and with the consent of the senate.

2. The librarian shall give bond to the state in the sum of three thousand dollars for the faithful performance of his duties with at least two sureties which bond and sureties are to be approved by the governor or in his absence from the seat of government or other disability by the secretary of state and filed in the secretary's office. 3. He is to have the custody and charge of all books papers maps charts engravings paintings and all other things properly belonging to the library or directed to be deposited therein.

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

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

6. The compensation of the librarian will be an annual salary of one hundred and fifty dollars payable quarterly from the state treasury. 7. No person shall be permitted to remove from the library any book or other property belonging thereto without giving a receipt therefor and no one except the governor the judges of the supreme and district courts the judge of the district of the United States and the United States district attorney shall take a book or other property of the library from the seat of government or to retain it more than ten days. 8. The governor and librarian may adopt such further regulations consistent with the provisions of this chapter as they see fit for the preservation and management of the library and may prescribe forfeitures for the breach of such regulations and also for the breach of those herein provided which regulations and forfeitures being posted one week on the door of the library room shall have the force and effect of law and such forfeitures may be recovered by action in the name of the state and shall be for the use of the library.

9. The librarian is required to report to the general assembly at the commencement of each session a list of books and other property missing from the library and an account of forfeitures imposed and those paid with such other information in relation to the library as he deems expedient and before the close of the session render an account of the expenses incurred since rendering the last preceding account. PART ONE TITLE VIII. See and the second seco

69

General Provisions. SECTION 1. The county court has the general supervision over the highways in the county with power to establish and change them as herein provided and to see that the laws in relation to them are carried into effect.

0

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

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

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

5. The county court may prohibit any person from riding or driving faster than a walk across any bridge maintained at the public charge and whose entire length is twenty-five feet or upwards under the penalty of one dollar for each offence. Notices thereof must be conspicuously posted at each end of such bridge. The penalty may be recovered before any justice of the peace in the name and for the use of the county.

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

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

8. Security must be given to the satisfaction of the court, conditioned that all the expenses growing out of the application will be paid by the obligors in case the contemplated road is not finally established. 9. If the road is less than five miles in length the security given shall be for the absolute payment of such expenses.

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

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

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

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

14. After a general examination, if he should not be in favor of establishing the proposed road he will so report and no further proceedings shall be had therein.

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

16. But if the precise location of the road cannot be otherwise given he must call to his aid a competent surveyor and the necessary assistants and cause the line of the road to be accurately surveyed and plainly marked out. township through which it is to pass and in th

17. The surveyor and assistants must be sworn by the commissioner to the faithful and impartial discharge of their several duties, except that where the county surveyor is employed he need not be so sworn. vorn. 18. Mile posts must be set up at the end of every mile and the dis-

tance marked thereon, 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 blased.

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

20. A correct plat of the road together with a copy of the field notes of the surveyor (if one has been employed) must be filed as a part of the commissioner's report. Tot bebraun ad a public on blood? . St 21. The commissioner shall receive one dollar and fitty cents per day for his services, the surveyor and assistants such compensation as is agreed upon being the lowest price for which competent persons can be employed and not exceeding three dollars per day for the surveyor and one dollar and twenty-five cents for the assistants.

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

23. Within thirty days after the appointment of that day all claims for damages in consequence of the establishment of the road must be made if at all, but where a sufficient excuse for not filing such claim within the time aforesaid is shown by affidavit the claim may be considered if made at any time before final action upon the road and the time for such final action may thereupon be postponed to a future day if necessary. solution a cloud of more received to an advancing the state of the second state of the s 24. Such claims must be in writing and filed in the county office. 25. Upon the filing of such claim the court must appoint three constables and disinterested voters of the county as appraisers to view the ground on a day fixed by the court and report upon the amount of damages sustained by the claimant after deducting therefrom the benefit he will receive from said road. 26. The court shall cause notice of their appointment to be given to each of these appraisers fixing the hour at which they are to meet at the office of the clerk of the court or of some justice of the peace notes must be recorded by the clerk and the supervisor beman chiered 27. If the appraisers are not all present within one hour of the

70

71

time thus fixed the court or the justice as the case may be may fill the vacancy by the appointment of others. A balance of least doine 28. The number being completed they must be sworn to discharge their duty faithfully and impartially.

72

29. They must file their report before the day appointed as aforesaid for final action upon the establishment of the road, and all 30. Should the report not be filed in time or should any good cause for delay exist the court may postpone the time for final action on the subject and may if expedient appoint other appraisers.

31. The appraisers shall each receive one dollar and fifty cents peri day for the time actually employed in the performance of their duties, a sa ball of term (beyoing need and one ii) reverse of the

32. Should no damages be awarded to the applicant the whole of the costs growing out of the application for damages shall be paid by him. 32. When the time for final action in relation to the road arrives, whether application for damages has been made or not, the court may hear testimony and receive petitions for or against the establishment of such road. It may establish or reject the road absolutely or it may make such establishment conditional upon the payment in whole or in part of the damages awarded or the expenses incurred in relation thereto as the public good may seem to require.

34. In the latter case, if the condition is not performed by the time appointed the subject shall come up for a rehearing and new action thereon. The minimum administration of the subject shall be a subj

35. If money is thus advanced to secure the opening of a road a memorandum thereof must be made in the record and the person so advancing it shall receive from the clerk a certificate of such fact. The road shall not thereafter be discontinued without refunding tohim or his legal representatives the amount so advanced without interest. 36. When damages have been paid by the county or by an indi-

vidual for injury to land in consequence of the establishment of a road, the amount must be refunded whenever the road is discontinued, and the claim for such refunding is a lien upon the land for the taking of which damagss were given which may if necessary be sold to liquidate such claim. 37. After the road has been finally established the plat and field notes must be recorded by the clerk and the supervisor of roads shall be directed to have the same opened and worked according to law.

38. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new road, add doing 39. Where crops has been sowed or planted before the road is finally established, the opening thereof shall be delayed until the crop is harvested provided such delay do not exceed six months. 40. Roads may be established without the appointment of a commissioner provided the written consent of all the proprietors of the land to be used for that purpose be first filed and recorded. 41. If a survey be necessary to give the road a precise location in such a case the expense thereof shall be born by the county if the road be more than three miles in length. It topogo bear visuos s as alongs 42. The rights of married women and the interests of minors and insane persons are in such cases and for such purpose under the control of their husbands or guardians. 43. The establishment of a road either along or across a county line may be effected by the concurrent action of the respective county courts, in the mode above prescribed, the commissioners in such cases must act in concert and the road will not be deemed established. in either county until it is so in both.

Establishment and alteration of State Roads.

44. Where not otherwise expressed the following rules must be observed in the establishment of state roads.

45. The commissioners appointed must employ a competent surveyor and the necessary assistants whose compensation will be the same as in cases of county roads, the compensation of the commissioners will be two dollars per day each.

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

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

48. Appended to the report must also be a plat of the road, a copy of the field notes and a statement of the expenses mentioning the items.

49. The rules in relation to referees shall as far as applicable be applied to the commissioners herein contemplated.

REVISED CODE-10

50. They must state what length of road lies in each county through which the road passes, the expenses must in the first instance be paid out of the state treasury but shall be refunded by the different counties in proportion to the portions of the road lying therein respectively.

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

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

53. Applications for damages if made at all must be filed in the office of the judge of the proper county court within thirty days after the copy of the plat and field notes are filed therein, and the damages shall be assessed as in the case of county roads and paid out of the county treasury

Road Taxes.

54. Every person liable to pay a connty poll tax must pay a road tax of such an amount as is fixed by the county court which shall not be less than one nor more than two dollars annually. 55. At the time of fixing the rate of county taxes the court must also determine upon the amount of property tax to be levied for roads and bridges, which shall not be less than one nor more than three mills on the dollar on the amount of the county assessment unless a higher rate is established by a vote of the people of the county upon the question being submitted to them in the usual manner.

56. A special property tax not exceeding one mill on the dollar in any one year may be levied by the county court for the building of a bridge which may be found too expensive to be constructed from the ordinary road fund.

57. Except as otherwise provided these taxes are to be deemed a portion of the county tax and shall be collected in the same manner and with the same consequences in case of delinquency but ordinary. county warrants are not receivable in payment of any road tax.

58. If the delinquent is an able bodied man and the head of a

family, in addition to the wearing apparel, the homestead, the household furniture, provisions and necessaries for his family which are exempted from execution are also exempt in this case but nothing else. 59. Every man between the ages of twenty-one and sixty years shall be deemed able bodied except those who can satisfy the court that they are otherwise and can obtain an order exempting them temporarily or permanently from the effect of the above provisions. Making and Repairing Roads.

60. As soon as the first supervisor is elected and qualified under this act he must provide himself with a map of his county on a scale of not less than one inch and a half to the mile which chall be carefully kept and transmitted to his successor in office.
61. On this map must be laid down as accurately as practicable

all the established roads in the county and whenever a new road is established is must be marked down also. 62. Where any portion of a road is established along a county line

the supervisors of those counties must apportion that part of the road which is upon the county line between them either by mutual agreement or by lot, and from thenceforth the portion of such road which falls to either county shall belong to and be kept in repair by it.

63. The supervisor shall with the approbation of the county court procure (by hiring or purchase) the necessary implements and horses or oxen if deemed expedient by him and may keep them in proper condition and replace them when necessary.

64. It is his duty to place and preserve the roads in as good a condition for being used as the funds at his disposal will permit, and to place guide boards at such points as he may think expedient or as the court may direct.

65. He must annually expend within each surveyed township or fractional township containing any portion of an established roat, at least one half of the ordinary road tax levied on real estate wit. 'n such township. 66. Subject to the approval of the county court he may expend t' e remainder in the construction of bridges the improvement of thoroughfares or of any important and difficult portion of the road in any part of the county, and unless applied that manner the whele 76

amount accruing in any one surveyed township must as nearly as practicable be expended therein.

67. He must keep an accurate account of the amount of labor expended and the amount of money paid therefor, showing how much has been paid to each individual and for what services or other consideration, how much on each road or bridge and how much within each township, which account must be verified by his oath and returned annually to the county court on the first Monday in July.

68. He must see that none of the public roads of his county are impassable or unsafe he must travel over them all at least once between the first of April and the first of July in each year and he shall on the first Monday in July annually report to the county court the condition of such roads respectively and the amount of improvement necessary thereon:

69. When notified in writing that any bridge or other portion of the public road is unsafe or impassable he will be liable for all damages resulting from the unsafe or impassable condition of the road or bridge after allowing a reasonable time for repairing the same.

70. For making such extraordinary repairs he may if necessary call out any or all the able bodied men of the township in which they are to be made for not more than two days at any one time without their consent.
71. Should such force prove inadequate he may in like manner call on any or all the adjoining townships in his county for the necessary aid.
72. If any able bodied man when duly summoned for any such purpose fails to appear and labor diligently by himself or his substitute he is liable to a fine of ten dollars to be recovered by suit before any justice of the peace in the name of the county and added to the

road fund.
73. Every person thus called upon for labor is entitled to receive at the rate of one dollar per day for his labor, he furnishing his own board.
74. The supervisor is authorized to take timber or other materials

74. The supervisor is authorized to take inher or other materials for the use of the road from any unenclosed lands in the neighborhood of which the road passes and is only liable to pay therefor the fair value of the property so taken, but he is not permitted to cut down or injure any tree growing by the way side which does not obstruct the road and which stands in front of any town lot or enclosure or cultivated field or on any ground reserved for public use where such tree is intended to be preserved for shade or ornament by the proprietor of the land on or adjacent to which the tree is so standing. 75. Every person is permitted to pay the whole or any part of his poll or personal property tax in labor at the rate of one dollar per day provided that on or before the first day of September of the year in which the tax is be paid he gives the supervisor written notice of his desire to pay his tax in that manner, stating in the notice his place of residence. He must afterwards perform the labor at such time and place as is directed by the supervisor which shall when practicable be within two miles of his place of residence.

76. Whenever the public interest will permit the supervisor must allow any able bodied person who presents himself for that purpose to labor on any of the public roads and in all cases where a person voluntarily labors in pursuance of this or the preceding section the supervisor must give him a certificate stating the amount of labor thus done by him.

0

77. A days work upon the roads as contemplated in the preceding sections is in all cases to be considered ten hours constant and diligent labor, and a suitable deduction must be made for what the time of labor falls short of this number of hours either from absence or idleness.
78. It is the duty of the supervisor to remove obstructions in the public highways caused by fences or otherwise, but he must not throw down or remove fences which do not directly obstruct the travel upon the highway until after reasonable notice to the owner of the land enclosed in part by such fence.
Manner of conducting the fiscal operations connected with the road tax.

79. The supervisor must provide himself with certificate books arranged in the same manner as the order books of the county judge, each certificate having a like margin or tally.

80. These certificates shall be of two classes which must be numbered and kept seperately, and the supervisor shall preserve on the tally of each certificate a memorandum stating its number, date, amount and to whom issued. A basis band and not mere reduced band 81. One of the classes shall be for those issued to persons who have either done voluntary labor or labor in payment of their poll or per-

77

sonal property road tax as above contemplated-these shall be known as special certificates. de preserved for she as intended to be be an and the second s 82. The other class shall be known as general certificates, and they shall be issued to persons who are entitled to payment from the county for labor or materials furnished at the request of the supervisor or growing out of contracts with him and they must state the amount to which the holders are thus entitled. and bing oddel and and doid war

83. The supervisor must provide himself with a book in which he shall make for cash certificates issued an entry similar to the memorandum above required to be kept upon the tally of such certificate preserving the two classes seperate, and shall keep the whole closely posted up so as readily to show the amount of certificates issued.

84. Where there has been an extraordinary tax levied for the purpose of building a bridge or other similar purpose as above authorized the certificates entitling the holder to payment out of that fund must state that fact, and the entry above required must be kept separate from the others above contemplated. 85. The books and papers of the supervisor are at all times subject to the inspection of the judge of the county court. 986. Special certificates are always receivable at the treasury of the county in payment of any poll or personal property road tax for the year on which they are issued, but for no other purpose. 87. In relation to each certificate thus paid in, the treasurer must make an entry stating the number date and amount thereof and the person to whom it was given, he must also file the certificate itself and have the same present together with his book of entries at his next settlement with the county court. and doue of the di besolono 88. General certificates when presented to the judge of the county

court entitle the person to whom they were respectively given to an order for a like amount upon the treasurer payable from the proper a 70. The supervisor must provide himself with certificate build baor

89. Such orders shall be provided in blank by the clerk in a separate order book and shall show conspicuously on their face from what fund they are made payable.out to od Hede astrophingo oscil .08 90. They are receivable generally at the treasury in payment of road taxes and redeemable out of any money belonging to the road fund, but when drawn upon the fund created by the extraordinary tax for building a bridge or other similar purpose they are only receivable in payment of that tax and redeemable out of that fund.

91. in other respects the rules prescribed in relation to other county orders are applicable to these they will draw the same interest after presentation and the like memoranda and entries must be made throughout by the judge and treasurer, but all accounts relative to the road fund must be kept separately der bas benistrees ad ot stoat is 92. The treasurer must open a distinct account with the road fund crediting it with the whole road tax and whatever else is transferred

be furnished to the respective assessors on or before the fir.bellance 93. The census board may make any supplementary regulations of the like character with those above prescribed which may be found necessary to carry out the full spirit and intent of this chapter and which regulations shall be obligatory throughout the state. 94, The county court of any county may also make such regulations as are contemplated in the last section subject to any regulation made by the statute or by the census board as above provided.

to that fund and charging it with the amount of orders paid in and

95. From the time of the election and qualification of the supervisors of roads that office as heretofore constituted, as also the exis ing road districts, is discontinued.

Me may if he digXI HITT-IN ONE-TTELE IX in presen of taxy aline called into actual service.

0

PART ONE-TITLE IX. ulations necessary to perry out the general sourit Of the State Census and the Militia.

Szernes I. All the able bolinarrahn citizens of the state between the ages of eighteen and forty-five years, who are not exempt from military duty agreeably to they arr he United States, constitute the effective military force of this State.

SECTION 1. A state census shall be taken in the year 1°2, 1854 and 1856 and every ten years after the year 1856 which shall be taken by the respective county assessors each taking that of his own 3. Whenever the governor deems it expedient to call into vinuos 10 2. The governor and the secretary, auditor and treasurer of state or any three of them constitute a census board for the state. 3. Each census return must show, a granounal edem year oH ... Frest. The total number of males in the state. and required administ SECOND. The total number of females. Sourseburg to easing has easing

dit.

THERD. The number of persons entitled to vote.
FOURTH. The number of the militia. And,
FIFTH. The number of foreigners not naturalized.
4. In addition to the above the census board may require such other facts to be ascertained and returned as they may deem expedient.
5. The census board must prepare and cause to be printed blank

forms suitable for the purpose which, together with such printed directions as will be calculated to secure uniformity in the returns, must be furnished to the respective assessors on or before the first Monday in March of the year in which the census is to be taken. 6. The assessor must complete the census by the first Monday in July and within thirty days thereafter must furnish the secretary of state with a duplicate thereof.

7. The secretary must file the same in his office for preservation and cause an abstract thereof to be recorded in a book to be by him prepared for that purpose, and published in such manner as the censusboard directs.

PART ONE-TITLE IX.

CHAPTER 2.

Dittill and THE MILATA. and and and

SECTION 1. 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 effective military force of this State.

2. The secretary of state on or before the first Monday in January after the taking of each state census must report to the president of the United States the aggregate number of such military force.

3. Whenever the governor deems it expedient to call into service any portion of the said military force he must prescribe the number and the manner in which they are to be called out.

4. He may make temporary appointments of such officers as he thinks proper for calling the troops into service and may appoint the time and place of rendezvous.

5. No troops can be called into service in any other manner than as volunteers, and the governor may prescribe the number to be received from the counties respectively, and may fix the amount of their compensation, which must not exceed that allowed to soldiers in the army of the United States. od and II ada gam etermone mA .? 6. At the time and place of rendezvous each company may proceed to elect the number of commissioned and noncommissioned officers that has been previously prescribed by the governor. 7. In like manner each regiment, brigade or division shall at the same time and place elect the number of its own officers which has been previously designated by the governor, except that each chief of brigade or division has power to appoint his own staff. 8. The particular place and hour for opening the polls at any such election, as well as the judges and clerks thereof, shall be fixed and appointed by the officer in temporary command at such place of rencounty judget who if satisfied that the above requirments he suoves 9. The governor may cause any arms owned by the State to be distributed to the troops thus called into service and may direct all necessary supplies to be procured and furnished at the expense of the to a deed in fee simple of such portion of the land as is thereistate 10. He may, if he think proper, take command in person of any troops thus called into actual service. 11. Subject to the foregoing provisions he may make all further rules and regulations necessary to carry out the general spirit and intent of this chapter. ed of that off to stote your off lie to those of people of the towal to which it is to be attached late throws no house be 8 of Whenever the county non-tof the county in which the town lies is satisfied that all the proprietors of the part sought to be attached thate given their consex X TTILE X and a consex sufficient in the estimation of the dourt to deffay the expenses of an election of Towns and Villages. In betteogob and end ed that the question be submitted to a vote of the people of the town ata time therein fixed, which, rugardAHO the day of any other election if thought expedient for sham as in the si ersethe done for ada four te erstov out of bottim village plats, itsoup dous tentooloo. O. . election must be published in the same manner and at the same time SECTION 1. The proprietor of a tract of land may lay out a village plat thereon in the manner herein prescribed. A solution additional .01 2. He must cause a survey to be made, marking the lots by a stake

REVISED CODE.-11

0

0

placed in at least one corner of each and which corner shall be uniform throughout the plat so far as practicable, and fixing a stone of not less than one fourth of a cubic foot in dimension in a permanent manner at some point in every street.

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

4. All the owners of the land shall then acknowledge before some officer authorized to take the acknowledgement of deeds that the disposition of the land as shown by the map is with their free consent and in accordance with their desire, and such acknowledgement shall be certified upon the map.

The plat and acknowledgement shall then be presented to the county judge who if satisfied that the above requirments have been fully complied with shall enter thereon, an order that the whole be recorded.
 The acknowledgement and recording of such plat is equivalent to a deed in fee simple of such portion of the land as is therein set apart for public use or is dedicated to charitable, religious, or educational purposes.

7. Ground subsequently laid out platted and recorded as above prescribed may be added to any town plat adjacent thereto with the consent of all the proprietors of the part to be so attached and of the people of the town to which it is to be attached.

8. Whenever the county court of the county in which the town lies is satisfied that all the proprietors of the part sought to be attached have given their consent thereto and after a sum of money sufficient in the estimation of the court to defray the expenses of an election has been deposited with the clerk, it shall cause an order to be entered that the question be submitted to a vote of the people of the town at a time therein fixed, which may be on the day of any other election if thought expedient.

9. Notice that such question will be submitted to the voters at such election must be published in the same manner and at the same time as is prescribed for the general notice of such elections.

10, Returns of the election shall be made to the county court and if the result has been in favor of incorporating the addition into the town,

an order to that effect, describing such addition shall be entered upon the records of the court, a transcript of which shall also be recorded in the town records and thenceforth such addition shall be deemed a part of said town and the judge of the county court shall issue his proclamation accordingly.

11. When the town to which the addition is proposed to be made is an incorporated town or eity, the consent of the people thereof to such addition may be given by the local legislature thereof whatever may be its name or character, instead of submitting the question to a vote of the people, as may be determined by the local legislature.

12. Any town plat may be wholly or in part vacated whenever the consent of all the property holders of the part to be so vacated and that of the people of said town can be obtained to that effect.

0

0

13 For this purpose a petition must be presented to the judge of the county court asking for such vacation and accompanied with a written consent of all the property holders in the part to be so vacated.

14. When this has been done the question shall be submitted to a vote of the people of the town in the manner above prescribed for submitting the question of an addition to a town plat upon the terms therein required.
15. If the result be in favor of vacating the portion of the town plat in question the court shall appoint a day for hearing objections to the granting an order to that effect and cause such notice thereof to be given as it may deem reasonable.
16. If no sufficient objection be then made, an order directing the vacation sought shall be entered upon the records of the court, and from thenceforth the vacation of the plat to the extent contemplated shall be deemed complete, and the portions set apart or reserved for public, charitable, religious or educational purposes shall revert back to the original proprietor, his heirs or assigns, and the judge of the

county court shall issue his proclamation accordingly. 17. In any of the elections above contemplated the judge of the county court may appoint the judges and clerks thereof where provision for such officers is not otherwise made, and may make any other regulations found to be necessary to enable the election to be held pursuant to the intent and purpose of this chapter.

people of the village and if it receive the ranction of a majority of the logal votes cast for or, against it shall be considered as adopted, and an entry thereof shall be made on the county records.

11. In the election herein contemplated unless provision is otherwise made the county court must fix upon the time and prescribe the notice to be given thereof appoint the judges and clerks of the election and in general prescribe all the means necessary to carry the intent of this chapter into effect.

12. Vacancies in the number of the judges and clerks are to be supplied in the same manner as at the general election.

13. Returns in each of the above cases must be made to the county court which shall give certificates thereof and have power to try and decide any case of contested election where notice af such contest is given before the granting of such certificates.

0

0

14. When an incorporated town desires to be organized as a city such steps must be taken to obtain an expression of the will of the people on the subject, to draft a charter, to obtain its adoption and to fix the time of its taking effect, as the board of trustees or other local legislature may direct but no charter shall be adopted without the sanction of a majority of the voters at a public election held for that purpose.

15. A town charter may provide for a local legislature under such name as may be selected and such other officers as may be deemed expedient, may prescribe and limit the powers and duties of each and may fix the mode of their election and removal, and their time of service and compensation.
16. The charter may confer upon the corporation the power of dividing the town into wards, enable it to acquire and hold whatever real or personal property may be necessary and proper to carry out the objects of the corporation, and to sell and convey the same, to adopt a common seal and to alter the same, and to appear as a party in any civil action.

17. It may also give power to establish such by laws and ordinances as are necessary and proper for the good regulation, safety, health and cleanliness of the town and the citizens thereof; to levy and collect taxes on all property within the limits of the corporation which by the laws of the state is not for all purposes exempt from taxation which tax must not exceed one per cent. per annum on the assessed value thereof, and its collection may be enforced by such measures as may be deemed expedient, provided those measures be not more stringent and summary than those used for the collection of state or county taxes; to establish a grade and regulate and improve the side

84

PART ONE—TITLE X. CHAPTER 2. THE INCORPORATION OF VILLAGES AND TOWNS.

SECTION 1. Any village containing three hundred inhabitants may become incorporated as a town and any town or village containing two thousand inhabitants may become incorporated as a city in the manner herein prescribed.

2. In making the enumeration for the purpose above contemplated those persons only shall be included who are permanent residents within the limits of the plat of the village or town.

3. Where the inhabitants of a village having no previous organization desire to be incorporated they must by petition apply for that purpose to the county court stating whether they desire a town or city organization and must satisfy the court that their village contains the requisite number of inhabitants.

4. Such proof being made and the petition being signed by at least one fourth of the legal voters of the village the court shall direct the question to be submitted to a vote of the people.

5. The vote shall be "for incorporation" or "against incorporation," and returns shall forthwith be made to the county court.

6. If the majority of the votes cast by the legal voters are in favor of incorporation the court must fix upon the time and place of an election to choose persons to prepare a charter or articles of incorporation for the village.

7. The number of persons thus to be chosen must be fixed upon by the court.8. Returns of the election shall be made to the county court which

shall cause notice of their election to be given to the persons elected.

9. The charter shall provide among other things, Frast—For the time when it will take effect.

SECOND—For the manner in which it may be altered.

THERD—It shall specify the powers to be given to the corporate authorities within the limits hereinafter prescribed.

10. The charter thus formed must be submitted to a vote of the people of the village and if it receive the sanction of a majority of the legal votes cast for or against it shall be considered as adopted, and an entry thereof shall be made on the county records.

walks alleys and streets and to change the grade making compensation to any person injured, to provide drains, sewers, public wells, wharves and landing places and keep them in repair; to regulate markets but not in such a manner as to prevent any person from selling the produce of his own farm in such manner and quantity as he may deem proper; to license and regulate or prohibit all shows or public exhibitions if the laws of the state are not thereby interfered with; to license porters, draymen and others who transport freight from one part of the town to another, and to limit their compensation; to provide against fires, breaches of the peace, gambling disorderly and indecent houses and conduct; and to make any other ordinary suitable and proper police regulations and to impose penalties for the violation of any such regulations, which penalties may be collected by eivil action in the name of the town.

86

18. The charter may further authorize the legislative power of the town to require the property holders of any street or part of a street to pave the same or the sidewalk thereof each in front of his own property whenever the owners of two thirds of the lots in such street or part of a street petition therefor.

19. None of the ordinances or regulations of any town can take effect until they have been duly promulgated so as to be within the knowledge of the inhabitants of such town, the manner of doing which shall be prescribed in the charter.

20. The local legislature may change the name of their town but not until such change has been sanctioned by the people at a public election, nor can any name be thus given to a town which is not clearly distinguishable from that of any other place within the state.

21. The preceding provisions are applicable to a town desiring to become organized as a city, and in addition thereto a city charter may authorize the establishment of a mayor's court for the enforcement of the city regulations but the jurisdiction of that court must not be greater than that of a justice of the peace, and appeals shall lie the same in all respects as from justice's courts. 22. The city charter may also confer power upon the city authorities to open new streets and discontinue old ones and to dispose of the ground thus rendered unnecessary to the public, to compel the owners of land within the city limits to drain or fill up ponds or stagnant places thereon and prescribe the manner of doing the same, to borrow money on the credit of the city but not without a direct vote of the people in favor of such loan, and on the application of the owners of three fourths of any square to prohibit the erection of any except brick or stone buildings within that square, and generally to make any regulations of a like nature with those above authorized, for the order and good government of the city and the welfare of the inhabitants not in conflict with the laws of state.

23. The above provisions are intended only to fix limits to the power of a town or city corporation, leaving the people if they choose the privilege of narrowing those limits as much as may be thought desirable or to fix other conditions in addition to those above required.

24. The authority to confer upon a town or eity the power to license and regulate or prohibit shows or public exhibitions, when exercised will be exclusive; but when no provision is made on that subject in the charter the county court has the same authority within such town or city as it has in other portions of the county.

less recorded and published as the original articles are required to be, but the addition of new subscribers and purchasers of stock need not be so recorded D.IX. TITLE ART ONE

Of Corporations. Of Corporations. CHAPTER 1. OF CORPORATIONS FOR PECUNIARY PROFIT.

0

SECTION 1. Any number of persons may associate themselves and become incorporated for the transaction of any lawful business and having pecuniary profit in view, including the establishment of ferries, the construction of canals, turnpike, and graded roads, railways. bridges and other works of internal improvement, in the following manner; they shall adopt articles setting forth,

First-The names of the persons concerned and their design to become incorporated;

SECOND—The name and intended duration of the proposed corporation; THEED—The nature of the business to be transacted;

FOURTH-Its principal place of business;

Firm-The amount of capital stock authorized, and the times ar

conditions upon which it is to be paid in, and the amount constituting a share;

SIXTH—Any limitation to the power of contracting debts which may be adopted;

SEVENTH-What officers the company will have, by what officers business will be conducted and when they are to be elected;

EIGHTH--Whether private property be exempted from the debts;

NINTH-The manner of calling the first meeting;

TENTH—Any other matters which they choose to set forth; Which articles shall be subscribed by the persons instituting the corporation, and shall be recorded by the recorder of deeds in the county where the principal place of business is to be, in the book kept forrecording limited partnerships, and shall also be published four weeks successively in a newspaper published in the same county, or, if there be none then in the nearest paper.

2. No change made in any of the above matters shall be valid unless recorded and published as the original articles are required to be; but the addition of new subscribers and purchasers of stock need not be so recorded nor published.

3. Corporations for the purpose of constructing any work of internal improvement such as those mentioned in section 1 of this chapter shall file a copy of their articles of incorporation in the office of the secretary of state, which copy shall be certified by the person named as clerk, secretary or the president in the articles (or any corresponding officer) if such be so named, and if not, then by one of the persons who sign the original articles.

4. Corporations for the construction of any permanent work of internal improvement may be formed to endure for fifty years; but those for other purposes contemplated in this chapter cannot be formed to endure for more than twenty years.
5. The above provisions being observed, the persons associated become a corporation, possessing the powers and attributes of a body

corporate. b right has been another and the second of T-real

6. They may commence business when the articles are filed in the office of the recorder, 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 the said filing in the recorder's office.

7. Among the powers of such body corporate are the following ;

89

To have perpetual succession; To sue and be sued by their corporate name; To have a common seal which it may alter at pleasure; To determine what offices there shall be, and to elect all necessary officers in such manner as it determines; fix their compensation and define their powers and duties;

To acquire and sell property; To make bye-laws and regulations, consistent with the laws of the state, for its own government and the due and orderly conduct of its affairs and the management of its property, and to hold and transfer property by its corporate name.

8. Such corporation may by its bye-laws determine the manner of calling and conducting meetings, the number of members that constitute a quorum, and the number of shares that shall entitle a member to one or more votes, the right and mode of voting by proxy; the manner of transfering shares or interests; the mode of selling shares or of enforcing their forfeiture for the non-payment of assessments, and the tenures of office; and it may prescribe suitable penalties for the violation of its bye-laws by the members, not exceeding in any case twenty dollars for any one offence, which may be recovered in the judicial tribunals of the state.
9. Such corporation may exempt the private property of its members from liability to corporate debts, by a provision to that effect in its

bers from hability to corporate debts, by a provision to that effect in its articles of incorporation, but subject to the provisions of this chapter in relation thereto.

10. The transfer of shares shall not be valid except between the parties thereto until it be entered on the books of the company so far as to show the names of the persons by and to whom transferred, the number or other designation of the shares, and the date of the transfer. 11. Such corporation shall cease to exist if the members do not organize by the adoption of bye-laws and the election of officers within one year after the recording and publication directed in section 1; and it shall cease to exist also by the non-user of its franchises at any time for two years. But such body shall not forfeiture its franchise by reason of an omission to elect officers or to hold meetings at any time prescribed in the bye-laws, *provided* such act be done within two years appointed therefor.

12. Any corporation which expires by its own limitation, or which is terminated by consent, or is annulled by reason of forfeiture shall REVISED CODE. -12 nevertheless continue for the term of three years unless sooner terminated, for the purpose of settling its concerns, disposing of its property, dividing its capital stock and prosecuting and defending suits; but not for continuing the business for which such corporation was created. And if any suit is pending at the termination of the said three years the corporation may, for the purpose of such suit, be regarded as continuing until its final termination in judgment and execution.

13. Such body may be renewed from time to time for a period not greater than was at first permissible if all the corporators assent thereto; and it may be renewed if all do not consent, provided the stock of those opposed thereto be first purchased or offered to be purchased at its market value.

14. When all the members are present at a meeting however called or notified, and sign a written consent on the records of the body, the doings of such meeting shall be as valid as if legally called.

15. The intentional making an undue dividend of profits or other funds so as to leave the assets of the corporation insufficient to discharge its existing liabilities, shall be held such a fraud as will render the officers making the dividend personally liable to the extent of those liabilities, and also subject to the penalties of a misdemeanor, and all the stockholders of a corporation making a dividend which produces the above effect will be liable to the extent of such dividend received by them, whether the same was made with the above intent or otherwise.

16. The responsibilities created in the preceding section are not intended to embrace the contingent liabilities of insurance companies prior to their knowledge of the happening of actual losses.

17. Intentional fraud in not complying, substantially with the articles of incorporation, or in deceiving the public or individuals in relation to the means or liabilities of the corporation, shall subject the persons guilty thereof to the penalties of a misdemeanor, and shall effect a forfeiture of all the privileges hereby conferred and the courts may proceed to wind up the business of the corporation in the manner prescribed by law.

18. Any person sustaining injury by such fraud may recover damages therefor against the persons participating in the fraud.

19. When persons are acting as a corporation under this act, it shall be presumed that they are legally incorporated until the contrary is shown, except in a regular proceeding instituted to test the tence; and n

legality of their corporate existence; and no such franchise shall be declared actually null or forfeited except in a regular proceeding brought for that purpose; and no person sued on a contract made with such corporation, or sued for any injury to its property, shall be permitted to set up a want of legal organization in his defence. 20. No body of men having taken any of the foregoing steps toward a corporate organization, and having acted as a corporation under the provisions of this chapter, shall be permitted to set up the the want of legal organization as a defence to an action against them as a corporation.

0

21. Unless the foregoing provisions concerning organization and publicity are substantially complied with, the private property of the stockholders shall be liable for the debts although exempt by their articles, but no action to charge the private property of a stockholder can be maintained unless it be alleged and shown that there is no corporate property subject to execution, and that fact may be proved by any competent evidence, but it will be sufficient prima facia to show that an execution has issued under a judgment against the corporation and a demand thereon made of some one of the last acting officers of the body for property on which to levy and that he has not pointed out any.

22. The defendant, at any stage of such a cause, may point out corporate property subject to levy, and on his satisfying the court of the existence of such property by affidavit or otherwise, the court may in its discretion either continue the cause or stay the execution against the defendant until the property can be levied on and sold, and may subsequently render judgment and order execution for any balance which there may be after disposing of the corporate property, according to the stage of the cause. But if a demand of property has been made as contemplated in the preceding section, the defendant shall pay the costs of the action against himself in any event.

23. 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. 24. For the purposes of repairs, rebuilding and enlarging, to meet contingencies, and for the purposes of a sinking fund, the companies in this title authorized to be created may establish a fund which they may loan, and in relation to which they may take securities as individuals may. 25. When the franchise of a corporation has been levied upon under an execution or other judicial process and sold, the corporators shall not have power to dissolve the corporation so as to destroy the franchise; and if they neglect to keep up an organization sufficient to enable the business to proceed, the purchaser shall thereupon become vested with all the powers of the corporation requisite therefor, and when it becomes impracticable for an individual so to conduct them, and when cases of doubt or difficulty not herein provided for arise, the purchaser may apply by petition to the district court which is hereby vested with authority to make any orders requisite for carrying into effect the intent of this chapter in this respect.

92

26. The corporation shall not be compelled however to incur new debts in order to keep its physical structures in repair, but such expenses are to be deducted from the receipts of the purchaser, and he may be compelled to keep the works of the corporation in proper repair and condition to the extent of his receipts so long as he continues to hold the franchise. 27. Every such corporation immediately after each election of an officer shall post up at its principal place of business a list of the names of its officers, showing what offices they hold.

28. In any proceeding by or against such 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 body on the motion of either party, a proper cause being shown to the satisfaction of the court.

29. A single individual may be incorporated under the provisions of this chapter and will be entitled to all the advantages herein conferred provided he complies substantially with the requirements hereinbefore contained, omitting those which from the nature of the case are inapplicable.

30. Corporations regularly organized under the general law heretofore in force may, by adapting their articles of association to the provisions of this chapter and by making the required publication of the change as well as of their intention to act under the provisions of this chapter,—be entitled to all the advantages and subjected to all the liabilities above provided for. But the change in their articles of association must be in accordance with the terms of those articles.

31. Mutual Insurance Companies organized under the provisions of this chapter may render their premium notes a lien upon the whole or any part of the real estate upon which the property insured is situated, whether such real estate is or is not exempt from other liabilities as a part of the homestead. But such lien will not attach until the premium note, stating the property on which it is a lien, is filed for record and treated in the same manner as though it were a mortgage from the makee thereof to the company,—except that it need not be acknowledged.

a The parcel of land a partiqu of which is wanted; behavin asorized

PART ONE TITLE XI. PART ONE TITLE XI.

fendants to one petitional society bod poincition add and 21

3. The owners of distinct gagardentyreal estate may be made des

The object for which it is wanted:

OF CORFORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT. SECTION 1. Corporations for the establishment of seminaries of of learning, churches, lyceums, libraries, agricultural societies and other lawful purposes unconnected with motives of pecuniary profit, may be formed in the manner directed in the preceding chapter, so far as applicable, and the provisions of that chapter are extended to them except as herein modified. 2. Their articles of incorporation shall be recorded, but a newspar per publication is not requisite.

 No dividend nor distribution of property among the stockholders shall be made until the dissolution of the corporation.
 Corporations of an academical character are invested with authority to confer the degrees usually conferred by such institutions.

PART ONE—TITLE XII. Of taking Private Property by Companies or Individuals. CHAPTER 1. TAKING PRIVATE PROPERTY FOR WORKS OF INTERNAL IMPROVEMENT. 1. When any corporation or other person designs to construct a canal, or rail-road or a turnpike, graded, m'adamized or plank road, or a bridge as a work of public utility although for private profit, it may take such reasonable amount of private real property as may be requisite for those purposes respectively, upon paying therefor such sum as may be assessed in the manner herein provided.

2. The company shall file its petition in the district court in the county where the land lies setting forth in substance:

The name of the owner;

The parcel of land a portion of which is wanted;

The object for which it is wanted;

A prayer that a suitable portion of the land may be decreed to the petitioners and may be set apart to them by metes and bounds.

3. The owners of distinct parcels of real estate may be made defendants to one petition.

4. A service upon the owner must be made as in civil actions except as herein qualified:

Service upon, and notice to, an agent entrusted with the supervision of a non-residents' land will be sufficient;

And a service by publication in a newspaper may be made the prescribed length of time before the return term;

And when the owner of a tract of land is unknown, the court upon being satisfied that diligent and unsuccessful efforts have been made to ascertain the ownership may either before or after a publication authorize proceedings against him by the description of the unknown owner of that tract of land,—(describing it.)

5. When the requisite service has been made, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff commanding him to summon a jury to inquire into and assess the damages.

The jurors are required to possess the ordinary qualifications of jurors, and to be persons not interested in the same or a similar question.

6. Twelve jurors shall be summoned unless the parties otherwise agree in writing, and each party will have the right of challenge both for cause and peremptorily, as in the district court.

7. Or if the parties assent, the jury may be thus constituted: the sheriff may set down in writing the names of eighteen jurors, and the parties shall alternately strike off one, beginning with the defendant; until but six remain, who shall be competent to act; and be summoned accordingly.

8. If a juror summoned fails to attend, his place may be supplied by one summoned to attend forthwith.

9. The jury shall be sworn to examine impartially and report truly upon the subject submitted to their consideration, and the sheriff is authorized to administer such oath.

10. The jury shall then proceed to examine the ground and may hear testimony, but no argument of counsel, and shall set apart by metes and bounds a quantity of land convenient and suitable for the purpose intended, and assess the damage occasioned to the owners thereby.

11. In estimating the damages no deduction shall be made for any benefit that may be supposed to result to the owners from the contemplated work.

12. When the petitioning body desires earlier action than is contemplated in the preceding provisions and is proceeding against one person only it may file its petition in the office of the district court and cause a service as before provided, and seven days after service is effected the clerk may in vacation issue a writ of inquiry of damages to the sheriff as before directed, and the sheriff shall then proceed as above provided and make his return as hereinafter directed.

13. Before proceeding with the jury the sheriff is directed to give the defendant if he is known and resides in the county, and if not then to his agent if he have one known, or to his tenant three days notice of the time and place of the meeting of the jury.

14. The report of the jury shall be reduced to writing, signed by each of the jurors and delivered to the sheriff and be by him returned together with the writ and his doings thereon to the district court without delay.

* 15. Upon the return of the inquest and writ the owner of the land may file objections to the proceedings and show cause why they should be set aside, and the court may direct issues other than those upon the facts found by the jury to be made up and tried as in other civil actions, and if good cause be shown may set aside the proceedings.

16. The damages assessed by the jury shall be paid into court for the defendant, or to the defendant, before a decree for the conveyance of the land can be made unless the parties otherwise agree.

17. If no sufficient objection is made and the damages are paid the court shall decree a conveyance to the plaintiff of the land reported

by the jury, and such decree shall have the same effect, and be enforced in the same manner as an ordinary decree for the conveyance of land.

18. If the contemplated work be not commenced within one year after obtaining land under these provisions or if after being commenced it ceases for two years to be prosecuted, or if after being completed it ceases for two years to be used for its original purpose, the former owner may file his petition in the district court to have the land restored to him upon his refunding the purchase money without interest.

19. The costs of the foregoing proceedings shall be paid by the petitioner, except that costs occasioned by litigation by the defendant shall be governed by the common rule in relation thereto.

20. A company or person actually intending to make application for the privileges herein contemplated and entering upon the land of another for the purpose of making the requisite examination and surveys, and doing no unnecessary injury, shall be liable only for the actual damage done, and if sued in such case, the plaintiff shall recover only as much cost as damage.

21. The provisions of this chapter do not apply to any corporation or person who has not obtained a license from the proper county court in accordance with the provisions of the chapter relating to granting license for ferries, bridges and roads.

14. The report of the jury shall be reduced to writing, signed by each of the jurys and delivered to the shall be by him returned together with the w.IIX, AITIT-ANO, TAAP, or the district court without delay.

CHAPTER 2. CHAPTER 2.

Section 1. Any person desiring to build a mill of any description of any water course within the exclusive jurisdiction of this state may obtain authority to erect a dam across such water course, if he is the owner of the land on either side of the water course at the point where he proposes to erect his dam, by proceeding as provided in this chapter. 2. He shall file a petition in the district court in the county in which

he proposes to build his mill, setting forth in substance;

The name of the water course. A description of his land with some description of the point at which he proposes to build his dam.

The altitude of the dam which he proposes to erect. The kind of mill or machinery which he proposes to connect with the dam.

And if another person is the owner of the land on one side of the water-course the petition must set forth the name of such owner; and A prayer that a portion of land (not exceeding one acre) belonging to such other person including the point where the dam will abut, may be decreed to him and may be set apart by metes and bounds.

3. When the defendant is duly served, if no sufficient cause to the contrary be shown, the court shall issue a writ for the inquiry of damages to the sheriff commanding him to summon a jury to inquire touching the matters contained in the petition, a copy of which shall accompany the writ.

The provisions of the preceding chapter in relation to the number of jurors, their qualification, the manner of empanneling them, swearing them, and their failing to attend, the estimation of the damages, and the manner of making their report and the return of it shall apply in this proceeding.
 Before proceeding with the jury the sheriff is directed to give each owner of the land likely to be flowed by the contemplated dam, if he is known and reside in the county, and if not, then to his agent if he have one known, or to his tenant, three days notice of the time and place of the meeting of the jury.
 For the purposes of this chapter the sheriff and jury are authorized to go into and act in an adjoining county.
 The sheriff shall attend the jury at the time and place appointed, and eaquire by the jury;

What damage each owner will sustain by reason of inundation consequent upon the erection of the dam proposed; Whether the dwelling house of any proprietor, or the outhouse, yard garden or orchard will be overflowed thereby; Whether the stream be navigable in fact and whether and to what extent navigation, or fish of passage, will be obstructed, and whether, and by what means the same way be prevented or diminished; Whether the health of the neighborhood will be injured in consequence of such erection. REVISED CODE -12

97

The value of one acre of the land on the side of the stream not owned by the petitioner, or, the value of the land set out; Whether there be any other valid objections to the erection of the

dam;
And the jury shall set apart by metes and bounds, a quantity of land convenient for the dam and mill not exceeding one acre on the side of the stream not owned by the petitioner.
8. The inquest of the jury shall be reduced to writing, signed by each of the jurors, and returned by the sheriff together with the writ with his doings thereon into the court whence it issued, without delay.

9. Upon the return of such inquest and writ, any person aggrieved by the verdict of the jury, may file his objections to the proceedings under the writ and to the verdict, and show cause why the proceedings should be quashed and the verdict set aside; and the court may direct issues other than the facts found by the jnry to be made up and tried as in other civil cases; and if good cause be shown, quash the proceedings and set aside the verdict.

10. If no objection be made to the proceedings under the writ, and it appear to the court that neither the dwelling house, outhouses, yard garden or orchard of any owner of lands will be overflowed, and that the health of the neighborhood will not be injured in consequence of the erection of the proposed dam; the court shall consider whether, all the circumstances weighed, it be reasonable that the permission prayed for should be given, and thereupon make an order granting permission or not accordingly

11. When the party prays for a quantity of land whereon to abut his dam, the court shall include in its order, if permission is granted, a decree for a conveyance to the petitioner of the land reported as requisite by the jury, and such decree shall have the same effect and be enforced in the same manner as an ordinary decree for the conveyance of land.

12. The order and decree authorized in the last two sections, and the rights and privileges thereby granted, shall be upon the condition that the costs, and the damages assessed by the jury, be paid, and subject to such conditions in reference to the obstruction of fish and navigation as the court may impose, including the building of suitable locks.

year and finished within two years from the date of the decree of per-

EI-adob dazivan

mission and if the dam or mill or machinery be destroyed or impaired so as to suspend its operation, and be not rebuilt or repaired within two years thereafter the former owner or his heir may file his petition to have the land reconveyed to him upon his refunding the purchase money without interest.

99

14. But if the owner of the dam or mill at the time of such injury be an infant, a person of unsound mind, or imprisoned for a less period than for life, and commence the repair within the two years, he may have one year in addition to the above to complete the same.

15. In case of such a failure to repair as contemplated in the preceding two sections, the privileges conferred shall cease as to any person applying for permission to build above or below the former petitioner's dam unless he has repaired before such application.

16. The owner of any dam and mill erected under this or any previous law, may obtain permission to increase or raise the altitude of his dam by the same proceedings and under the same regulations and conditions as herein provided.

17. Dams not built in accordance with the directions and conditions prescribed by the court shall be deemed public nuisances, and may be dealt with as such; and any person injured thereby may recover double damages.

18. If the improvement of the navigation of any stream be undertaken by the state or by any county or other lawful public authority under the state, then the privilege to keep a dam across such stream, the right to construct which may be hereafter granted, shall cease if it would prevent or obstruct the making of such improvement, and the owner of such dam shall either remove or make such change in the same as will render the navigation safe and convenient, according to the plan of such improvement; the change or alteration to be such as may be directed by the proper public officers or agents having the superintendence of the improvement.

tion therefor point be posted up in at least three public places on each side of the river (if both sides \overline{m} and \overline{m} inversion within this state) in the township and meriphonical in which has been as a set of the township and the book and in which the form of the town of to

CHAPTER 3. OF LICENSES FOR FERRIES, BRIDGES AND ROADS. SECTION 1. The several county courts have power to grant such li-

98

cences as may be needed within their respective counties, but these shall not be granted for a longer period than five years at any one time. 2. The court may prescribe the rates of ferriage as well as the hours of the day or night during which the ferry must be attended, both of which may from time to time be changed at the discretion of the court.

3. In granting a ferry license the court has power to make the privilege granted exclusive for a distance not exceeding two miles in either direction from said ferry, in which case no person shall keep a public ferry within the prescribed distance unless after twenty days notice to the person who has obtained such privilege it is made to appear to the court that the public good requires both ferries and a new license is issued for the second ferry accordingly. The notice herein required must be served personally on the owner or on the person in charge of the ferry boat.

4. In granting a ferry licence preference must be given to the keeper of a previous ferry at the same point; but if there is none such, or if after giving the same notice as is required by the last section he fails to make application for such license or if in the opinion of the court he is an improper person to receive the same, it may be conferred on any other proper applicant.

5. Where the opposite shores of the stream are in different counties a license from either is sufficient and the court which first exercises jurisdiction by granting a license retains that jurisdiction during the license.
6. Where but one side of a river is within this state the county court possesses the same power so far as the shore of this state is concerned as though the river lay wholly within the juristiction of this

state. 7. Before a license can be granted notice of the intended applica-

tion therefor noust be posted up in at least three public places on each side of the river (if both sides of the river are within this state) in the township and neighborhood in which the ferry is proposed to be kept, at least twenty days next prior to the making of such application.

8. The court upon being satisfied that the above requirements have been complied with, that a ferry is needed at such place and that the applicant is a suitable person to keep it, must grant the license, which however shall not issue until the applicant files a bond with sureties to be approved by the court in a penalty not less than one hundred dollars with a condition that he will keep the ferry in proper condition for ferrying and attend the same at all times fixed by the court for running the same that he will neither demand nor take any illegal tolls and that he will perform all other duties which are or may be enjoined on him by law which bond shall be filed in the county office.

101

9. The license together with the rates of toll established must be entered upon the records of the county court and the certificate of license shall contain the rates of toll allowed.

10. 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.

11. He must keep a list of the rates of toll allowed him posted up on his boat or on the door of his ferry house or at some other conspicuous place near the ferry.

12. The failure to have such list posted up as aforesaid justifies any person in refusing the payment of tolls and where such failure is habitual the proprietor of the ferry is liable to pay twenty five dollars in a suit brought on his bond and the proceeds shall be paid into the county treasury.

13. When it is made to appear to the county court after ten days notice to the person licensed that such person fails substantially to perform his duties according to law the court may revoke his license. 14. Existing licenses and charters are not to be affected by the provisions of this chapter.

0

15. The county court is also authorized to grant licenses for the erection of toll bridges across any stream or other obstruction which justifies the establishment of such bridge and which calls for an expenditure greater than can be met without serious inconvenience by the revenues of the county but the navigation of no navigable river must be thereby materially obstructed.

16. Subject to the provisions of the last section bridges may be fhus authorised to be constructed across navigable streams provided they do not prove substantially a nuisance.

17. Where the extremities of the bridge lie in different counties a license must be procured from each of such counties and if different rates of toll are fixed by the different county courts each has power to fix the rates of travel which is going from its own county. A simi-

any public highway thus rendered unnecessary?o threat off their man

lar principle shall be observed where only one of the extremities of the bridge is within this state.
18. 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 the rate of toll will be under the control of the county court in the same manner as is provided in the case of ferries.

102

19. The court is also authorised to stipulate in the license to the effect that no other toll bridge or ferry shall be permitted across the same obstruction within any distance not exceeding two miles of such bridge and for a period not exceeding ten years; any violation of the terms of such stipulation is a nuisance and he who causes it is guilty of a misdemeanor.

20. Before granting a license to build a toll bridge the court must be satisfied that the same general notice has been given as is required in the case of an application for a ferry.

21. The rates of toll must be conspicuously posted up at each extremity of the bridge under the same penalty as is provided in the. case of ferries.

22. Any proprietor of a toll bridge established and kept up according to law may make and enforce a regulation prohibiting any person under a penalty not exceeding five dollars from traveling across such bridge faster than on a walk, but such regulation must be conspicuously posted up at each end of a bridge and suit may be brought therefor before a justice of the peace in the name of the proprietor and for his benefit.

23. All toll bridges must be so regulated as to allow persons to pass at any hour of the night or day but the county court may in its discretion in fixing the rates of toll permit a greater amount to be collected during certain hours of the night time.

24. The county court may also grant licences for the construction of any canal or railroad or of any m'adamized or plank road or any other improvement of a similar character or any telegraph line, to keep the same up for a period not exceeding fifty years and to use for this purpose any portion of the public highway or other property public or private if necessary, and where any road is thus authorized of such a character as to admit of its being used for the same purposes as an ordinary highway the court in its discretion may discontinue any public highway thus rendered unnecessary. 103

25. The court in its' discretion may at the time of granting the licence fix the maximum rates of toll to be charged on any such work and may render the same unalterable for a period not exceeding 20 years from the time tolls are begun to be charged thereon, after the expiration of which time the rate of tolls shall be under the direction of the county court in the same manner as those of ferries and bridges. 26. The time for the commencement of taking tolls as contemplated in the preceding section must be notified to the court and entered

on its records before any such tolls are collectable. 27. The rates of toll established as above contemplated must be conspicuously posted up at every gate or other place where tolls are required to be paid, under the same penalty as is hereinbefore fixed in the case of ferries.

28. From the decision of the county court in refusing or granting any of the licenses authorized in this chapter excepting those for ferries an appeal lies to the people of the county as herein after regulated, at any time within thirty days after the making of such decision and which appeal may be taken by any white male citizen of the county.

29. The county court may also in the first instance submit any question growing out of an application for any of the licences authorized herein to be submitted at once to the popular vote of the county. 30. Neither the appeal nor the vote contemplated by the two pre-

ceding sections shall be allowed until money is deposited or security given sufficient to indemnify the county against the payment of any of the expenses growing out of the taking of such vote or appeal.

31. Where the license has been granted and the appeal above authorized is for the purpose of setting aside such grant the license as granted must be published in the ordinary manner provided for publishing questions thus to be submitted to vote.

32. If the appeal be from the order refusing the license the appellant shall draw up and cause to be thus published a license such as he desires to have submitted.

33. If where a license has been granted the appellant is dissatisfied with the terms thereof he must cause to be published both the license granted and that which he desires to obtain.
34. The county court must make the necessary arrangements for carrying the above regulations in relation to taking a vote of the people into full effect and it shall grant or withhold the license in accordance with the result of such vote.

35. In none of the above cases shall the license issue until a bond be filed such as is required in the case of ferry licenses and in such increased penalty as the court directs.

36. The county court as a consideration or bonus for any of the licenses herein contemplated may require the licensee to pay money or do acts for the purpose of promoting the public convenience in connection with the subject of his license but for no other purpose.

37. The taking illegal toll by the grantees of any of the licenses herein contemplated subjects the offender to the penalty of twenty-five dollars for every such offence, to be recovered by suit on the bond of such licensee by the person who has paid the illegal toll and for his own benefit, or he may bring suit in the name of the county in which latter case he is a competent witness but the proceeds shall go into the county treasury.

28. A substantial failure in other respects to comply with the terms fixed by the court in accordance with the above provisions works a forfeiture of any of the licences herein authorized and also subjects the party guilty of such failure to damages for all the injury resulting therefrom, for which he is also liable on his bond.

39. Any person who refuses to pay the regular tolls established and posted up in accordance with the provisions of this chapter, or who shall run through or pass around their toll gates with a view of avoiding the payment of just tolls or dues, forfeits the sum of ten dollars for every such offence, which together with costs of suit may be recovered by the person entitled to such toll by civil suit befor the proper justice of the peace, and for failure to pay such forfeiture and costs forthwith the justice shall commit him to the county jail for a period not less than two nor more than five days.

40. The proprietor of any canal, road, bridge or ferry authorized by this act may establish rules for the regulation of passengers, travellers, teams and freight passing or travelling thereon and may enforce those rules by penalties not exceeding ten dollars for any one offence which penalties may be recovered by civil action before a justice of the peace in the name of the proprietor aforesaid, but such rules must be published by being conspicuously posted up before they can be thus enforced.

41. Any of the franchises contemplated in this chapter is subject to execution and shall be sold as real property and subject to the same rights and consequences, except that the purchaser may take immediate possession of the property. 42. The sale of any such franchise carries with it all the materials, implements and works of whatever kind necessary for, or ordinarily used in, the exercise of such franchise.

43. In the sale of such franchise he who will satisfy the execution and costs thereon and take the franchise for the shortest period of time to receive during that time all the tolls to which the defendant in execution was entitled keeping the same in ordinary reasonable repair, is the highest bidder.

44. The officer's deed transfers to the purchaser all the privileges and immunities of the corporation necessary for demanding and receiving tolls during the time therein specified, and the officer must immediately after the sale deliver to the purchaser possession of the toll houses and gates of the defendant, and the purchaser may thereupon demand and receive all tolls accruing during the time limited by the terms of the purchase in the same manner and under the same regulations as the defendant might.

45. In case of destruction or extraordinary injury happending to the works thus temporarily in possession of the purchaser without any fault or negligence on his part he shall not be compelled to repair the injury provided he will abandon his interest in the franchise so held by him and yield possession thereof to the owner without delay.

PART ONE-TITLE XII.

. TIZ CHAPTER 4. TIAN

wind by lenst fourteen days our transformer of the protocol tend the fill

OF TELEGRAPHS.

SECTION 1. 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.

Such fixtures must not be so constructed as to incommode the public in the use of any highway or the navigation of any stream—nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damages he thereby sustains,
 If the person over whose lands any such telegraph line passes, REVISED CODE.—14

claims more damages therefor than the proprietor of the telegraph is willing to pay the amount of damages may be determined in the same manner as is provided in cases of rail roads and other works of internal improvement.

4. If the proprietor of any telegraph within this state or the person having the control and management thereof refuses to receive despatches 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, or to incorporations, or 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. It of the sates bas epsued list 5. 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 erroniously 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. do opposite to that 6. The proprietor of any telegraph is liable for all mistakes in transmitting messages made by any person in his employ as well as for all damages resulting from a failure to perform any other duty required by law.

PART ONE-TITLE XIII.

0

DART ONE TITLE XU

Of the internal police of the State. CHAPTER 1. THE SETTLEMENT AND SUPPORT OF THE POOR. ARTICLE 1. The support of poor persons by their kindred. Section 1. For the purposes of this title the word "court" means county court, the word "judge" means the judge of the same court, and the word "clerk" means the county clerk, unless it be otherwise expressed, and the word "directors" means the directors of the poor house in counties where there is one.

2. The father, mother, children, grandfather if of ability without his personal labor, and the male grandchildren who are of ability of any poor person who is blind, old lame or otherwise impotent so as to be unable to maintain bimself by work shall jointly or severally relieve or maintain such poor person in such manner as may be approved by the trustees of the township where such poor person may be or by the directors but these officers shall have no control unless the poor person has applied for aid.

3. The word "father" in the preceding section, includes the putative father of an illegitimate child, and the question of his being the father may be tried in any action or 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.
4. Upon the failure of such relative so to relieve or maintain a poor person who has made application for relief, the township trustees or the directors may apply to the court of the county where such poor person resides for an order to compel the same.
5. At least fourteen days written notice of the application shall be given by summons which shall be served as original process in an action may be served, and in any county, by any officer thereof or by any other person.

6. The court shall make no order affecting a person not served but may notify him at any stage of the proceedings.
7. 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 named in section 2 and for that purpose making new parties to the proceedings when necessary.

8. Such order may be for the entire or partial support of the poor person, and it may be for support either by money or by taking the poor person to the relative's house or the order may assign the poor person for a certain time to one and for another period to another relative as may be adjudged just and convenient, taking into view the means of the several relatives. 9. If the court order the relief in any other manner than in money it shall fix a just weekly value upon it.

10. The order may be specific in point of time or it may be indefinite until the further order of the court; and may be varied from time to time when the circumstances require it on the application of the trustees, of the poor person or of any relative affected by it, upon fourteen days notice being given.

11. When money is ordered to be paid it shall be paid to such officer as the court may direct.

12. If any person fails to render the support ordered, on the affidavit of one of the proper trustces or directors showing that fact, the court may order execution for the amount due, rating any support ordered in kind as before assessed. In such proceeding the county is plaintiff and the person sought to be charged, defendant.
13. An appeal may be taken from such judgment, as provided in

13. In appear may be taken non-such judgment, as provided in title three, chapter 5, section 30, of this part.14. Whenever a father, or a mother being a widow, or living sepa-

rate from her husband, abandons their children, or a husband his wife, leaving them chargeable or likely to become chargeable upon the public for their support, the trustees of the township where such wife or children may be, or the directors upon application being made to them may apply to the court of any county in which any estate of such father, mother or husband may be for a warrant to seize the same and upon due proof of the above facts the court may issue its warrant authorizing the trustees or directors to take into their possession the goods, chattels, effects, things in action and the lands of the person absconding.

15. By virtue of such warrant the trustees or directors may take the property wherever the same may be found in the same county and shall be vested with all the right and title to the personal property, and to the rents of the real property, which the person absconding had at the time of his departure.

16. All sales and transfers of any such property, real or personal and leases made by the person after the issuing of the warrant shall be absolutely void.

17. The said trustees or directors shall immediately make an inventory of the property so seized by them, and return the same together with the proceedings to the court there to be filed.
18. 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 maintainance of the children or wife of the person so absconding.

19. If the party against whom such warrant issued return and support the wife or children so abandoned, or give security to the county satisfactory to the judge, that such wife or children shall not become chargeable to the county the warrant shall be discharged by an order of the court and the property taken and remaining, restored.

of the court and the property taken data in the trial contemplated 19a. The defendant may demand a jury in the trial contemplated in section 7, on the question of his ability and of his obligation to support a poor relative; and also on the questions of abandonment and of liability to become a public charge as provided in section 14, which demand may be made upon the inquiry contemplated in section 18, 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.

20. Any county having expended any money for the relief of a poor person under the provisions of this chapter may recover the same from any of his kindred mentioned in the second section of this chapter, by an action brought in any court having jurisdiction, within two years from the payment of such expenses.

21. A more distant relative who may have been compelled to aid a poor person may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others of the same degree.

ARTICLE 2.

Legal Settlements.

22. Legal settlements may be acquired in the counties as follows: FRST—Any person having attained the age of majority, and residing in this state one year without being warned as hereafter provided, gains a settlement in such county.

SECOND—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. THERD—A married woman abandoned by her husband, and having obtained authority to act as a single person, may acquire a settlement as if she were unmarried.

FOURTH-Legitimate children follow, and have the settlement of their father if he have one, but if he has mone than that of their mother.

mother. FIFTH—Illegitimate minor children follow, and have the settlement of their mother, or if she have none, then that of the putative father.

SIXTH—A minor whose parent has no settlement in this state and 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.

SEVENTH—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.

23. A settlement once acquired continues until it is lost by acquiring a new one.

24. The provisions of the preceding sections apply to cases of settlements begun to be acquired or lost as well before as after the provisions of this chapter go into effect.

25. 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 a warrant of the county court, otherwise he is to be relieved in the county where he applies.

26. Persons coming from other states or counties who are or of whom it is apprehended that they will become county charges may be prevented from obtaining a settlement in a county, by warning them to depart, and thereafter they shall not acquire a settlement except by the requisite residence for one year uninterrupted by another warning.

27. Such warning shall be in writing and may be served upon the order of the trustees of the township, or of the directors, or of the court or judge. The service may be made by any person, and the person making it shall make a return of his doings thereon to the officer issuing the order, and if not made by a sworn officer it must be verified by affidavit.

28. When a poor person applying for relief in one county has a settlement in another, he may be removed to the county of his settlement, if he be able to be removed, upon the order of the judge of the

the state of the state of the state

8111

county where he applied for relief, and delivered to any trustee of a township in the county where his settlement is, or to a director, giving written notice of the fact to the county judge or clerk, or the judge of the county where the poor person applied for relief, may in his discretion cause the judge of the county where the poor person has a settlement to be notified of his being a county charge in the first county, and thereafter it will become the duty of the judge of the county of the settlement to order the removal of the poor person if he is able to be removed, and if not able, then to provide for his relief.

29. 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.

30. When an order of removal is made, the county to which the removal is made, may appeal from the order to the district court of the county where the order is made, by the judge of the county to which the removal is made, causing a notice of such appeal, signed and sealed by him, to be filed in the office of the other county within thirty days after the service of the notice of the order. No other proceeding than the above shall be necessary to effect the appeal and the notice of appeal and a transcript of whatever other proceedings or papers there may be relative to the matter shall be filed in the office of the district court, and the cause may be entitled as of the county issuing the order as plaintiff against the county appealing as defendant and appellant. Automo porto doub to suredo off to od abda 31. The cause may be tried as other actions, but there need be no pleading, the only issue being whether the poor person had a settlement in the county to which he was removed at the time of such order of removal. To point out the root off the bo boordun and the

32. Upon the application of the county appellant the district court may in its discretion change the venue of such a cause to some convenient disinterested county.
ARTICLE 3.
The relief of the poor where there is no poor house.
33. The trustees in each township in counties where there is no

poor house, have the oversight and care of all poor persons in the... township so long as they remain a county charge and shall see that they are properly relieved and taken care of.

34. The poor must make application for relief to the trustees of the township where they may be, and if the trustees are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may for the time being afford such relief as the necessities of the person may require, and shall report the case forthwith to the judge who is authorized to deny further relief to such person if he find cause.

35. All claims and bills for the care and support of the poor, shall be certified to be correct by the proper trustees and presented to the judge, and if he is satisfied they are reasonable and proper, they are to be paid out of the county treasury.
36. The court may in its discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who will probably be benefitted thereby such sums, or such annual allowance as will not exceed the charge of their maintainance in the ordinary mode.

37. If any poor person on application to the trustees is refused the required relief, he may apply to the county judge, who on examination into the matter may direct the trustees to afford relief, or the judge may direct specific relief.

38. A person who is a resident of, but having no settlement in this state, falling into want and making application in one county, but having his usual residence in another, may at his request be removed to such other county by the overseers where he applied and he shall then be at the charge of such other county.

39. The judge is invested with authority to enter into contract when he considers the same expedient, with the lowest bidder, through proposals opened and examined at a regular session of the county court, for the support of all the poor at the time being of the county for one year only at a time and to make all requisite orders to that effect.

40. When such a contract is made the judge shall from time to time appoint some person to examine and report upon the manner the poor are kept and treated which shall be done without notice to the person contracting for their support, and if upon due notice and inquiry the judge find that the poor are not reasonably and properly supported, treated or cared for, he has power at a regular session to set aside the contract making proper allowances for the time is as been in operation.

41. Such contractor and every contractor under the overseers of a township may employ a poor person in any work for which his age, health and strength is competent but this shall be subject to the supervision and orders of the trustees, and in the last resort of the county judge. ARTICLE 4. ARTICLE 4. The relief of the poor where there is a poor house.

42. The county court of each county is hereby authorized to order the erection and establishment of a poor house in such county whenever that measure is deemed advisable, and also the purchase of such land as may be deemed necessary for the use of the same and the judge is invested with full authority to make the requisite contracts, and to carry such order into effect. 43. The judge may when he sees fit cause a vote of the county to be taken on the adoption of such a measure, in manner as provided in the chapter relating to the county judge.

44. The expense of such erection and purchase shall be defrayed by a tax levied ou the general assessment roll for that express purpose, and shall constitute a separate and special fund, but be collected and paid over as other taxes are.

45. When a poor house is established the court has discretionary authority to appoint directors or not, and when it deems it expedient so to do, may appoint one or three in accordance with the provisions of the following sections; and until the court so appoint directors the judge is invested with all the authority and powers in relation to the poor and the poor house which are given to the directors when they have been appointed.

47. They are required to take an oath faithfully to discharge the duties of their office previous to acting thereon, they continue in office one year and until their successors are appointed and qualified, they REVISED CODE.—15

113

55. When any initial and interest of the support

0

himself the directors may order ins distanties, is in a condition that but When a poor person 2 STATAHO relief, is in a condition that will not admit of his removal to the poor house, the directors may provide for his relief out, MARDIN TRANSPORT

SECTION 1. When any woman, residing in any county of the state, is delivered of a bastard child, or is pregnant with a child, which if born alive will be a bastard, complaint may be made in writing by any person to the county court of the county where she resides, stating that fact and charging the proper person with being the father thereof.

2. Upon the complaint being filed the county judge has authority in his discretion to issue a summons requiring the person charged to appear at a time named but not less than seven days distant and answer to the county on the complaint of ——— (the complainant,) which with a copy of the complaint, shall be served at least five days before the return day, and be served and returned in the manner required in other actions. If the accused be not found notice shall be given as in actions before justices of the peace when the defendant is not found.

3. From the time of the issuing of the summons in such case, the action shall be a perpetual lien and security upon the real property of the accused in the county where the action is pending for the payment of any money, and the performance of any order adjudged by the proper court.

4. Upon the return day of the summons if the legal service has been made, the court shall proceed to hear the cause, examining the woman and other witnesses and permitting the accused to put interrogatories also, but continuances may be granted for good cause, and the accused may demand a jury.

5. If on such examination the accused appear in the opinion of the court or the jury to be the father of the child, he shall be adjudged to give security as directed by the court, to the county, conditioned to save the county and also every other county in the state from all charges toward the maintainance of the child.

• 6. If upon appeal the judgment below (being against the accused) be sustained it shall be rendered and entered as a judgment of the district court.

117

7. The issue in such case shall be whether the party is guilty or not, and shall be tried as other issues.

8. If the accused be found guilty, or confess the accusation in the court above, he shall be charged with the maintainance of the child, in such sum or sums, and in such manner as the district court direct and with the costs of the suit, and shall be required to enter into bond, to the county with surety approved by the county judge, or in his absence by the clerk to save the county and all other counties of the state from all charges for the maintainance of the child, and for the performance of the orders of the said court, and execution may issue for costs, and for any sum ordered to be paid immediately.

9. When money has been ordered to be paid from time to time, or by installments, and when a bond has been ordered to be given with a condition for the performance of any act, and the accused neglects to perform such order, a *scire-facias* may issue from the county or district court (as the case may be) to the accused, or his executor, and from the district court to any heir or devisee holding under him any land subject to the lien, to show cause why judgment should not be rendered and execution issue for the sum due, or for the breach of the condition ordered by the proper court.

8. Every such guardian al. 8 RATTAN wenty days after his appointment publish a notice thereof in such manner as the court directs. 9. It is the duty of the .snosrae 'BARANI' for and take into his possession the reode: clattels, money, effects securities and writings touch-

SECTION 1. Jurisdiction over insane persons for the ends prescribed in this chapter is hereby conferred upon the county court sitting as a court of probate. 2. The court is hereby invested with authority to appoint guardians to take the care, custody and management of insane persons residing in their county who are incapable of conducting their own affairs and of their estate real and personal, and to provide for the safe keeping of such persons, the maintainance of themselves and families and the education of their children.

3. When the court is informed that any person in the county is in-

sane, and is satisfied there is sufficient cause for an inquiry, it may cause the person to be brought before it, and inquire into the facts by testimony, and may summon witnesses therefor, and a jury may be demanded by or on behalf of the defendant.
4. If it be found that the person before the court is insane and incapable of managing his own affairs the court shall appoint a guardian of his person and property.

5. When the person is found to be insane, the cost of this proceeding shall be paid out of his property or if that be insufficient, by the county. If he be discharged and it be found by the court or jury that there was no ground for the impression of insanity, the cost shall be paid by the person at whose instance the proceeding was had.

6. The guardian has charge of the person as well as the property of the insane, and if it be necessary for his own safety or for that of the persons or property of others, he may confine or guard him, and may commit him to jail on an order of the county judge who may also release him.

7. Before entering upon the duties of his appointment, the guardian shall give bond to the county in such sum and with such surety as the court approve, with a condition that he will take proper care of such insane person, and manage and minister his effects to the best advantage according to law and that he will faithfully discharge all duties which by law or by the order of a court of proper jurisdiction may devolve upon him, which bond shall be filed in the county office.

8. Every such guardian shall within twenty days after his appointment publish a notice thereof in such manner as the court directs.

9. It is the duty of the guardian to collect and take into his possession the goods, chattels, money, effects, securities and writings touching the estate real and personal belonging to the insane.

10. Within forty days after his appointment the guardian shall file in the county office a true inventory of the real and personal estate of his ward and the income thereof if any and the debts due him as they have come to his knowledge, which shall be attested by two credible witnesses and verified by the oath of the guardian. He shall also file a new inventory when any further property comes to his knowledge. 11. The guardian is authorized to collect all debts owing to his ward, settle his accounts and pay the demands owing by him so far as his estate will extend. 12. The court has authority to make order for the restraint, support and safe keeping of the ward, the management of his property and the maintainance of his family, out of his property, to set apart any of the property for the use of the family, and to sell or morgage any of the property real or personal, when necessary for the payment of debts or the support of the ward or his family.

13. When it is found that the personal estate of the ward is insufficient to meet the foregoing requisitions it is the duty of the guardian to lay before the court an account of the property, his sales, his payments, the debts unpaid and all his doings, and the court if it find it necessary may order a mortgage lease or sale of the whole or such part of the real estate as may be necessary.

14. The court shall direct the time and terms of such sale, mortgage or lease and the manner in which the proceeds shall be paid and cause due notice of the property and of the disposal thereof to be given. The guardian shall execute the order of the court and make report of his doings under oath, and shall be required to state in the same whether he is directly or indirectly the purchaser at the sale, or if otherwise disposed of, whether he is directly or indirectly interested in the agreement.

15. When the proceeding is approved of by the court as having been conducted according to law and not under such circumstances as to operate prejudicially to the interests of the ward the judge is authorized to execute any requisite instrument in writing which shall be as valid as if executed by the ward when of sound mind.

16. If the report be disapproved by the court as not doing justice to the ward, it may set aside the proceedings, and proceed as if they had not taken place.

17. When the court has reason to believe that the ward has recovered his reason, it shall immediately inquire into the fact, and if it finds . the ward restored to sound mind shall discharge him from the care and custody of the guardian, and revoke the letters of guardianship; and thereupon the guardian shall immediately settle his accounts, and restore all things remaining in his hands belonging to his former ward.

18. In the event of the death of the ward the power of the guardian shall cease and the estate descend and be disposed of as if the ward had been of sound mind and the guardian shall settle his accounts, and deliver the estate and effects of his ward to his legal representatives' 19. The court is empowered to remove any such guardian at any time after notice and hearing for neglect of duty mismanagement or for disobedience to any lawful order of the court; to hold him to account and to appoint another in his place.

20. The compensation of the guardian of an insane person is in the discretion of the county court, but subject to an appeal. PART ONE—TITLE XIII. CHAPTER 4.

OF LOST GOODS AND ESTRAYS. SECTION 1. Any person stopping or taking up any kind of water craft or timber, logs or lumber adrift upon any water course within or upon the borders of this state, or lodged upon the shore or bank thereof, or any stray beast or finding any money or other personal property shall proceed therewith as follows.

2. If the property do not exceed ten dollars in value, he shall put up two written advertisements containing a notice of the finding and description of the property in two public places in the township where it was found and file one such notice in the county office, and if no owner appears within sixty days from advertisement and proves his property and pays the reasonable charges the property shall vest in the finder.

3. If the property exceed ten dollars and does not exceed thirty dollars in value, the finder shall within five days after the finding appear before a justice of the peace of the county or the county judge or clerk and make a written statement setting forth the time and place of the finding and general description of the property, and the officer shall issue his warrant appointing two disinterested persons to examine the property and to report under their hands an appraisement with an accurate description of the property setting forth all marks which may assist to identify it. The report shall be sworn to by the appraisers and by the finder also so far as to state that the propperty named in it is all which he has found and that neither the property nor any mark on the same has been altered or defaced by him or by any other person with his knowledge. 4. If the property is appraised at more than ten dollars value the justice shall return the statement of the finder his warrant and the report of the appraisers with the affidavit to the county office and the clerk shall enter them at large in a book to be kept for that purpose, and shall post a notice containing the finder's statement and the appraiser's report on the door of the court house, and the finder shall also give such notice as directed in section 2. If the property is appraised at more than ten and not more than thirty dollars and no owner appears and proves his property and pays the charges within ninety days from the filing the papers with the clerk, the property shall vest in the finder on his paying the costs of the above proceedings and not before.

5. If the appraisement of the property exceed thirty dollars, in addition to the notices above directed the county clerk shall publish for four weeks in some newspaper in his county or if there be none then in some other county a notice of the time and place of finding, with the finder's name, and general description of the property; and if no owner appear and prove his property within six months from the time the notices above directed were first published, the finder may take the property and the right thereto shall be vested in him if he will pay the expenses and pay one half the appraised value deducting the charges into the county treasury.

6. If the finder does not take the property upon the above terms the county judge shall issue a warrant under his hand to the sheriff or a constable to sell the property in the same manner as on execution and having deducted the whole charges to pay one half the remainder into the county treasury and the other half to the finder. But if the owner appear before the sale takes place he may still prove his property and pay the charges as above provided and the sale may be adjourned therefor.

0)10

7. If the appraisement of the property exceed one hundred dollars and the property does not consist of domestic animals, it shall be kept one year for the owner's appearance, and the sale provided for in the two preceding sections shall not take place within that time.

8. But if the property in any of the cases above contemplated consist of domestic animals and the notice is given or the papers filed in the county office after the first of December and before the first day of April no more than ninety days shall be required to pass before the REVISED CODE-16

proceedings to vest the property in the finder or for a sale may take place.

9. No person is authorised to take up straying animals (save stallions, jacks and trespass animals) except in the civil township in which he resides, nor shall the property in them vest in the finder before the first day of December if taken up after the last day of March.

10 When money other than cost is paid into the county treasury under any of the preceding provisions, the owner of the property will be entitled to the money on making claim thereof within six months from the time it was paid in and proving his right to the satisfaction of the county judge.

11. The certificate of the county clerk the return of a sheriff or constable, or the affidavit of an indifferent person of the giving the notices above required, accompanied by one of the notices or a copy thereof and filed with the clerk, shall be prima facie evidence of the facts stated in the certificate return or affidavit.

12. No property such as above intended shall vest in the finder unless he has substantially pursued the directions of this chapter.

13. If the charges of the finder cannot be agreed upon by him and the county clerk or when a claimant appears, by him and the finder, they shall be settled by the county judge, or a justice of the peace upon a case made by the above parties, and if the finder refuse to make a case he shall receive no charges, and if the owner refuse the idge or justice shall decide without it.

14. If such a case be made between the finder and the county clerk the costs of the case shall be taken from the proceeds of the property, if between the finder and the owner each shall pay one half the cost, which the justice may demand before adjudication.

010

15. If the ownership of the property cannot be agreed upon by the finder and claimant they may make a case before the county judge or any justice of the peace, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred (and the claimant shall also verify his claim on his affidavit) and the judge or justice may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

16. When the property found consists of more than one item or in-

01-200 000 /22

123

dividual, the value above spoken of as governing the proceedings means their aggregate value: 17. As a reward for stopping, taking up and securing any property as aforesaid the finder shall be entitled to one dollar at least, and ten per cent. on the appraised value above ten dollars and his expenses in securing and keeping it. monthed source verorence a near 18. The following charges shall be allowed viz: to the justice for the initiatory proceedings fifty cents; to the county clerk one dollar, and where there is an advertisement in a newspaper one dollar additional; the fee for printing; to the sheriff or constable the same fees as for similar services in actions before justices; to each appraiser fifty cents, to the justice for deciding the case concerning the charges, seventy five cents, which charges except sheriff's and constable's compensation shall be paid by the finder and allowed him out of the property, or paid by the owner. 19. Any stallion or jack running at large shall be accounted a stray. 6. All partition fences shall be kept in good repair throughout the year, unless the owners on both sides otherwise agrees developed of or water No person not wishing his land enclosed, and instoceupying nor studiatues of bello PART ONE TITLE XIII. It selves the destruction to creet or maintain any fence dividing netween him and an adjacent -mos in comer, but when he encloses a range of the otherwise than in common, he shall contribute to the partition fences as in this chapter is or he and at his releasion, or FENCES. I brake ball the mabebizorq 8. When lands of different persons are bounded upon or divideil

SECTION 1. 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.
2. 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 they 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.
3. 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 double the sum so ascertained, and in case of neglect to pay the same for one month after demand may recover it with one per cent a month, by action. and be avoid outer best and ab no tree rout

4. 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 in section 2.

5. 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 in 19. Any stallion or jack ranning at large shall be accounted noitoes

1 0

6. All partition fences shall be kept in good repair throughout the year, unless the owners on both sides otherwise agree.

7. No person not wishing his land enclosed, and notoccupying nor using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing 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 is provided.

8. When lands of different persons are bounded upon or divided from each other by a river, brook, pond or creek which of itself is not a sufficient fence in the judgment of the fence viewers, and it is in their opinion impracticable without unreasonable expense for the partition fence to be made in such waters in the place where the boundary line is; if in such case the owner on the one side refuse to join with the owner on the other side in making the partition fence on the one side or the other, or if they disagree respecting the same, then the fence viewers shall view such waters and if they determine that it will not answer the purpose of a fence and that it is impracticable or too expensive to fence on the true line, they shall determine how, or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other, and shall reduce such determination to writing. If either of the parties neglect to make or maintain his part of the fence, it may be done as before pr 125

vided, and the delinquent party shall be subject to the same cost and charges to be recovered in the same way as directed in section 3. 9. 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 to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by the fence viewers who may in writing assign a reasonable time having regard to the season of the year for making the fence and if either party neglect to comply with the decision of the viewers, the other after making his own part may make the other part and recover as directed in section 3. to to easily make the out 10. In the case mentioned in the preceding section, when one of the owners desires to throw his field open and leave it unenclosed, he shall first give the other party six months notice of such intention or such shorter notice as may be directed by the fence viewer on notice to the other party. "I bevostor of Bana at hud wheel rollo off to gors 11. When land which has lain unenclosed, is enclosed, the owner thereof shall pay for one half of each partition fence between his land and the adjoining lands, the value to be ascertained by the fence viewers, and if he neglect for thirty days after notice and demand to pay the same, the other party may recover as provided in section 3, or he may at his election, rebuild and make half the fence, and if he neglect so to do for two months after making such election he shall be liable as before provided. To oth no dhaq bas able ago no

12. When a division of fence between the owners of improved lands may have been made either by fence viewers or by agreement in writing and recorded in the office of the clerk of the township where the lands are, the owners and their heirs and assigns shall be bound thereby and shall support them accordingly, but if any desire to lay his lands in common and not improve them adjoining the fence divided as above the proceedings shall be as directed in section 10. 13. In the provisions of this chapter the term " owner" shall apply

to the occupant or tenant when the owner does not reside in the coun-The "fence viewers" means the fence viewers of the township in which the division line in controversy is, and if that line is between two townships and 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. 14. 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 damage the fence viewers may determine them as in other cases.

15. 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. 16. 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.

17. A person building a fence may lay the same upon the line between him and the adjacent owner so that the fence may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land.

18. The foregoing provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line. 19. 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 in an end links symbols of out avoid as bebivit 18. In the provisions of this chapter the term "owner" shall apply to the occupant or tenant when the owner does not reside in the country, but these proceedings will not bind the owner unless notified .---The "fence viewers" means the fence viewers of the township in which the division line in controversy is, and if that line is between two townships and both parties live in the same, then it means the viewers of that township, but if the parties live in different townships,

PART ONE-TITLE XIII.

0 0

2) 0

. 127

TRESPASSING ANIMALS.

CHAPTER 6.

SECTION 1. When any person is injured in his land by any kind of domestic animal he may recover his damages by an action against the owner of the beasts, or by destraining the beasts doing the damage; provided that if the beasts were lawfully on the adjoining land and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

2. And if the beasts 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 beasts.

3. If the person injured elect to distrain the beasts he shall proceed as directed in the chapter concerning stray beasts, except as herein otherwise provided. HZ ALL

4. The fence viewers shall in all cases be the appraisers and shall find and certify the amount of damage done by the beasts.

5. The property in the beasts shall in no case vest in the distrainer,

but he shall receive his damages, the costs paid by him and the expense of keeping the beasts.

6. The proceeding shall in all cases be as directed in chapter four, in relation to property appraised at a sum above ten and not more than thirty dollars but the proceeds of the sale (after deducting the costs, charges for keeping and damages) shall be paid into the county treasury for the use of the owner if claimed within six months from the sale.

7. The distrainer shall in his statement show that the beasts were taken doing damage on his land, describing it, and the same shall appear in the advertisements, and he shall within forty eight hours after distraining the beasts notify the owner if known and living in the same township, or within five miles, of the injured enclosure in another township.

PART ONE-TITLE XIII.

128

CHAPTER 7.

MARKS OF ANIMALS.

SECTION 1. The county judge of each county shall procure at the expense of the county, a book for each civil township in which to record the marks and brands of horses, sheep, hogs and other animals.

2. 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.

3. 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.

4. The clerk will be entitled to twenty five cents for recording each mark or brand and making a certificate thereof.

PART ONE—TITLE. XIII. CHAPTER 8. THE SALE OF INTOXICATING LIQUORS.

SECTION 1. The people of this state will hereafter take no share in the profits of retailing intoxicating liquors, but the traffic in those commodities as articles of merchandise is not prohibited.

2. The retail of intoxicating liquors in the manner which is commonly denominated "by the glass" or "by the dram" is hereby prohibited.

3. The places commonly known as "dram shops" or "grog shops" are hereby prohibited and declared public nuisances, and their establishment shall be held presumptive evidence of the violation of the provision contained in the preceding section.

4. The establishment or the keeping of a place of any description whatever, and whether within or without a building, coming within the spirit and intent of this chapter; and the establishment or the keeping a place of any description where other persons are accustomed to resort providing their own liquors of the prohibited character purchased elsewhere and drinking them there, shall be taken to be within the meaning of this chapter.

5. Every person engaged in any of the acts above prohibited or in any way aiding or assisting in such illegal traffic whether as principal or as clerk, barkeeper or otherwise shall be subject to the penalties herein provided.

6. Courts and juries are required to construe this chapter so as to prevent evasions and subterfuges, and so as to cover the act of giving as well as of selling in the places above prohibited.
7. Whoever is guilty of violating any of the provisions of this chapter, on conviction thereof shall be fined in a sum not less than one hundred dollars nor more than two hundred dollars or be imprisoned in the courty jail not more than ninety days, or both in the discretion of the court, and may be prosecuted therefor either by indictment or by information before a justice of the peace.

8. An information or indictment under this chapter may allege any number of violations of its provisions by the same party and he may be found guilty of and punished for each act as under seperate indictments or informations, but a seperate judgment must be entered in each instance in which a verdict of guilt is found. And the proceedings may be the same where they are against the building or other property itself, as herein provided.

9. The information and indictment herein authorized may be made or found against the shop or building or ground itself in or upon which the prohibited traffice is carried on under a description of ordinary certainty, alleging that the prohibited liquor has been there retailed in the manner forbidden, and proof of such retail by any person will be sufficient, and the building and ground and the liquors and furniture shall be liable to the penalties herein prescribed, and when an information is filed supported by an affidavit shall be held in the same manner as if under an attachment and shall be dealt with as when an indictment is found.

10. The building on which a shop or other establishment herein prohibited is set up whether permanently or temporarily, and the lot or other ground (not exceeding forty acres) on which the same stands if owned by any person engaged in the prohibited business, or if own-

REVISED CODE.-17

ed and leased by a person who demised it knowing that such establishment was to be set up or such traffic carried on therein, shall be subject to a lien, although not proceeded against directly, for the purpose hereafter directed; and when an indictment is found it is made the duty of the court to command the sheriff by proper process to seize the establishment and close it and keep it closed and keep possession of the goods therein until the final determination of the prosecution.

11. In the cases mentioned in the preceding two sections the property may be released by any person filing a bond in a penal sum not less than five hundred dollars with one or more sufficient freehold sureties, which bond and sureties must be approved by the clerk or justice, and the condition of which must recite that the principal therein assumes to be the owner or keeper of the said establishment takes upon himself the liabilities arising therefrom, and the condition shall be that the parties thereto undertake to pay any fines and costs which may be adjudged against the person or property informed against or indicted.

12. Upon the conviction of any person engaged in any establishment prohibited in this chapter, the proper matter being found, and also upon the conviction of the property, the court is required to deelare such establishment a nuisance, and the proper officer shall be commanded to abate the nuisance by taking possession of the establishment and destroying all the prohibited liquors therein, and selling the vessels furniture and other goods found therewith for the payment of the fine and costs.

13. The enactments of this statute in relation to the homestead and its exemption from execution are modified as follows: If the establishment herein prohibited be set up in the dwelling house of the homestead, the whole homestead will be liable. In other cases the remainder of the homestead (exclusive of the dwelling house) is made liable.

14. The authority to grant licenses to retail the liquors herein prohibited, contained in the charter of any incorporatee town or city, is hereby repealed; but existing licenses whether granted by towns or counties are not affected by these provisions. And these provisions are not to extend to boats or vessels usually navigating waters which are not exclusively the waters of this state, unless the laws of the oth-

REVISED CODE .-- 17

er states having concurrent jurisdiction over such waters contain substantially similar provisions.

Of the regulation of trade.

CHAPTER 1. shimog vizis esoistog 10.

Of barley, forty-eight pounds,

1 0

131

Of wheat, sixty pounds, and so raved sur Of shelled com, fifty-six pounds,

PART ONE-TITLE XIV. do add ni doo 10.

WEIGHTS AND MEASURES. 100 Vite and 10 WEIGHTS AND MEASURES. 100 Vite and 10 Section 1. The treasurer of state is hereby required to procure

at the expense of the state, a set of the following weights and measures. One yard of three feet, divided by marks into halves, quarters,

eighths and sixteenths; One foot measure of twelve inches, not true, how second 10

One half bushel for dry measure not heaped containing one thousand and seventy-five and one fifth cubic inches. One peck, or fourth of a bushel.

One half peck, or one eighth of a bushel; q porest (fit shound 10)

One gallon measure, containing two hundred and thirty-one cubic inches One quart, or a fourth of a gallon, One pint, or half of a quart and

One gill, or a fourth of a pint; One set of avoirdupoise weights consisting of a pound, a half pound a quarter of a pound and an ounce, and also a ten pound weight. All which shall be of the most approved material for the preserva

tion of uniformity, and shall be kept in the treasurer's office, and be the standard weights and measures of this state. 2. The "hundred weight" is hereby declared to consist of one hundred pounds avoirdupoise weight, and the ton to consist of twenty

such hundreds...... et al. betoegeni ernseen bas tiefew dei rol 1.3. The "perch" of mason work or stone, is hereby declared to consist of twenty-five feet cubic measure.

4. Contracts in which no other scale or standard of weights or measures is expressed shall be taken to mean the above, excepting the following in relation to the bushel. A bushel of the respective articles hereafter mentioned will mean the amount of weight in this section specified ; that is to say,

Of wheat, sixty pounds, Of shelled corn, fifty-six pounds, Of corn in the cob, seventy pounds, 70 THA Of rye, fifty-six pounds, Of oats, thirty-five pounds, actual on the out of Of barley, forty-eight pounds, Of potatoes, sixty pounds, J HITTAHO Of beans, sixty pounds, Of bran, twenty pounds, a state and Of clover seed, sixty pounds, Of timothy seed, forty-five pounds, do to the set of a vote set Of flax seed, fifty-six pounds, did to the contract to perception of the Of hemp seed, forty-four pounds, abirth tool pends to basic anOs Of buckwheat, fifty-two pounds, Of blue grass seed, fourteen pounds, a down to subasem tool on O Of castor beans, forty-six pounds, second yeb sol todand lied an()

Of dried peaches, thirty-three pounds, Of dried apples, twenty-four pounds, Of onions, fifty-seven pounds, Of salt, fifty pounds.

5. When the treasurer has so procured the above standards, he shall give notice in some newspaper, and thereafter it shall be the duty of the county judge of each county to obtain a set of weights and measures accurately corresponding in weight and measure with the above standards, and deposit them in the office of the county treasurer to be there kept, and these shall constitute the county standards and the county treasurer shall from time to time cause them to be tested by the state standard and made to agree therewith.

6. Any person desiring his weights and measures inspected may apply to the county treasurer at his office whose duty it shall be to test them, and he may demand and receive therefor twenty-five cents for eigh weight and measure inspected, to the number of six, and fifteen cents each for all above that number, and he shall destroy all such weights and measures as cannot be made to conform to the standard. and to pay to another.VIX EJTITLE ONE-TITLE XIV. or to bearer only and any sum of memory are negotiable by endorsement or delivery in the same memory and bills 2 STATAPA according to the custom of meteopole.

THE MONEY OF ACCOUNT AND INTEREST.

SECTION 1. The money of account of this state is the dollar cent and 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.
2. The above provisions shall not in any manner affect any demand expressed in money of another denomination, but such demand in any suit or proceeding affecting the same shall be reduced to the above denomination.

3. The rate of interest shall be six cents on the hundred by the year : rongings year and an angle beilt of the state of t

FIRST—On money becoming due by express contract, unless a different rate be expressed in writing.

SECOND—On judgments and decrees for the payment of money, when no other rate is expressed. THIRD—On money received to the use of another and retained beyond a reasonable time without the owner's consent expressed or implied.

FOURTH—On money due upon the settlement of matured accounts from the day the balance is ascertained.
FIFTH—On money due upon open account after six months from the date of the last item.
4. Judgments and decrees for the payment of money shall draw the same rate of interest with the contract on which they are rendered when such rate is expressed in the judgment or decree.

assigned, and the assignee will have the right of action in his own name, but subject to the same defence, and setoffs as the instruments

PART ONE—TITLE XIV.

SECTION 1. Notes in writing, made and signed by any person promis-

ing to pay to another person or his order or hearer, 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 nerchants.

2. The person to whom such sum of money is made payable may naintain 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.

3. 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 defence or set off legal or equitable, which the maker or debtor had against any assignor thereof before notice of his assignment.

4. 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 makers, but the use of the technical words "order" or "bearer" alone, will not manifest such intent.

5. When by the terms of an instrument its assignment is prohibited, an assignment of it shall nevertheless be valid, but the makermay avail himself of any defence or set off legal or equitable against the assignce which he may have against any assignor thereof before suit is commenced thereon.

6. An open account of sums of money due on contract may be assigned, and the assignee will have the right of action in his own name, but subject to the same defences and setoffs as the instruments mentioned in the preceding section.

7. 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 guaranty of the performance of the contract.

8. To charge such guarantor notice of non-payment by the principal must be given within a reasonable time, but the guarantor is chargeable without notice if the holder show affirmatively that the guarantor has received no detriment from the want of notice. 9. An endorsor of a negotiable instrument and a guarantor as contemplated in the preceding section is liable to the action of an endorsee, assignee or payee, without notice if the endorsee assignee or payce, have used due diligence in the institution and prosecution of a suit against the maker or his representative.

10. The assignor of any of the above instruments not negotiable, shall be liable to the action of his assignee without notice.

11. Three days of grace are allowed on bills of exchange according to the custom of merchants, but not on any other instruments; and a demand at any time during the three days of grace will be sufficient for the purpose of charging the endorser.

12. When the holder of an instrument for the payment of money is absent from the state where 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

ame due; and if there be no person authorized to receive payand 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.

13. 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.

14. 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.

15. But if the property in such case be too ponderous to be conveniently transported or if the payee had no known place of residence within the state at the making of the contract, or if the assignee of a written contract have no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract.

16. When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof he shall make the tender at the residence of the holder if he reside in the state and no farther from the maker than did the payee at the making thereof.

17. A tender of the property as above provided discharges the maker from the contract, and the property becomes vested in the payee or his assignee and he may maintain an action in relation thereto as in other cases.

18. But if the property tendered be perishable or require feeding or other care, and no person be found to receive it when tendered it is the duty of the person making the tender, to preserve, feed, or otherwise take care of the same and he has a lien on the property for his reasonable expenses and trouble in so doing.

19. The rate of damage 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 bills be drawn upon a person at a place out of the United States or in the territory of Oregon, California, Utah or New Mexico, ten per cent upon the principal specified in the bill with interest on the same from the time of the protest; if drawn upon a person at a place in the state of Iowa, Missouri, Illinois, Wisconsin or Minnesota, three per cent with interest; if drawn upon a person at a place in the state of Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Indiana, Ohio, Virginia, District of Columbia, Pennsylvania, Maryland, New Jersey, New York, Massachusetts, Rhode Island or Connecticut, five per cent with interest; if drawn upon a person at a place in in any other state in the United States, eight per cent with interest.

the payse of and y payse of the payse of the payse of the basis of the payse of the

OF TENDER. SECTION 1. 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 see fit retain in his own possession the money or property tendered, but if afterwards the party to whom the tender was made see proper to accept it and give notice thereof to the other party and the subject of tender be not delivered to him within a reasonable time, the tender shall be of no effect.

2. 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.

3. 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.

4. The person to whom a tender is made must at the time make any objection which he may have to the money, instrument or property tendered or he will be deemed to have waived it. And if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property he must specify the amount, terms, or kind which he requires or be precluded from objecting afterwards. But

or beta beta of private seals in written contracts (except the seals of corporations) is hereby abolished, and the addition of a private seals to an instrument of writing hereafter made, shall not affect its character in any respect

its character in any revert distribution of the party 2. All contracts in writing hereafter made and signed by the party to be bound, or his authorized **3-93147893** ttorney, shall impart a consideration, in the same manner as scaled instruments now do.

3. The want or the failure, in the failure, in the consideration of a written contract, may be shown as a defence total or par-

SECTION 1. 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.

REVISED CODE.-18

2. 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.

3. 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 defence to the action, but may be heard on the assessment of the damages.

4. The provisions of this chapter extend to the executor of a deceased surety, and to the executor, endorsee, and assignee of the creditor; but they do not extend to the official bonds of public officers, executors or guardians.

If The person to whom a tender is made must at the time make

PART ONE-TITLE XIV. CHAPTER 6. PRIVATE SEALS.

SECTION 1. The use of private seals in written contracts (except the seals of corporations) is hereby abolished, and the addition of a private seal to an instrument of writing hereafter made, shall not affect its character in any respect. WHEN TRACE THAT

2. All contracts in writing hereafter made and signed by the party to be bound, or his authorized agent or attorney, shall impart a consideration, in the same manner as sealed instruments now do.

3. The want or the failure, in the whole or in part, of the consideration of a written contract, may be shown as a defence total or partial as the case may be, in an action on such contract brought by one

ting apprehends that his principal is about to become insolvent or to remove permanently from the state without discharging the centract, . if a right of action has accruad 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.

PART ONE-TITLE XIV.

CHAPTER 7.

OATHS AND ACKNOWLEDGMENTS.

SECTION 1. The following officers are authorized to administer oaths and take and certify the acknowledgement of instruments in writing; each judge of the supreme court, each judge of the district court, each judge of a county court and the prosecuting attorney when acting in stead, each clerk of the supreme court, each clerk of the district court both as clerk of the district court and as clerk of the county court, each justice of the peace within his county, and each notary public within his county.a only but around a latongs of as awond of 2. Persons conscientiously opposed to swearing may affirm, and shall be subject to the pains and penalties of perjury as in case of 3. The general partners only shall have power to transacigniraswa

0

iness, to sign for the partnership and to bind it. 4. The persons desirous of forming a partnership shall make and to severally sign a certificate, containing a statement of the name of the the place of residence of ca.8 RETERNOTH contributed by each special partner and the time when the partnership is to commence and when to terminate.

SECTION 1. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors of the assignor, shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims.

2. In the case of an unconditional assignment of property for the benefit of all the creditors of the assignor, the assent of the creditor shall be presumed. bus bell of linds anoney fice of the recorder of every such county.

8. No such partnership shall be considered as formed until the cer-to tificate and acknowledgement are filed and if any false statement be made in the certificate all the persons interested in the partnership shall be liable as general partners. These versus are in adversion 9. The terms of the partnership when recorded, shall be published

PART ONE-TITLE XIV.

CHAPTER 9.

LIMITED PARTNERSHIPS,

SECTION I. Limited partnerships for the transaction of any lawful business, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein provided.

2. They shall consist of one or more persons who may be known as the general partners and be liable as such, and of one or more persons who contribute a specific amount to the common stock, who may be known as the special partners and who shall not be liable for the debts of the partnership beyond the fund so contributed by them, except as herein provided.

3. The general partners only shall have power to transact the business; to sign for the partnership and to bind it.

4. The persons desirous of forming a partnership shall make and severally sign a certificate, containing a statement of the name of the firm, the nature of the business to be transacted, the names of all the partners, specifying which are general, and which special, and the place of residence of each, the amount contributed by each special partner and the time when the partnership is to commence and when to terminate.

5. Such certificate shall be acknowledged by all the persons signing it before such officer and in such manner as deeds, for the conveyance of land may be acknowledged.

6. The certificate so acknowledged and certified shall be recorded in the office of the recorder of deeds in the county in which the place of business of the partnership may be, in a book kept for that purpose.

7. If the firm have places of business in different counties the certificate and acknowledgement, shall be filed and recorded in the office of the recorder of every such county.

8. No such partnership shall be considered as formed until the certificate and acknowledgement are filed and if any false statement be made in the certificate all the persons interested in the partnership shall be liable as general partners.

9. The terms of the partnership when recorded, shall be published

for two weeks after the record thereof, in a newspaper (if there be one). in each county where the partners have a place of business, and if such publication be not made the partnership shall be deemed a general one.

10. Upon the renewal or continuance of a limited partnership beyond the time originally agreed upon for its duration a certificate of the fact of renewal shall be made, acknowledged, recorded and published in the same manner as for the formation of such partnership, otherwise on its continuance it shall be taken to be a general partnership.

11. Every change of the partners or in the nature of the business, or in the amount invested by the special partners, or in any other matter specified in the original certificate except the residence of the partners shall effect a dissolution of the partnership, and every such partnership which shall be carried on after such alteration shall be held a general partnership as directed in the foregoing sections.

12. The business of the partnership shall be conducted under a firm; in which the names of the general partners only shall be inserted and if the name of any special partner be used in the name of the firm with his consent or p ivity or if he personally make any contract respecting the concerns of the partnership with any person except the general partners, he shall be taken to be a general partner.

13. Suits by and against the partnership, may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

14. If at any time during the continuance or at the termination of the partnership, its property or assets be not sufficient to pay its debts the special partners shall be responsible for all sums by them received from the partnership.

15. Special partners shall have right to examine into the condition of the partnership concerns, as other partners and the partners in such firms shall be liable to account to each other, as in other cases of partnership.

16. No dissolution of such a partnership shall take place by the act of the parties previous to the time specified in the certificate of its formation or of its renewal, unless a notice of such dissolution is prepared, filed, and recorded as directed in section six, and published for four weeks in one newspaper as directed in section nine. CHAPTER 10.

MECHANICS LIENS.

SECTION 1. Every person who by virtue of a contract with the owner of a piece land, performs work or furnishes materials especially for any building, and which material is used in the erection or reparation thereof has a lien upon the land including the building with its appurtenances for the amount due him for work or material, against all persons except encumbrances by judgment rendered and by instrument recorded, before the commencement of the work.

2. The word "owner" in this chapter includes any person who has any estate or interest in the land; and the lien hereby given extends to the whole of his estate and interest in the land and no farther. And the word "building" includes permanent machinery substantially connected with a building, and the lien applies to both building and machinery.

3. A subcontractor has no lien on such building, but may proceed as hereafter authorized.

4. The person wishing to avail himself of such lien shall commence his action within one year from the time payment should have been made by virtue of the contract under which the lien is claimed.

5. The action may be commenced as in ordinary cases, upon such an account, but the complaint shall further set forth sufficient of the contract to show the foundation of the plaintiff's claim to a lien and stating any terms which were specially agreed upon in the contract, and shall describe the tract of land (not exceeding a quarter of a section) or the town lot on which he claims his lien, and pray an enforcement thereof.

6. When the contract is in writing that as well as the account, or their copies, shall be filed, and the rules of pleading and proceeding in other actions are applicable to this according to the nature of the case.

7. A judgment for the plaintiff shall be that he recover the amount found due and that his lien on the tract of land and building is established (describing the tract) to be limited by the ascertainment as herein directed of two acres of the tract if it exceed that quantity, and the judgment shall order a special execution to issue against the given tract of land or lot, and the judgment shall not be a lien on any other property of the defendant.

8. If the given land be a town lot the lien shall be limited to the lot and shall extend to the whole thereof provided it do not exceed half an acre, subject to the qualifications hereafter expressed.

9. If the given tract of land be supposed to contain more than two acres, or more than half an acre in the case of a town lot, the sheriff having the execution shall proceed as follows.

10. If the owner and creditor can agree in fixing the locality and bounds of the proper quantity of land their agreement shall be reduced to writing accurately describing the land by metes and bounds signed by the parties and attested by the sheriff and it shall stand as the ascertainment of the proper land to which the lien and subsequent proceedings are to be limited and be returned by the sheriff with his doings.

11. If the parties do not so agree the sheriff is required to proceed as follows for the ascertainment of the proper quantity of land. He is to take a person competent to survey, and a disinterested householder of the vicinity and administer to them the following oath in substance, which must be in writing signed by them and certified by him:

We, (A and B.) do solemnly swear that we will with faithfulness and impartiality perform our duty in ascertaining and setting out the proper portion of the land of (C) subject to the mechanic's lien of (D) by virtue of an action of the said (D) against the said (C) in the district court of _____ county, wherein judgment was recovered on ______ (or before (E) a justice of the peace on _____ and filed in the district court of _____ county,) as the case may be.

12. The sheriff and the two persons appointed by him shall then proceed to ascertain and set out by metes and bounds two acres of the land, fairly consulting the interests of both parties, subject to the following directions:

FIRST—The two acres must include the building on which the lien arose;

SECOND—They are not be restricted by enclosures nor by congressional lines but are restricted to contiguous lands;

THERD—They should be set out in a rectangular form and as nearly in a square as practicable; FOURTH-When the lien arises on a dwelling house the two acres shall enclose such out houses as are usually occupied with a dwelling and as are requisite to its convenient use in the given case.

FIFTH—But in such case if there be two dwelling houses, only one shall be taken although this direction reduces the quantity of land below that prescribed in sections 7 and 8.

SIXTH—If the lien does not arise on a dwelling house such house shall not be taken although the quantity be thereby reduced as in the preceding direction.

SEVENTH—Any building any part of which had commonly been used as a dwelling before the commencement of the work out of which the lien arose is to be accounted a dwelling house; and any shed or out house contiguous to the dwelling is to be accounted a part thereof;

EIGHTH—The two acres should reach a highway if there be one touching the land and to effect this object the third direction may be modified;

NINTH—But if a road cannot be thus reached without essentially conflicting with other more material directions, then a roadway of such width as the plaintiff desires to the highway may be set out as a part of the two acres;

13. The above directions are intended as guides to the parties when they ascertain the land by agreement unless they waive them by their agreement, as well as for the viewers.

14. The doings of the viewers shall be reduced to writing, accurately describing the land set out, and be signed by the three or a majority of them; and returned by the sheriff when the execution is returned.

15. The two acres being ascertained in either of the above methods the lien of the plaintiff and levy of the execution shall be restricted thereto, and the sheriff may proceed to advertise and sell the same as he sells real property in other cases.

16. Any number of persons claiming a lien on the same building, may join in one action, but stating their several accounts and contracts distinctly as in a separate action, and the judgment shall show the amounts they severally recover, but the execution shall be joint, and the sale shalt be for the benefit of all such recoverers rateably. Each of such recoverers may nevertheless have his separate action subsequently on the judgment for the amount recovered by him. 17. The ascertainment of the two acres under any one execution shall stand for all other mechanic liens established on the same building for labor or materials expended on it within two years from the first establishment of a lien.

18. The words "two acres" used in this chapter shall be limited to "half an acre" when the land in question is a town lot.
19. A creditor who claims a mechanic's lien on the same building and who has commenced an action for the establishment thereof, may redeem the property by paying the amount for which it sold with ten per cent. per annum thereon to the clerk of the district court within the time allowed to the defendant to redeem, and if the property was sold to a plaintiff in any such action for lien the new ereditor may redeem within six months after the recovery of a judgment on which he can proceed.

20. If the defendant has redeemed, the new creditor may levy as if no levy and sale had been made, except that the assignment of the two acres under the former execution shall stand.

21. When such creditors redeems from a prior sale, he has a lien on the property as a purchaser for both his own judgment and the redemption money paid by him and to effect such lien shall cause a levy and sale under his own execution of the same property, but if he has not obtained a judgment and does not ultimately obtain one he shall still have his lien on the property for the money paid by him in redemption with interest thereon at six per cent. per annum and shall be entitled to the sheriff's deed unless the property be redeemed, and the defendant in this case may redeem it within six months after the final determination of such claimants action, and if the sheriff's deed has been given to a former lien creditor and purchaser the party so redeeming shall be entitled to a release from such former creditor and purchaser.

22. All redemptions shall be certified by the clerk in the sale book and the money received therefor shall be paid by him to those entitled to the proceeds of the former sale and in the same proportion.

23. When such judgment is not fully satisfied by the above proceedings the creditor may have a general execution on the judgment and proceed against other property as on a general judgment.

24. The surplus of the proceeds of a sale not belonging to the above creditors is to be paid to the defendant, saving however rights arising under any levy on, or garnishment of, the same.

REVISED CODE-19

25. A subcontractor may obtain a lien against his principal contractor in like cases with those in which the contractor may obtain a lien on the building in the following manner:

26. He shall commence an action against his principal within six months from the time payment should have been made under his contract, and upon filing with the clerk or justice an affidavit of himself or his agent or attorney of his belief of the truth of his claim and his belief that the said owner is indebted to the contractor (whether it be on the given building or otherwise) a writ of garnishment may issue to the owner returnable to the same term with the action and from the service thereof all indebtedness of the owner to the contractor and any property of the contractor in the hands of the owner shall be stayed in the hands of the owner, and the proceeding shall have the qualities of, and be conducted as, an ordinary garnishment.

27. When a judgment is rendered in favor of a subcontractor against the owner as such garnishee the record shall show the relation of the parties and the sub-contractor may have the benefit of the lien of the principal contractor and shall take precedence thereof, and the sub-contractor is invested with all the rights in relation to levy, sale, and redemption, in this chapter given to any contractor.

28. In the cases above contemplated the owner or contractor so sued may release his property or demands from lien by filing with the proper clerk or justice a written undertaking with two or more sureties approved by the clerk or justice to pay the plaintiff the amount which may be recovered with costs, and acknowledged by the undertakers, and a general judgment may be rendered against both principal and sureties.

29. No person is entitled to a mechanic's lien who takes collateral security on the same contract.

PART ONE-TITLE XV. CHAPTER 1. GENERAL PROVISION RELATIVE TO PART FIRST OF THIS STATUTE.

SECTION 1. Whenever it is found that any of the provisions of the

first part of this statute cannot be carried into full effect on account of the absence of some necessary regulation or on account of a conflict of existing regulations, the census board are authorized to establish any rules that may be necessary to supply the defect or reconcile the discrepancy in order to carry out the spirit and intent of the statute, which rules must be published in two or more newspapers of the state and shall have the force of law until changed by the general assembly.

Severation outcoments and credits belong exclusively to such institutions and devoted solely to sustaining them, but not exceeding in amount or income the sum prescribed by their charter;

Timded debt or in auditor's Warrants; CHAPTER 4. OR AUDITOR ON A TRACE CHIlicates of stock or CHAPTER 4. OR A TRACE ON A TRACE

SECTION 1. Each county court shall hold a session on the fourth Monday of July annually at which time it shall levy the following taxes upon the assessed value of the taxable property in the county ; For state revenue three mills on a dollar, when no other rate is directed by the census board ;

For ordinary county revenue including the support of the poor, not more than six mills on a dollar, and a poll tax of not less than fifty cents nor more than one dollar;

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

For roads as directed in the chapter relating to roads.

2. The following classes of property are not to be taxed and they may be omitted from the lists herein required;

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

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

THERD—Public grounds by whomsoever devoted to the public ineluding all places for the burial of the dead;

FOURTH—Five engines and implements used for exinguishing fires with the ground used exclusively for their buildings and for the meetings of fire companies;

REVISED CODE-19

0

FIFTH—The grounds and buildings of library, scientific, benevolent and religious institutions or societies devoted solely to the appropriate objects of those institutions, not exceeding three acres in extent and not leased nor otherwise used with a view to pecuniary profit;

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

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

EIGHTH—Claims against the state whether in certificates of stock or funded debt or in auditor's warrants;

3. 0

NINTH-Improvements on land;

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

ELEVENTH—The polls or estates, or both, of persons who by reason of age or infirmity may in the judgement of the assessor be unable o contribute to the public charges, such opinion being subject to reversal by the county court. TWELFTH—Mutual Insurance Companies.

3d. All other property real and personal within this State is subject to taxation in the manner herein directed; and this section is intended to embrace lands, and lots in towns, including lands bought from the United States and from this State and whether bought on a credit or otherwise. Ferry franchises, which for the purposes of this chapter

are to be considered real property. Horses and neat cattle over two years old, mules and asses over one year old, sheep and swine over six months old, money whether in possession or on deposite and including bank bills, money, property or labor due from solvent 149

debtors on contract or on judgment and whether within this State or not.

Mortgages and other like securities, accounts bearing interest, stock or shares in any bank or company incorporated or otherwise and whether incorporated by this or any other State and whether situate in this State or not. Public stocks or loans, household furniture including gold and silver

plate and musical instruments. Watches and jewelry.

Private libraries, for their value above one hundred dollars, pleasure carriages, stages, hacks and other vehicles for transporting passengers, wagons, carts, drays, sleds, and every other description of vehicle or carriage. Boats and vessels of every description whereever registered or licensed and whether navigating the waters of this state or not if owned whether wholly or in part by persons who are inhabitants of this state, annuities, but not including pensions from the United States or any of them nor salaries or payments expected for services to be rendered; and all other property not above exempted although not herein specified.

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

5. Every inhabitant of this state of full age and sound mind shall list all property subject to taxation in this state of which he is the owner or has the control or management, in the manner hereafter didirected ; but the property

Of a ward is to be listed by his guardian; Of a minor having no other guardian, by his father if living, if not then by his mother if living and if not then by the person having the; property in charge :

Of a married woman by her husband, but if he be unable or refuses by herself; Of a beneficiary for whom property is held in trust, by the trustee Of the personal property of a decedent, by the executor; Of a body corporate, company, society or partnership, by its principal accounting officer, agent or a partner.

5a. 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.

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

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

1

0

8. A person required to list property in behalf of another shall list it in the same county in which he would be required to if it were his own (except as herein otherwise directed) but he must list it separately from his own naming the person or estate to whom it belongs ; but the undivided property of a person deceased belonging to his heirs may be listed as belonging to such heirs without enumerating them. 9. The property of corporations or companies constructing canals, railways, plank roads, graded roads, turnpike roads and similar improvements is taxed through the shares of the stockholders, and when any such stockholders are non-residents their interests are to be taxed in this state in the county in which is either terminus of the structure in the state, and to that end the assessor is directed to require the secretary or clerk (or whatever officer of corresponding duties there may be) to render under oath a list of the names and residences of non-resident stockholders with the number of the shares of each and both the par value and the market value of such stock. But if such secretary or other corresponding officer do not reside in this state, the assessor may require the same of any officer residing in the state. If such officers refuse, the shares of non-residents shall be assessed to the company or corporation and may be ascertained in the best manner within the power of the assessor. In such case the county first listing or assessing is to levy and collect the tax.

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

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

The manner of listing and assessing property.

11. Personal property shall be listed and valued in the year eighteen hundred and fifty-two and every two years thereafter. Real property shall be listed and valued in the year eighteen hundred and fifty two and every four years thereafter; and real property is to be assessed at its true value in money at private sale without regarding the improvements on the land valued or the growing crops, but having regard to its quality, locality, natural advantages, the general improvement in the neighborhood and county, and all other elements of its value.

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

13. In making up the amount of money and credits which any person is required to list he will be entitled to deduct from their gross amount the amount of all bona fide debts owing by him; but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section; and so much only of any liability of such person as surety for another shall be deducted, as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be

1

compelled to pay on account of the inability of the principal debtor; and if there are other sureties able to contribute, then so much only as he in whose behalf the list is made will be bound to contribute. But no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to, or instalment payable on the capital stock of any company or corporation.

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

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

16. The assessor of each county shall, on or before the first day of March in the year eighteen hundred and fifty-two and each two years thereafter leave with each person resident in his county of full age and of sound mind or at the usual place of residence or at the office or other place of business of such person a written notice requiring him to make out and return to the assessor by the twentieth day of the same month of March a statement or list of his property which by law is subject to taxation; and the assessor shall leave a blank form upon which such list may be made. And if the statement be not returned to the assessor in due time he is to call for the same; but if the person is prepared to render his list at the time the notice is left it is the duty of the assessor to receive it at that time.

him and any stol officer when the

17. The list shall contain :

3. 0

FIRST. In the years wherein real property is to be assessed,

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

SECOND. On each two years his personal property by the following particulars:

Amount of capital employed in merchandise. Amount of capital employed in manufactures.

Number of horses over two years old and their value.

Number of mules and asses over one year old and their value. Number of neat cattle over two years old and their value.

Number of sheep over six months old and their value.

Number of swine over six months old and their value. Number of carriages and vehicles of every description, and their value,

Amount of money and credits,

Amount of taxable household furniture,

Amount in stock or shares in any corporations or companies, Amount of all other personal property not enumerated, The number of polls.

18. The above list of items may be diminished or varied or enlarged by the census board so as to obtain such facts as they deem advis-

able. 19. On the year when there is no general assessment of real property the above list shall also contain all lands previously omitted and all lands acquired subsequent to a prior listing.

20. Before the first of March on each two years, beginning with the year eighteen hundred and fifty two the census board is required to furnish the assessors with suitable blank forms for the assessments, with such instructions as to secure full and uniform assessments and

returns, os od ot si ti gnitsil lo rear prior ynn no bottimo at i li REVISED CODE .- 20 21. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor or by any other officer authorised to administer oaths, and shall be certified by him and any such officer except the assessor will be entitled to ten cents for the above service. The oath may be printed upon the blank forms and shall be in substance the following:

"I, (A. B.) solemnly swear that I have listed above (or within) all the land [where this is required] and all the personal property, money and credits subject to taxation, owned or held by me and which I am required by law to list, [in the proper cases insert; as guardian, parent husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor] according to the best of my knowledge, and that I have valued the personal property therein truly according to the best of my knowledge and belief. A. B." And such form may be changed to meet the case of omitted or newly acquired land.

3.

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

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

24. All lands acquired subsequent to the last listing shall be listed and returned by the owner on the alternate years in which personalty only is designed to be listed. And the assessor is authorized and required at all times when making his assessment roll whether of personalty only or of both that and realty, to add thereto any property real or personal so subsequently acquired or which may have been omitted, examining the returns from the land offices and taking any other means within his knowledge to ascertain the same; and if it be property omitted he is to mark against it the word "omitted," and if it were omitted on any prior year of listing it is to be so entered and taxed for all the years it was omitted. And it is also the assessors duty to ascertain on each year when there is no listing all property acquired or brought into the state since the last listing, and real property in such case shall be assessed at the uniform rate of one dollar and twenty-five cents an acre until the next biennial listing.

25. Real property is in all cases to be valued by the assessor, as is also personalty which has not been listed and valued by the owner.

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

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

27. The assessor shall take and subscribe an oath, to be certified by the officer administering it and attached to the assessment roll which oath is to be in substance as follows : nivroy ad to attempt been I _____ assessor of _____ county solemnly swear that the value of all property, money, and credits of which a statement has been made and verified by the oath of the person required to list the same, is herein truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that as I verily believe the full value thereof is set forth in the annexed return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of tax until the next general assessment unless soo.noitaxat rol vireqorq

155

28. As soon as practicable after the assessment roll is filed the county clerk is required to make out an abstract thereof containing the whole number of acres of land listed in the county and the total value of all town lots, the whole number of horses over two years old and their total value, the whole number of mules and asses over one year old and their total value, the whole number of neat cattle over two years old and their total value, the whole number of sheep over six months old and their total value, the whole number of swine over six months old and their total value, and the gross amount of all other personal property, with money and credits; which abstract the clerk is directed to transmit forthwith to the auditor of state. But the census board is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it deems advisable. On the years in which personal estate only is listed and assessed, the above abstract is to contain the number of acres and the value of newly acquired lands. modman to annulos out driv batasibni

1

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

30. Such equalization may be made either by changing any of the assessments or by varying the rate of taxation in any of the counties, as may be found most convenient. But in either case the board is directed to preserve unchanged, as far as practicable, what would have been the aggregate amount of valuation had no such equalization been made.
31. The general rates thus fixed shall remain unchanged for the succeeding four years, and will be the basis on which to levy the state tax.

32. Before the fourth Monday of July the auditor is required to transmit to the judge of each county a statement of the change (if any) which has been made in the assessment and the rate of statetax which is to be levied and collected within his county, which however shall not exceed one half of one per cent on the valuation, and the rate so fixed by the census board is to remain the annual rate for the state tax until the next general assessment unless sooner changed by that board. And when that board fixes no different rate, and also if after a general:assessment it prescribes no rate, the rate first mentioned in this chapter shall be levied.

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

34. On the fourth Monday of July the county court shall levy the requisite taxes for the then current year. They may be levied at any time after the second Monday of July if the statement has been received from the census board.

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

Rhad taxes may he &

aring and

in the S

A 16 6 6

-

04

board. And when that board fixes no different role, and also 191 a general second it prescribes no rate, the rat m? this chartier shall be levied. tor 33. The county indge, clerk and treasurer c the correction of the massagent roll and bein ha June and the second Monday of July any or trail

	Owner's Names.	A.B.C.
	Farts of Sec- tion.	A.B. C. Personalty, n. e. ‡ w. ¹ / ₂ of n. e. ‡
	Section.	00
	.qidanwoT	11
	Калде.	0 K
-	No. of acres.	160
סמ לשווו זכורי	Name of Town.	internet and had defer our parts entrances and rear entrances are real entrance in the defering has not had not sold that the scale of valueting has not had a by demonstrate by the different essenters.
n m	No. of Lot.	nount of personal property the we we personal
ioi a	No. of Block,	samn by itself the smount of e R & P went tax
Such List may be in the following Form.	Value.	Ac As soon as provided by 00 1 300 1 300 1 300 1 300 1 300 1 300 1 300 1 100 0 0 100 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
	County Tax.	1 1 1 2 1 1 2 1
	State Tax.	1 25 1 25 1 25 1 25 25 1 25 25 1 25 25
	School Tax.	012 012 022 022 022 022 022 022 022 022

36. An entry is required to be made upon the tax list showning what it is and for what county and year it is and the county judge shall attach to the list his warrant under his hand and official seal, in general terms requiring the treasurer to collect the taxes there in levied according to law, and no informality in the above requirements. shall render any proceeding for the collection of the taxes illegal.

The judge is required to cause the list to be delivered to the treasurer of the county by the fifteenth day of September, and his receipt taken therefor, and such list is a full and sufficient authority for the collector to collect all taxes contained therein.

The Collection of Taxes.

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

38. Auditors warrants are receivable for three fourths of the amount payable into the State treasury, and county warrants are receivable at the treasury of the proper county for the ordinary county tax and any poor tax or poor house tax, but money only is receivable for the school tax. Road taxes may be discharged and road warrants received as provided in the chapter relating to roads.

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

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

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

42. When the treasurer distrains goods he may keep them at the expense of the owner, and shall give notice of the time of their sale within five days after the day of the taking in the manner constables are required to give notice of the sale of personal property on execution, and the time of the sale shall not be more than ten days from the day of the taking ; but he may adjourn the sale from time to time for a period not exceeding three days, and shall adjourn once at least when there are no bidders, and in case of an adjournment he shall post 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.

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

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

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

46. The treasurer shall continue to receive payment of all taxes after the first of January upon the above terms, until paid by distress or sale.

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

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

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

50. The person who offers to pay the amount due on any parcel of land for the smallest portion of the same, is to be considered the highest bidder, and when such portion constitutes a half or more of the parcel it is to be taken from the east side thereof dividing it by a line running North and South, except that town lots are to be divided in such case lengthwise by a line parallel with the proper lines of the lots. If the portion taken be less than one half of the tract it is to be taken from the south east corner in as puare form as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualification ; the homestead is liable to be sold for no tax save that which is due on itself exclu-

REVISED CODE.-21

sively, and the above directions concerning the division of a tract of land shall be modified so as to meet this requirement and to that end the quantity of land bid may be obtained by drawing the division line in any direction or form so as to avoid the homestead; and when the homestead constitutes part of the tract sold and is not yet ascertained the court may in the action hereafter authorized at the suggestion of either party cause a proceeding to be had similar to that required in relation to the mechanic's liens, for the ascertainment of the homestead; and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold and to set it apart from the homestead.

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

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

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

54. Land so sold will be subject to redemption as follows: if redeemed before a suit be commenced as hereafter provided, by paying the amount paid by the purchaser, including the fee for the deed and any taxes on the land paid by the purchaser with twenty-five per centum per annum thereon; and if redeemed after a suit is commenced, by paying in addition to the foregoing the sum of ten dollars and the costs of suit to be taxed by the clerk of the district court. Such pay163

ment may be made to the purchaser his agent or attorney, or to the treasurer who is to enter a memorandum of the redemption in the list of sales and give a certificate thereof to the purchaser, and hold the money paid (except the costs of a suit) to the use of the purchaser.

55. The purchaser may afterward file his petition in the district court as in case of a foreclosure of a mortgage except that no sale shall be decreed, in which action the notice to the party and the service is to be the same as in the case of a mortgage, but the owner shall not be entitled to defend unless he has paid or tendered the amounts above directed, or shows that no tax was levied on the land or that he had paid the taxes.

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

57. The court shall have jurisdiction of such actions as in chancery, and the decree therein shall be conclusive in the same decree as in other actions.

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

59. A tax for state purposes shall be levied upon peddlars of watches, jewelry and clocks for a license to peddle throughout the state for one year, as follows:

Upon each peddler of watches and jewelry or either of them ten dollars.

Upon each peddler of clocks, twenty dollars.

60. Such license may be obtained from the judge of any county upon paying the proper tax to the treasurer thereof.

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

REVISED CODE .-- 21

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

PART SECOND—TITLE I.

hall be desired in which action the police to the party and the ser-

Of the rights of individuals.

CHAPTER 1.

OF PROPERTY.-GENERAL PROVISIONS.

SECTION 1. 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.

2. Married women may receive grants or gifts of property from their husbands without the intervention of trustees-but this provision applies only to form and manner and leaves the substantial rights of all parties unchanged.

the smanth (firition names on his hand; (or the parchaser may recover CHAPTER 2.

OF THE TRANSFER OF PERSONAL PROPERTY.

SECTION 3. No sale or mortgage of personal property where the vendor or mortgagor retains actual possession thereof is valid against existing creditors or subsequent purchasers without notice unless a written instrument conveying the same is executed; acknowledged like conveyances of real estate and filed for record with the recorder of deeds of the county where the holder of the property resides.

4. The recorder of deeds must keep an entry book or index for instruments of the above description having the pages thereof ruled so as to show in parallel columns to be alphabetically arranged in double entry in the manner hereinafter provided in case of deeds for real property.

First-The mortgagors or vendors;

SECOND-The mortgagees or vendees;

THIRD—The date of the filing of the instrument;

FOURTH-The date of the instrument itself; FIFTH—Its nature;

SIXTH-The page and book where the record is to be found. 5. 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 shall forthwith enter in his entry book all the particulars required in the preceding section except the 6th item therein and from the time of said entry and not before shall the sale or mortgage be deemed complete as to third persons and shall have the same effect as though it had been accompanied by the actual delivery of the property so sold or mortgaged.

6. 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. where the record may be found. noitered and more analysis to truste result and more and the operation

or construction of law.

not necessary to create and

16. Conveyances to two or more in their own right create a tenancy in common unless a conta strappies expressed.

17. A married woman may convey her interest in real estate in the

OF CLAIMS ON THE PUBLIC LANDS. OF TOTAL OF CLAIMS 18. Any person in the possession of real property with the assent

SECTION 7. The owner of what is known as a valid claim or improvement on the public lands has a transferable interest therein which may be sold on execution or otherwise; any sale of such improvement is a sufficient consideration to sustain a promise.

8. The occupant of such claim will be deemed to have constructive possession thereof to the extent of three hundred and twenty acres provided it be so marked out and designated that the boundaries can be readily traced and determined and he may protect and defend his possession by the proper civil action. A to yet then out no spale exist 20. In the absence of stimulations to the contrary the mortgagor of real estate retains the legal title and right of possession thereof but in case of personal property the mortgagor holds that title and right.

eldrob di beggeste vilasione CHAPTER 4. Leon 101 ebeeb 10 eses OF REAL PROPERTY.

SECTION 9. All persons owning lands not held by an adverse possession shall be deemed to be seized and possessed of the same.

10. The term "heirs" or other technical words of inheritance are not necessary to create and convey an estate in fee simple.

11. Every conveyance of real estate passes all the interest of the grantor therein unless a contrary interest can be reasonably inferred from the terms used.

12. 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.

13. Adverse possession of real property does not prevent any person from selling his interest in the same.

14. Estates may be created to commence at a future day.

15. 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.

16. Conveyances to two or more in their own right create a tenancy in common unless a contrary intent is expressed.

17. A married woman may convey her interest in real estate in the same manner as other persons.

18. Any person in the possession of real property with the assent of the owner is presumed to be a tenant at will unless the contrary is shown.

19. Three months notice in writing is necessary to be given by either party before he can terminate a tenancy at will. But where in any case rent is reserved payable at intervals of less than three months the length of notice need not be greater than such interval between the days of payment. In case of tenants occupying and cultivating farms the notice must fix the termination of the tenancy to take place on the first day of April.

20. In the absence of stipulations to the contrary the mortgagor of real estate retains the legal title and right of possession thereof but in case of personal property the mortgagor holds that title and right.

OF THE CONVEYANCE OF REAL ESTATE.

SECTION 21. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice unless recorded in the office of the recorder of deeds of the county in which the land lies as hereinafter provided.

22. It shall not be deemed lawfully recorded unless it has been previously acknowledged or proved in the manner herein prescribed.

23. The recorder of deeds must keep an entry book or index the pages of which are so divided as to show in parallel columns: 1st. The grantors. 2nd. The grantees. 3rd. The time when the instrument was filed. 4th. The date of the instrument. 5th. The nature of the instrument. 6th. The book and page where the record there-of may be found and 7th. The description of the lands conveyed in the manner following.

Grantors.	Grantees.	Date of filing.	Date of in- strument.	Character of instrument.	missioner to take the acknow ernor of t.noitqinasa r befora a 20. The court or person ta upon the deed a certificate a
-Iwomlo revoked	n <mark>the s</mark>	1848	1848	nes by tra	Purst The title of the con edgement was taken with me
A. B.	C. D.	Jan. 1,	Jan. 1,	Deed,	E. 1/2 n. e. 1/2 Sec. 14 T. 7, R. 2
M. N.	P. Q.	Oct. 7,	June 4	Deed,	Lot 4 29, in Burlington,
R. S.	T. V.	Nov. 3	Sep 19	, Mortgage	5. ½ Sec. 12, T. 67, R. 3.

24. 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 last preceding section except that of the book and page where the record of the instrument may be found and from that time such entries shall furnish constructive notice to all the world of the rights of the grantee conferred by such instrument.

25. The entries in such entry book shall be double—the one showing the names of the respective grantors arranged in alphabetical order—the other those of the grantees in like order. Where there are two or more grantors having different sur-names there must be as many distinct entries among the grantors as there are different names being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

26. Every such instrument shall be recorded as soon as practicable in a suitable book to be kept by the recorder for that purpose. After which he shall complete the entries aforesaid so as to show the book and page where the record is to be found.

Manner of acknowledging or proof of deeds.

27. If acknowledged within the state it must be before some court having a seal or some judge justice, or clerk thereof, or some justice of the peace or notary public.

28. If acknowlged out of the state it must be before some court of record or clerk or officer holding the seal thereof or before some commissioner to take the acknowledgment of deeds appointed by the governor of this state or before some notary public.

29. The court or person taking the acknowledgement must endorse upon the deed a certificate setting forth the following particulars:

FIRST—The title of the court or person before whom the acknowledgement was taken.

SECOND—That the person making the acknowledgement was personally known to at least one of the judges of the court or to the officer taking the acknowledgement to be the identical person whose name is affixed to the deed as grantor; or that such identity was proved by at least one creditable witness (naming him.)

THIRD—That such person acknowledged the instrument to be his voluntary act and deed.

30. If the grantor dies before acknowledging the deed or if for any other reason his attendance cannot be procured in order to make the acknowledgement or if having appeared he refuses to acknowledge it proof of the due execution and delivery of the deed may be made by any competent testimony.

31. Such proof may be made before the same court or officers as are authorized to take acknowledgements as aforesaid.

32. The certificate endorsed by them upon the deeds thus proved must state

FIRST-The title of the court or officer taking the proof.

SECOND—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 acknowledgement or that having appeared he refused to acknowledge the deed.

THIRD—The names of the witnesses by whom the proof was made and that it was proved by them that the instrument was executed by the person whose name is thereunto subscribed as a party.

33. The certificate of proof or acknowledgement as aforesaid may be given under seal or otherwise according to the mode by which the courts or officers granting the same usually authenticate their most solemn and formal official acts.

34. Any officer who knowingly states a material untruth in either of the certificates above contemplated may be indicted and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is endorsed.

35. Any court or officer having power to take the proof above contemplated may issue the necessary subpænas and compel the attendance of witnesses residing within the county by attachment if necessary.

36. No instrument containing a power to convey or in any manner affect real estate certified and recorded as above prescribed can be revoked by any act of the parties by whom it was executed until the instrument containing such revocation is acknowledged and deposited for record and entered on the entry book in the same office in which the instrument conferring the power is recorded.

37. Every instrument in writing affecting real estate which is acknowedged or proved and certified as hereinbefore directed may be read in evidence without further proof.

38. The record of such instrument or a duly authenticated copy thereof is competent evidence whenever by the parties 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.

39. Neither the certificate, nor the record nor the transcript thereof is conclusive evidence of the facts therein stated.

40. Nothing herein contained shall invalidate any act already done.

REVISED CODE.-22

1. The following or other equivalent forms, varied to suit circumnces, 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 tract of land (describing it.)

For a deed in fee simple without warranty.

For the consideration of ——— dollars I hereby convey to A. B. the following tract of land (describing it.)

For a deed in fee with warranty.. The same as the last preceding form adding the words; "and I warrant the title against all persons whomsoever" (or other warranty as the parties may desire.)

For a Mortgage.

The same as a deed adding the following, "to be void upon condition that I pay &c." For a deed of trust.

For the purpose of securing to A. B. the sum of — dollars with interest from date at the rate of — per cent per annum (or as the case may be) I hereby convey to C. D. [describe the property conveyed.] And if the sum so secured to A. B. is not paid him by the [stating the time of payment] I hereby authorise the said C. D. to sell the property herein conveyed, [stating the manner place of sale notice to be given, &c.] to execute a deed to the purchaser to pay off the amount herein secured with interest and costs and to hold the remainder subject to my order.

of is conclusive evidence of the facts therein stated. 40. Nothing herein contained shall invalidate any act already done. revise cone -22 bebiver for the set of the set of

OF THE RIGHTS OF OCCUPYING CLAIMANTS.

SECTION 1. Where an occupant of land has color of title thereto and in good faith has made any valuable improvement thereon and is afterwards in the proper action found not to be the rightful owner thereof no execution shall issue to put the plaintiff in possession of the property—after the filing of the petition hereinafter mentioned—until the provisions of this chapter have been complied with.

2. Such petition must set forth the grounds on which the defendant seeks relief—stating among 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.

3. All issues joined thereon must be tried as in ordinary cases, and if the value of the land or of the improvements is in controversy such value must be ascertained on the trial.

4. The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property.

5. Should he fail to do this after a reasonable time—to be fixed by the court—the defendant may take the property upon paying the appraised value of the land aside from the improvements.

6. 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.

7. 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 pass to his assigned or representatives.

8. Any person has also such color of title who has occupied a tract of land—by himself or by those under whom he claims—for the term of five years or who has thus occupied the land for a less term than five years if he or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year and if two years afterwards elapsed without a repayment or proffer of repayment of the same by the owner of the land. Provided such occupancy is continued up to the time at which the suit is brought by which the recovery of the land is obtained as above contemplated.

9. 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.
10. It is a sufficient cause of challenge to any juror—selected to appraise the value of the land or the improvements—that he is interested in a like question.
11. The plaintiff is entitled to an execution to put himself in possession of his property in accordance with the provisions of this chapter but no otherwise.

12. The regulations contained in this chapter are intended to be retrospective.

1. The plaintiff in the main action may there upon pay the appraise ed value of the improvement. 7 STALAN he property.

-ge out gaized noge the OF THE HOMESTEAD. Inshelped add - 11000 odd

SECTION 1. Where there is no special declaration of the statute to the contrary the homestead of every head of a family is exempt from judicial sale.

 A widow or widower though without children shall be deemed the head of a family while continuing to occupy the house used as such at the time of the death of the husband or wife.
 A conveyance by such owner is of no validity unless the husband and wife (if the owner is married) concur in and sign such conveyance.

 But the homestead is liable for taxes accruing exclusively thereon and the whole or a sufficient portion thereof may be sold to pay the same. It is also subject to mechanic's liens in the cases provided by law.
 It may also be sold on execution for debts contracted prior to the passage of this law or prior to the purchase of such homestead (except where otherwise declared) or for those created by written contract executed by the persons having the power to convey and expressly stipulating that the homestead is liable therefor. But it shall not in such cases be sold except to supply the deficiency remaining after exhausting the other property of the debtor which is liable to execution.

6. The homestead must embrace the house used as a home by the owner thereof and if he has two or more houses thus used by him at different times and places he may select which he will retain as his homestead.

7. 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.

8. If within a town plat it must not exceed one half an acre in extent and if not within a town plat it must not embrace in the aggregate 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.

9. It must not embrace more than one dwelling house nor any other buildings except such as are properly appurtenant to the homestead as such, 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.

10. The owner may select his own homestead and cause it to be marked out, platted and recorded as provided in the next section. If he neglect this the privilege of doing the same devolves upon his wife. A failure in this respect by both does not leave the homestead liable but the officer having an execution against the property of such a defendant may cause the homestead to be marked off, platted and recorded, and may add the expenses thence arising to the amount embraced in his execution.

The homestead shall be marked off by fixed and visible monuments and in giving the description thereof the direction and distance of the starting point from some corner of the dwelling house shall be stated. The description and plat shall then be recorded by the recorder of deeds in a book called the homestead book which shall be provided with a proper index.
 The owner may from time to time at his pleasure change the

limits of his homestead by changing the metes and bounds as well as the record of the plat and description ; or he may change the homestead entirely but such changes shall not prejudice conveyances or liens made or created previously thereto.

13. The new homestead to the extent in value of the old is exempt from execution in all cases where the old or former homestead would have been exempted but in no other nor in any greater degree.

14. Where a disagreement takes place between the owner and any person adversely interested as to whether any land or buildings are properly a part of the homestead the sheriff shall at the request of either party summon nine disinterested persons having the qualification of jurors. The parties then, commencing with the owner of the homestead shall in turn strike off one juror each and shall continue to do so until only three of the number remain. These shall then proceed as referees to examine and ascertain all the facts of the case and shall report the same with their opinion thereon to the next term of the district court. and is suffer both and ovit and seal at outay sti

15. If either party fail to strike off jurors in the manner directed in the last section the sheriff may strike off such jurors.

16. The court may also in its discretion refer the whole matter or 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.

17. 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 further 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.

18. 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 proceedings.

19. 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.

20. If there is no such survivor the homestead decends to the issue of either husband or wife according the general rules of decent unless 12. The owner may from time to time at his pleasure change that

otherwise directed by will and is to be held by them exempt from any antecedent debts of their parents or of their own.

21. 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.

22. 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.

10. All other wills to be valid more with writing witnessed by two competent witnesses and signed by the testator (w by some person in

11. No subscribing witness to any will can derive any benefit there.

CHAPTER 8.

OF THE ESTATES OF DECEDENTS. SECTION 1. The county court has power to take probate of wills, to grant administration of the estates of all persons who at the time of their death were residents of the county or who die non-residents of the state having property to be administered upon within the county or where such property is afterwards brought into the county and it has jurisdiction in all matters relating to the settlement of such es-

tates. 2. It may also appoint guardians for minors and others requiring guardians residing within the county in cases prescribed by law and may exercise a general supervision over their property persons, and interests.

3. Where a case is originally within the jurisdiction of the courts of either of two or more counties that court that first takes cognizance thereof by the commencement of proceedings can retain the same throughout.

4. Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued.

5. No bond relating to probate matters required by law to be given and filed in the county office shall be deemed sufficient until examined by the judge and his approval endorsed thereon. nessed in the same manner as the m

edt drivt holieogeb od gent to Of Wills. over falsen vlaberti

6. 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.

7. Property to be subsequently acquired may also be devised where the intention is clear and explicit.

8. Personal property to the value of three hundred dollars may be bequeathed by a verbal will if witnessed by two competent witnesses.

9. A soldier in actual service or a mariner at sea may dispose of all his personal estate by a will so made and witnessed.

10. 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.

11. No subscribing witness to any will can derive any benefit therefrom unless there be two disinterested and competent witnesses to the same.

12. But if without a will he would be entitled to any portion of the testators estate he may still receive such portion to the extent in value of the amount devised.

13. Posthumous children unprovided for by the father's will shall inherit the same interest as though no will had been made.

14. 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.

15. 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.

15a. 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.

16. 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

17. When done by cancellation the revocation requires to be witnessed in the same manner as the making of a new will.

18. Wills duly sealed up and endorsed may be deposited with the clerk of the court whose duty it is to file and preserve the same until

the death of the testators unless they themselves sooner demand them.

19. Any person having the custody of a will shall at the first stated term of the court after being informed of the death of the testator bring the same into open court when it shall be publicly read.

20. If he fails to do so after receiving reasonable notice he may be brought in by rule and attachment and committed to jail until he complies and shall be further liable to any person aggrieved for all the damages sustained by such failure.

21. After being thus produced and read a day shall be fixed by the court for proving the same which may be postponed from time to time at the discretion of the court.
22. Such notice thereof as the court directs shall be immediately given to all persons interested in the matter.
23. After being proved and allowed by the county court the will

together with the certificate hereinafter required shall be recorded in a book kept for that purpose.

24. Wills proved and allowed in any other state or county shall be allowed and recorded in any county in this state in which it may be desired to use them upon the production of a copy thereof to the proper county court duly authenticated by the attestation of the clerk of the court in which such will was proved together with the certificate of the judge or presiding officer that such attestation is in due form of law. If there be no clerk such attestation may be made by the judge or presiding officer and in all cases if the clerk or officer making such attestation have a seal of office such seal shall be annexed to the attestation.

25. Wills shall not be carried into effect unless thus allowed and such allowance is conclusive as to the due execution of the will unless set aside by an original or appellate proceeding in the district court.

26. When proved and recorded the court shall direct the will or an authenticated copy thereof to be placed in the hands of the executor therein named or otherwise duly appointed.
27. If no executors are named therein or if the executors named fail to qualify and act it shall be retained on file until an executor is appointed and qualified in the manner herein prescribed.
28. Wills when proved and allowed shall have a certificate thereof endorsed and annexed thereto signed by the clerk and attested by the REVISED CODE—23

issue a commission under its seal giving the executor the power authorized by law.

48. Where for any cause there is a necessary delay in granting such commission the court in its discretion may appoint one or more special executors to collect and preserve the property of the deceased who shall qualify as above required.

49. No appeal from the decision appointing such special executors shall prevent their proceeding in the discharge of their duties.

50. Such special executors shall make and file an inventory of the property of the deceased in the same manner in all respects as is required of general executors and shall preserve said property from injury.

51. 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.

52. Upon the granting of full administration the powers of special executors shall cease and all the business shall be transferred to the general executor.

53. 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 know. in case he died out of the estate.

54. The preceding provisions are in some respects subject to be changed and modified by the will of a testator. Thus where the interests of creditors will not be thereby prejudiced he may prescribe the entire manner in which his estate shall be administered upon. He may exempt the executor from the necessity of giving bond—may constitute him in substance his attorney in fact for the settlement of the estate—may direct that no material and immediate change be made in conducting his business affairs in consequence of his death and may prescribe the manner in which his affairs shall be conducted until his estate is finally settled or until his minor children become of age.

55. The county court in its discretion may also authorize the executor to continue the prosecution of any business in which the deceased was engaged at the time of his death in order to wind up his affairs with greater advantage to the interest of the estate but such permission does not exempt the executor from the necessity of returning a full inventory and appraisement of the effects of the deceased as accurately as practicable in the manner prescribed in other cases as may be further directed by the court.

Of the inventory and collection of the effects of deceased persons.

56. Within thirty days after their appointment, unless for good cause an extension of that time is specially given by the court the executors shall make and return into the court an inventory of all the personal effects of the deceased of every description which has come within their knowledge embracing all book accounts which do not appear by the books or papers of the deceased to have been settled.

57. When the deceased leaves a widow no property which in her hands as the head of a family would be exempt from execution shall be deemed assets or administered upon as such but the same after being inventoried without appraisement shall remain with her and the family until disposed of according to law.

58. 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 like other property left by the deceased.

59. All personal property except as aforesaid found in the county must be appraised by appraisers who shall be appointed by the court and shall each receive one dollar per day for his services.

60. If any portion of such property be in another county the same appraisers may serve or others may be appointed by the court or by a disinterested justice of the peace of such county whose duties and compensation shall be as aforesaid.

61. A supplemental inventory must be made out in like manner whenever the existence of other property is discovered.

62. The court may summon before it any person suspected of having taken wrongful possession of any of the effects of the deceased or of having had such effects under his control and may subject him to an examination under oath.

63. If he disobeys such summons or refuses to answer the interrogatories propounded he may be committed to the jail of the county until a compliance be yielded.

64. The executor with the approbation of the court may compound with any debtor of the estate who may be thought unable to pay his whole debt or in order to avoid doubtful litigation. 65. The interest of a deceased mortgagee shall be included among his personal assets and upon being paid off satisfaction shall be entered by the executor.

Of the disposition to be made of the property of the deceased.

66. Upon the death of a sole surviving parent leaving a minor child the court may make such order and allowance for its temporary support as may be suitable and proper.

67. When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors the will may still be sustained by the giving of security to the satisfaction of the court for the payment of the claims of the creditors to the extent of the value of the property thus devised.

68. When no different direction is given in the will the 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.

69. The court on the application of the executor shall from time to time direct the sale of such portions of the personal effects as are of a perishable nature or which from any cause would otherwise be likely to depreciate in value and also such portions as are necessary to pay off the debts and charges upon the estate in addition to the means above provided.

70. If the personal effects are found inadequate to satisfy such charges a sufficient portion of the real estate may be ordered to be sold for that purpose.

71. Application for that purpose can only be made 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.

72. Before any order to that effect can be made such notice as the court may prescribe must be given to all the persons interested in such real estate.

73. 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.

74. When a part cannot be sold without material prejudice to the general interests of the estate the court may order the sale of the whole or of such part as can be sold advantageously.

75. Property may be permitted to be sold at private sale whenever

the court is satisfied that the interests of the estate will be thereby promoted.

76. 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.

77. No property can be sold at private sale for less than the appraisement price without the express approbation of the judge of the county court.

78. Property may be ordered to be sold on a partial credit of not more than nine months.

79. Any heir or other person interested in the estate who may wish to prevent a sale of the whole or any part thereof may accomplish that purpose by giving bond to the satisfaction of the court conditioned that he will pay all demands against the estate to the extent of the value of the property thus kept from sale as soon as called upon by the county court for that purpose.

80. If the conditions of such bond are broken the property is still liable for those debts unless it has passed into the hands of a bona fide purchaser and the executors may take possession thereof and sell the same under the direction of the court or they may prosecute the bond or both at once if the court so directs.

81. If the conditions of the bond are complied with the property passes by devise, distribution or decent in the same manner as though there had been no debts against the estate.

S1.a Where real estate is sold conveyances thereof executed by the executors pass to the purchaser all the interest of the decedent therein. But such conveyance shall not be valid until approved by the judge of the county court.

82. Such approval shall be entered of record. A brief memorandum thereof must be endorsed upon the deed with the signature and seal 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.

83. 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.
Of filing claims against an estate.
84. Within thirty days after the receipt of their commission the

executors shall publish a notice of their appointment in such manner as the cout directs; either by posting up or by publicatian in a newspaper. S5. This notice need only be given by the executors first appointed and qualified.

86. Claims against the estate must be clearly stated, sworn to, and filed. Ten days notice of the hearing endorsed on a copy thereof must be served upon one of the executors in the manner required for commencing actions in the district court.

87. The same rules of evidence including those in relation to the calling and examination of the party as a witness shall be observed as in cases pending in the district court.

88. The executor may with the approbation of the court admit claims with the correctness of which he is satisfied but not until the claimant has sworn to their correctness. The like rule shall be observed in relation to payments or set offs to any demands due the estate.

89. All claims not established in the district court must be submitted to and passed upon by the county court and no claim except such as the executors may admit can be allowed unless sustained by such testimony as would be sufficient on a trial in the district court.
90. Claims for a mere money demand when no lien is to be enforced shall not except with the approbation of the county court be prosecuted originally in the district court.
91. Demands though not yet due may be presented proved and allowed as other claims.
92. Contingent liabilities must also be presented and proved or the court or executors shall be under no obligation to make any provision for satisfying them when they may afterwards accrue.

93. Claims against an estate and set offs thereto may in the discretion of the court be proved up before one or more referees to be argued upon between the parties or approved by the court and their decision being entered upon the record becomes a decision of the court.

94. Unsatisfied judgments rendered prior to the death of the decedent shall be entered in the catalogue of claims and so much thereof allowed as the plaintiff will show by his own oath or otherwise is still unpaid. But they possess no preference over other claims except the liens allowed by law in their favor.

84. Within thirty days after the receipt of their commission the

95. Suits pending at the time of such death may be prosecuted to judgment and then placed in the catalogue of established claims. But no lien is created by such judgment.

96. 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 claim.

Of the payment of claims against the estate.

97. As soon as the executors are possessed of sufficient means over and above the expenses of administration they shall $pa\bar{y}$ off the charges of the last sickness and funeral of the deceased.

98. They shall in the next place pay any allowance which may be made by the court for the maintainance of the widow and minor children previous to the time when a sufficient amount for such maintainance can be paid to them out of their shares of the estate which amount so advanced shall afterwards be deducted from their respective portions. 99. Other demands against the estate are payable in the following order—

FIRST—Debts entitled to a preference under the laws of the United States.

SECOND—Public rates and taxes. THIRD—Claims filed within six months after the notice given by the executors of their appointment.

FOURTH-All other debts. Some strong to seise solution of the second seco

100. All claims of the fourth of the above classes not filed and proved within one year and a half of the giving of the notice aforesaid are forever barred unless the claim is pending in the district or supreme courts or unless peculiar circumstances entitle the claimant to equitable relief.

101. 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.

102. Claims of the fourth class may be paid off at any time after REVISED CODE.-24

the expiration of six months aforesaid without any regard to those claims not filed at the time of such payment. And even legacies may be paid off at any time after the expiration of one year from the date of the notice of appointment of the executor provided sufficient be left on hand to satisfy all the claims filed at the date of such payment —the claims of the fourth class as well as the legacies being within the limits above fixed preferred to the unfiled claims whether the estate be solvent or not.

103. No payment can be made to a claimant in any one class until those of a previous class are satisfied.

104. Demands not yet due shall be paid off if the holders will consent to such a rebate of interest as the court thinks reasonable. Otherwise the money to which such claimant would be entitled shall be safely invested until his debt becomes due.

105. Within their respective classes debts shall be paid off in the order in which they have been proved up subject to the provisions of the following section; but the court shall permit them to be proved up in the order in which they are filed.

106. If there are not likely to be means sufficient in all to pay off the whole of the debts of any one class the court shall from time to time strike a dividend of the means on hand among all the creditors of that class, and the executor shall pay the several amounts accordingly.

107. The executors may with the approbation of the court use funds belonging to the estate to pay off incumbrances upon lands owned by the deceased or to purchase lands claimed or contracted for by him prior to his death.

108. Specific legacies of property may be turned over to the rightful claimant at any time upon his giving unquestionable real estate security to restore the property or refund the amount at which it was appraised if wanted for the payment of debts.

109. 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 110. After the expiration of the one year and a half allowed for filing claims as above provided such legacies may be paid off without requiring the security provided for in the two preceding sections if the means are still retained to pay off all the claims proved or pending as hereinbefore contemplated.

. \$2-.9000 GRETTER

111. If the testator has not prescribed the order in which legacies are to be paid off and if no security is given as above provided in order to expedite their time of payment they may be paid off in the order in which they were contained in the will were the estate is sufficient to pay all.

112. Or where not incompatible with the manifest intention of the testator the court may direct all payments of money to legatees to be made rateably.

113. Such must be the mode pursued where there is danger that the estate will prove insufficient to pay off all the legacies unless security be given to refund as above provided.

119. If the executors fail to make payment of any kind in accordance with the order of the court, they and their sureties may be summoned to appear before the court at a time to be specified in the summons not less than ten days from the time of service to show cause why they have so failed as aforesaid.

120. If no sufficient cause be shown the court shall render judgment on the bond of the executors for the amount of money directed to be paid together with costs and shall issue execution accordingly.

121. When any of the obligors in the bond are not served with such summons a similar course may be pursued to that authorized in parallel cases in the district court and with like consequences.

Of the distribution of personal property.

122. The personal property of the deceased not necessary for the payment of debts nor otherwise disposed of as hereinbefore provided shall be distributed to the same persons and in the same proportions as though it were real estate.

123. The distributive shares shall be paid over as fast as the executor can properly do so.

124. 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.

125. Where the circumstances of the family require it the court in addition to what is hereinbefore set apart for their use may direct a partial distribution of the money or effects on hand at any time after filing the inventory upon the execution of security like that required of legatees in like cases.

Of the disposition of real property.

126. One third in value of all the real estate in which the husband at any time during the marriage had a legal or equitable interest which has not been sold on execution or other judicial sale and to which the wife has made no relinquishment of her rights shall under the direction of the court be set apart by the executor as her property in fee simple upon the death of the husband if she survives him. Continuous cohabitation as husband and wife is presumptive evidence of marriage for the purpose of giving the right aforesaid.

127. Such share shall be so set off as to include the ordinary dwelling house and the land given by law to the husband as a homestead or so much thereof as will be equal to the share allotted to her by the last section unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect of prejudicing the rights of creditors.

128. The share thus allotted to her may be set off by the mutual consent of all the parties interested where such consent can be obtained or it may be set off by referees appointed by the court.

129. The application for such admeasurement by referees may be made at any time after twenty days and within ten years after the death of the husband and must specify the particular tracts of land in which she claims her dower and ask the appointment of referees.

130. The court shall fix the time for making the appointment and direct such notice thereof to be given to all the parties interested therein as it deems proper.

131. The referees may employ a surveyor if necessary—they must cause the widows share to be marked off by metes and bounds and make a full report of their proceedings to the court as early as practicable.

132. 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.

133. 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.

134. Such confirmation after the lapse of thirty days unless appeal-

135. Nothing in the last section shall prevent any person interested from controverting the general rights of the widow to the dower thus admeasured.

136. If the referees report that the property cannot be readily divided as above directed the court if satisfied with such report may order the whole to be sold and one third of the proceeds to be paid over to the widow.

137. Such sale shall not however take place if any one interested to prevent it will give security to the satisfaction of the court conditioned to pay the widow the appraised value of her share with ten per cent. interest on the same within such reasonable time as the court may fix not exceeding one year from the date of such security. If no such arrangement is made the widow may keep the property by giving like security to pay off the claims of all others interested within the same time and upon the like terms.

138. With any money thus paid to the widow she may procure a homestead which shall be exempt from liability for all debts past or prospective from which the former homestead would have been exempt in her hands.
139. The widow's dower cannot be affected by any will of her hus-

139. The widow's dower cannot be anected by any many moments band if she objects thereto and relinquishes all rights conferred upon her by the will.

140. Subject to the rights and charges 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.

141. If any one of his children be dead the heirs of such child shall inherit his share in accordance with the rules herein prescribed in the same manner as though such child had outlived his parent.
142. If the intestate leave no issue the one half of his estate (including the dower of his wife) shall go to his father the other half to his wife and if he leave no wife nor issue the whole shall go to his father.
143. If his father be previously dead the portion which would have fallen to his share by the above rules shall be disposed of in the same manner as though he had outlived the intestate and died in the possession and ownership of the portion thus falling to his share and so

3. But such property will in favor of third persons acting in good faith and without knowledge of the true ownership be presumed to have been transferred to him unless during his life time and prior to its being disposed of by him or levied upon for his debts notice of the wife's ownership is filed for record with the recorder of deeds: nor shall such notice exempt her property from liability for his debts contracted after marriage and before the filing of such notice except as against those who have knowledge of her rights.

4. The notice aforesaid shall be recorded in the book kept for recording mortgages and conveyances of personal property and shall be indexed in the same manner.

5. In the case of bank stock, written securities, things in action or other property which does not ordinarily pass by mere delivery or by oral contract without an endorsement, assignment or other written evidence of such transfer knowledge of the ownership of the wife will be presumed without the recording required by the two preceding sections.

6. Except as herein otherwise declared the husband is not liable for the separate debts of the wife nor is the property of the wife or the rent or income thereof liable for the debts of the husband. But the separate debts of the wife as herein contemplated are only those growing out of the contracts mentioned in the next section.

7. Contracts made by a wife in relation to her separate property or those purporting only to bind herself do not bind the husband.
8. The expenses of the family; the education of the children and such other obligations as come within the equity of this provision are chargeable apon the property of both husband and wife or of either of them and in relation thereto they may be sued jointly or either of them severally.

9. Married women abandoned by their husbands may obtain authority from the district court of the county in which they reside to act and to transact business as though unmarried.

10. The petition for that purpose must be sworn to filed and served as in ordinary civil actions and issues may be joined and tried in like manner.

11. If the fact of abandonment be established either by the default of the defendant or by proof that fact shall be entered of record and the court shall make a decree giving the power sought. 12. The court may also under such circumstances authorize the wife

erty so held and dies on or before the day 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.

2. A tenant giving notice of his intention to quit the demised premises at a time named and afterward holding over, and a tenant or his assignee wilfully holding over the premises after the time and after notice to quit, shall pay to the person entitled thereto double the yearly value of the premises during the time he holds over.

3. The attornment of a tenant to a stranger is void unless made with the consent of the landlord, or pursuant to or in consequence of a judgment at law or in equity, or to a mortgagee after the mortgage has been forfeited.

4. A landlord shall have a lien for his rent upon all crops grown upon the demised premises and upon any other personal property of the tenant which has been used on the premises during the term and not exempt from execution, for the period of one year after a year's rent, or the rent of a shorter period claimed, falls due, but such lien shall not in any case continue more than six months after the expiration of the term.

5. The lien may be effected by the commencement of an action within the period above prescribed, for the rent due, in which action the landlord will be entitled to a writ of attachment upon filing with the proper clerk or the justice an affidavit that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the affidavit.

183. The money of any post of the line of the part of

CHAPTER 1.

OF HUSBAND AND WIFE.

SECTION 1. The rule that the legal existence of the wife is merged in that of her husband is modified as provided in this chapter.

2. The personal property of the wife whether held at the time of the marriage or acquired subsequently does not vest in the husband.

to sue or defend in any or all cases in place of her husband to sell or otherwise dispose of so much of the husband's property as is necessary for the maintainance of the family and to collect debts due the husband, deeds made and receipts and discharges executed and delivered by the wife in accordance with the power so given are valid.

13. The court may in its discretion modify or revoke its orders and decrees herein authorized. offer marriage and before the

14. The husband has the same right in relation to the wife and her property as is above given to the wife and he may have the same proceedings in like cases. cording mortgages and conveyances o

15. The husband cannot remove the wife or their children from their homestead without the consent of the wife and if he abandons her she is entitled to the custody of their minor children. aral contract without an endorsement, assignment or other written

our Except as herein otherwise, declared the husband is not liable to olive and to grapane all a OF MARRIAGE. To aldeb oterages add to the reat or income thereof liable for the delats of the husband. SECTION 1. Marriage is a civil contract requiring the consent of parties capable of entering into other contracts except as herein oth-

evidence of such transfer knowledge of the ownership of the wift

be pressined without the recording required by the two preceding

CHAPTER 2.

erwise declared. Tod of goile in cline a vd of gon steering? . Contract of gon steering? 2. A marriage between a male person of fourteen and a female of twelve years of age is valid but if either party have not attained the age thus fixed the marriage is a nullity or not at the option of such party made known at any time be he or she six months older than the age thus fixed. j bene of your yout operation moit and in moit

3. Previous to any marriage within this state a license for that purpose must be obtained from the judge of the county court of the county wherein the marriage is to be solemnized agreeable to the provisions of this chapter. The south as associated socenast of bos to a

4. 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. he worredt galvis ostates a wiem Hads theos add 5. Unless the judge of the county court is acquainted with the age

and condition of the parties for the marriage of whom the license is applied for he must take the testimony of competent and disinterested lence of the marriage and the date thereb witnesses on the subject.

6. He must cause due entry of the application for the issuing of the license to be made on the records of the county court stating that he was acquainted with the parties and knew them to be of competent. age and condition or that the requisite proof of such facts was made to him by one or more witnesses (stating their names.)

7. If either party is a minor the consent of the parent or guardian must be filed in the county office after being admitted by the said parent or guardian or proved to be genuine and a memorandum of such facts must be also entered on the records of the county court.

8. If the judge of the county court grants a license contrary to the provisions of the preceding sections he is guilty of a misdemeanor and if a marriage is solemnized without such license being procured the parties so married and all persons aiding in such marriage are likewise guilty of a misdemeanor.

9. The license shall not be issued until the amount of one dollar and twenty-five cents has been paid into the county treasury and the receipt therefor filed with the judge of the county court.

10. marriages must be solemnized either,

FIRST-By a justice of the peace or judge of the county court of the county or the mayor of the city wherin the marriage takes place. SECOND-By some judge of the supreme or district court of this which the plaintiff claims the relief sought must state that he state

THIRD-By some officiating minister of the gospel ordained or licensed according to the usages of his denomination.

11. After the marriage has been solemnized the officiating minister or magistrate shall on request give each of the parties a certificate Divorces from the bonds of matrimony may be decreed a porrel

12. 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.

13. The person solemnizing marriage shall forfeit a like amount unless within ninety days after the ceremony he make return thereof to the county court. on relieve a felony after the the man W-mm

14. The clerk of the county court shall keep a register containing the names of the parties, the date of the marriage and the name of the person by whom the marriage was solemnized which or a certified transcript therefrom are receivable in all courts, and places as evidence of the marriage and the date thereof.

15. The preceding provisions so far as they relate to the manner of solemnizing marriages are not applicable to marriages among the members of any particular denomination having as such any peculiar mode of performing that ceremony.

16. But where any mode is thus pursued which dispenses with the services of a clergyman or magistrate the husband is responsible for the return directed to be made to the county court and is liable to the above named penalty if the return is not made.

17. Illegitimate children become legitimate by the subsequent marriage of their parents. It is short they are added a short of the

provisions of the preceding sections he is guilty of a misdemeanor and if a marringo is selemnized without such license being procured the parties so married and all persons aiding in such marriage are CHAPTER 3.

9. The license shall not be issued until the amount of one dollar OF DIVORCE AND ALIMONY. receipt therefor filed with the judge of the county court

SECTION 1. The district court of the county where the plaintiff resides has jurisdiction of all cases of divorce and alimony and guardianship connected therewith.

2. The petition for divorce in addition to the facts on account of which the plaintiff claims the relief sought must state that he has been for the last six months a resident of the state and that the application is not made through fear or restraint or out of any levity but in sincerity and truth for the purpose set forth in the petition. It must also be sworn to by the plaintiff.

3. Divorces from the bonds of matrimony may be decreed against the husband in the following cases-

First--Where the defendant at the time of his marriage was impotent. SECOND-When he had a lawful wife then living. THIRD--When he has committed adultery subsequent to the marriage. FOURTH-Where he wilfully deserts his wife and absents himself

without a reasonable cause for the space of one year. FIFTH-When he is convicted of felony after marriage. SIXTH-When after marriage he becomes addicted to habitual the names of the parties, the date of the marriage and tassenashurb

SEVENTH-When he is guilty of such inhuman treatment as to endanger the life of his wife. EIGHTH-When it shall be made fully apparent that the parties can-

not live in peace and happiness together and that their welfare reof the minors own misrepresentations as 4. The husband may in all cases obtain a divorce from the wife quires a separation.

for the like causes. 5. If the defendant does not appear and answer the petition at the proper time the court if satisfied that the complainant is the injured party may decree a dissolution of the marriage contract; or when the defendant can be found it may in its discretion bring him in by attachment and compel him to answer.

6. When the parties voluntarily appear in court and agree to a divorce having made a suitable disposition of their minor children and their property if they have any, the court shall decree accordingly but the petition must be filed ninety days previous to the term at

which the decree of divorce is rendered. 7. If it appear that both parties are equally in fault no divorce

can be decreed except by mutual consent. 8. When a divorce is decreed the court may make such order in relation to the children and property of the parties and the maintainance of the wife as shall be right and proper. Subsequent changes may be made by the court in these respects when circumstances render them expedient. Jonin done 301 meibrang rollome inlogge lliv 9. When a divorce is decreed the guilty party forfeits all rights acquired by the marriage.

minor has property not derived from either of them a guardien musti-

be appointed by the county court to manage such property. 4. The father or (in case, 14 RETTAND', absence, or incapacity) she mother may be appointed the guardian to take charge of the prositi perty of his minor child if de snorim to the court a suitable person for

SECTON 1. 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.

2. A minor is not only bound 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.

jority. 3. No contract can be thus disaffirmed in cases where on account of the minors own misrepresentations as to his majority or from his having engaged in business as an adult the other party had goed reason to believe the minor to have been capable of contracting.

4. 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.

6. When the parties voluntarily appent in court and agree to a divorce having madifiar saitaline diposition of their minor children and their property if they have any the court shall decree according is but the potition must be its **RATEAND** days previous to the term at which the decree of divorce is studered.

onorib on theel at Of the guardians of minors. It magas it it as

SECTION I. The father is the natural guardian of the persons of his minor children. If he dies or is incapable of acting the mother becomes the guardian.

2. The natural and actual guardian of any minor child may by will appoint another guardian for such minor. If without such will both parents be dead or disqualified to act as guardian the county court may appoint one.

3. Although the parents are living and of sound mind yet if the minor has property not derived from either of them a guardian must be appointed by the county court to manage such property.

4. The father or (in case of his death, absence, or incapacity) the mother may be appointed the guardian to take charge of the property of his minor child if deemed by the court a suitable person for that purpose.

5. If the minor be over the age of fourteen years—and of sound intellect he may select his own guardian subject to the appointment of the court.

6. 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. 7. Within forty days after their appointment they must make out an inventory of all the property of the minor which shall be appraised

in the same manner as the property of a deceased person. The inventory must be filed in the office of the county judge. 8. Guardians of the persons of minors have the same power and

S. Guardians of the persons of minors have the same power and control over them that parents would have had if living.
9. 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.

10. 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 county court be sold or mortgaged on the application of the guardian either when such sale or mortgage is necessary for the minors 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.

11. The petition for that purpose must state the grounds of the application—must be verified by oath and a copy thereof with a notice of the time at which such application will be made to the court must be served personally upon the minor at least ten days prior to the term fixed for such application.

12. The court in its discretion may direct a postponement of the matter and may order such further publication through the newspapers or otherwise as it may deem expedient.

13. It may also direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for.

14. Before any such sale or mortgage can be executed the guardian must give security to the satisfaction of the court the penalty of which shall be at least double the value of the property to be sold or of the money to be raised by the mortgage conditioned that he will faithfully perform his duty in that respect and account for and apply all monies received by him under the direction of the court. 15. When the application for the sale of property is resisted the

court may in its discretion award costs to the prevailing party and

REVISED CODE.-26

which the allowance was made must be entered upon the records of the court. a character bei and be concerted to perform has moltone gniwol 9. Epone complaint by the minor or by any other person made to

the judge of the county court stating stater outh they the master is ill-treating his apprentice or is in any other manner patpably failing reference out putting and CHAPTER 6. To the addie ogtationib out at with reasonable certainty the court in its discretion any summon the OF MASTERS AND APPRENTICES. OR TRAGE OF TOTAL bollo. The enipplaint with the proper dones endorsed there'on must

SECTION 1. Any minor child may be bound to service until the attainment of the age of legal majority as hereinafter described. 2. Such binding must be by written indenture specifying the age

of the minor, the terms of the agreement. If the minor is more than twelve years of age and not a pauper the indenture must be signed twomented to entry by him of his own free will.

3. A written consent must be appended or endorsed upon such agreement and signed by one of the following persons to wit : FIRST-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 diment storing bias of board from abor dore to blanch

SECOND-By the mother and if she be dead or unable or incapacitated for giving such assent then it most bortails edit of longge yars not

THIRD-By the guardian and if there be no guardian then by the judge of the county court. a shill or at the solutions of products the second

4. The judge of the county court may bind minors who are paupers till they have attained the age of majority without obtaining their assent. . Swith of assored busicities of band referes to schedule assent.

5. The written indenture must in that case be signed by the master and said judge. Another a share that with a share of the same

6. The indenture must in all cases where there is a parent or guardian be in three parts one being left with the master another with the county judge and the third with the person by whose assent be found in the sound, among the he is bound.

7. 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 17. The answer must be made and the issue thereon tried .wal yd

8. The parent, guardian or officer by whose act or consent any minor is thus bound must watch over the interests of such minor and

202

may when satisfied that there was no reasonable grounds for making the application direct the costs to be paid by the guardian from his take an oath of the same tenor at the condition of the bot state 16. 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 is valid.

17. The same rule that is prescribed in the sales 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. 18. No person can question the validity of such sale after the lapse

of five years from the time it was made. 19. A failure to comply with any order of the court in relation to the guardianship shall be deemed a breach of the condition of the guardian's bond which may accordingly be put in suit by any one aggrieved thereby for which purpose the court may appoint another guardian of the minor if necessary. The court may also commit him to jail until he complies with such order.

20. Guardians of the property of minors, must account on oath annually or oftener if required by the court. It may also direct them to give new or supplementary security or may remove them for good cause shown which cause must be entered on the records.

21. 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.

22. The foreign guardian of any non-resident minor may be appointed the guardian of such minor by the court of the county wherein he has any property for the purpose of selling or otherwise controlling that and all other property of such minor within this state.

23. Such appointment may be made upon his filing in the office of the clerk 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 secan must give scourity to the satisfaction of the court the broad noit

24. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign state if the court is satisfied with the sufficiency of the amount of the security it may dispense with the filing of an additional bond.

25. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for REVISED CONE, -- 26

if the case requires must enter complaint as provided for in the following section.

9. Upon complaint by the minor or by any other person made to the judge of the county court stating under oath that the master is ill-treating his apprentice or is in any other manner palpably failing in the discharge of his duty in regard to him stating the particulars with reasonable certainty the court in its discretion may summon the master to appear and answer such complaint.

10. The complaint with the proper notice endorsed thereon must be served and returned in the same manner as in the commencement of an action in the justice's court and the time for appearance shall be regulated by the same rules.
11. The answer of the master must also be under oath and if any issue be joined thereon it must be tried as in other cases in the county court.

12. If the court or jury before whom the case is pending finds the cause of complaint admitted by the master or proved upon the trial to be of sufficient magnitude to justify the discharge of the minor from further service judgment shall be rendered accordingly and a certificate of such judgment placed in said minors hands.

13. From any judgment in such cases either the minor or the master may appeal to the district court in the same manner as is provided for in ordinary cases.

14. 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.

15. 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.

16. A reasonable space of time not exceeding three days shall be allowed to the minor to consult with his parent, guardian or other friends previous to making his answer to the complaint.

17. The answer must be made and the issue thereon tried in the manner hereinafter provided.

18. If when thus brought up the apprentice refuse to serve without

showing sufficient cause for such refusal the magistrate may commit him to the county jail until he consents to perform his duty.

19. If he shows sufficient cause for refusing to serve he may be discharged from service in the manner hereinbefore provided.

20. 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.

21. Proceedings shall thereupon be had similar to those provided for in case of a complaint by or in behalf of the apprentice and judgment rendered in like manner with the same right of appeal.

22. The death of the master or his removal from the state works a dissolution of the indentures unless otherwise provided therein or unless the apprentice elects to continue in his service.

23. Upon complaint being made to the district court of the proper county that the father of a minor child is from habitual intemperance or flagrantly vicious brutal or criminal conduct 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.

24. 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.

25. The complaint in such cases must be sworn to and filed 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 district court for adjudication—must be served personally on the parent from whom the guardianship is sought to be taken at least ten days before the time so fixed for the adjudication.

26. Issues joined shall be tried in the same manner as in ordinary civil actions.

27. 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.

PART THIRD—TITLE I. Of courts and the proceedure therein.—Of the organization of the Supreme and District courts. CHAPTER 1. OF THE SUPREME COURT.

SECTION 1. Until otherwise ordered the four supreme court districts will remain as at present organized and the times and places for holding courts therein will continue unchanged.

2. At any general term the court may change the times for holding the next regular term in that district but there must be at least one term in each of said districts annually.

3. Special terms may also be called by the chief justice at his discretion for the trial of appeals in civil cases with the consent of both parties, or for the trial of appeals in criminal causes to which the accused consents and the prosecuting attorney can show no sufficient objections.

4. The court may prescribe the character of the record to be kept by the clerk and the mode of keeping the same, and subject to the regulations contained in the statue it may prescribe his other duties and powers.

5. The sheriff of the county wherein the court is held together with all necessary assistants must attend upon the sessions of the court and shall each receive two dollars per day as a compensation for such attendance.

6. All reasonable expenses of the supreme court must be certified by one of the judges of the court and be allowed by the auditor and paid out of the state treasury.

7. Appeals must be taken to the supreme court for the district in which the causes respectively originate unless by the written consent of parties or their attorneys they are taken to another district. But cases heard in one district may be decided in another.

8. Such decisions and the order of the court thereon being certified back to the court where the cause was heard and entered on the records of that court shall have the same force and effect as if made and entered during the session of the court in that district. 207

9. The presence of two judges is necessary for the transaction of business but one alone may adjourn from day to day or to any particular day or until the next term.

10. When the court is equally divided in opinion the cause must stand for a reargument unless the third judge be legally disqualified from serving. In such cases the judgment of the district court shall stand affirmed but the decision is of no further force or authority.

11. If all the judges fail to attend on the first day of the term the clerk must enter the fact upon the record and the court shall stand adjourned until the next day. The same proceedings shall be repeated from day to day until the fourth day of the term when if none of the judges appear the court shall stand adjourned until the next term.

12. No process or proceeding is in any manner affected by an adjournment or failure to hold court but all shall stand continued to the next term without any special order to that effect.

13. The supreme court has an appellate jurisdiction over all final judgments and decisions of any of the district courts as well in cases of civil actions properly so called as in proceedings of a special or independent character.

14. Intermediate orders involving the merits and materially affecting the final decision may also be reversed on appeal.

15. The court may also in its discretion prescribe rules for allowing appeals on such other intermediate orders or decisions as they think expedient and for permitting the same to be taken and tried during the progress of the trial in the court below; but such intermediate appeals must not retard proceedings in the trial in chief in the district court.

. 16. The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

17. The judges of the court may report their own decisions or they may appoint a reporter who shall hold his office at the pleasure of the court.

18. The opinions of the court on all questions reviewed on appeal as well as such motions, collateral questions and points of practice as they may think of sufficient importance shall be reduced to writing and filed with the clerk of the court.
19. All dissenting opinions must be written and filed in the same

manner.

20. 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.
21. The supreme court has a general supervision over the district court to prevent and correct abuses where no other remedy is provided for by law.
CHAPTER 2.

22. The supreme court may in its discretion remove any of its clerks and appoint others in their stead. The location of their offices shall remain as heretofore until changed by law.
23. Each of the clerks must keep a complete register of all proceedings of the court. They must also copy the written opinions of the court into a book to be procured for that purpose and keep an index to the same. And generally they must perform all the other duties ordinarily pertaining to their offices.

ing the first section may also be reversed on appeal. if. The court may also in it, discussion prescribe rules for allowing appeals on such other informediate orders or decisions as they think expedient and for permitting **R FTFTFO** in taken and trad during the progress of the trial in the court below, but such informediate appeals must not returd P. TSURTED SHT FO in chief in the district peals must not returd P. TSURTED SHT FO in chief in the district

24. The judicial districts and the terms of the district court therein respectively shall remain as at present fixed until otherwise directed. 25. The several district courts by an order entered of record shall fix upon the number of courts to be held annually in each county of their respective districts and the times of holding the same but there shall be at least one term annually in each organized county; if such county contains 2000 inhabitants not less than two terms and in no case shall the number now fixed be diminished.

26. In counties where no time is now fixed for holding a court the judge may appoint the first term by a written notice to the clerk thereof.

27. The clerk shall thereupon prepare as many written notices of the time and place of holding such court as there are townships in the county and the sheriff shall post up one of such notices in a public place in each of said townships at least three weeks prior to the time therein fixed for holding the court.

209

28. The times of holding the district court in any county may be changed by order of the court, entered of record in that county at any regular term thereof but such alterations shall not be made oftener than once in each year.

29. But a special term may in like manner be ordered at any regular term of the court in that county.

30. Such special term may also be called at any time by the judge, for the trial of those causes in which both parties consent.

31. The court in ordering a special term shall direct whether a grand or petit jury or both or neither shall be summoned.

32. The court may by its rules establish terms in any county for the making up of issues or the transaction of any other business not requiring a jury; but the number of trial terms above required shall not on that account be lessened.

33. When a county is not provided with a regular court house at the place where the courts are to be held they shall be held at such place as the county court peovides.

34 If no suitable place be thus provided the district court shall direct the sheriff to procure one.

35. The district judges may interchange and hold each other's courts.

36. The several district courts shall exercise general original jurisdiction both civil and criminal and as well in chancery as at common law where not otherwise provided by law. They shall also have a ,general supervision over all inferior courts to prevent and correct abuses where no other remedy is provided.

37. The clerk of each district court shall keep a record of the proceedings of the court under the direction of the judge. He shall from time to time read over all entries therein in open court which when correct shall be signed by the judge.

38. Where it is not practicable to have all the records prepared and thus approved during the term they may be read corrected and approved at the next succeeding term but such delay shall not prevent an execution from issuing in the mean time and all other pro-REVISED CODE.—27 ceedings may take place in the same manner as though 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.

39. The record aforesaid is under the control of the court and may be amended or any entry therein expunged at any time during the term at which it is made or before it is signed by the judge as aforesaid.
40. Entries made approved and signed at a previous term can only

be altered to correct an evident mistake.

41. 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.

42. 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.

43. If the judge is siek 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.

44. 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.

45. 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 nonappearance in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat.

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

23. Where 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 exception from issuing in the mean time and all other pro52. No judge of the supreme or district courts shall practice as an attorney and counsellor at law or give advice for fee or reward in relation to any case pending or about to be brought in any of the courts of this state.

of this state. 53. Each of the judges of the supreme or district courts shall report to the legislature at each regular session thereof all omissions discrepancies or other evident imperfections of the law which has fallen under his observation.

54. The supreme and district courts shall respectively have power (by the establishment of proper rules) to supply defects in this title so as to carry out the general spirit and intent of the system of practice herewith adopted.

55. Said courts may adopt also, such other rules as they may deem expedient consistent with law and may revise the same as often as . they think expedient.

56. The prime objects of such rules shall be to carry out the purpose of the statute—to preserve as far as is consistent with law the substance of previous remedies—dispensing with all needless forms with the view of arriving at the prompt attainment of justice.

57. All process issued by the clerk of the supreme or any district court shall bear date on the day on which it is issued and be tested in the name of the clerk who issued the same under the seal of the court. 58. All judicial proceedings must be public unless otherwise spe-

58. All judicial proceedings must be public during the parties. cially provided by statue or otherwise agreed upon by the parties.

59. All courts have power to administer oaths connected with any matter pending before them either by any judge, justice or clerk thereof or by any other person appointed for that purpose by them.

60. A judge or justice is disqualified from acting as such except by the 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. 61. No court can be opened nor can any judicial business be transacted on Sunday except,

FIRST-To give instructions to a jury then deliberating on their verdict.

SECOND-To receive a verdict or discharge a jury.

uprope and district courts shall respectively have poure

THIRD—To exercise the powers of a single magistrate in a criminal proceeding.

62. All courts must sit at the places designated for that purpose pursuant to statute unless by common consent some other place is fixed upon.

CHAPTER 5.

(A)

53

PUNISHING FOR CONTEMPTS.

SECTION 1. The following acts or omissions are deemed to be contempts and are punishable as such by any of the courts of the state or by any judicial officer acting in the discharge of an official duty as hereinafter provided.

FIRST—For contemptuous or insolent behavior towards such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.

SECOND—For any wilful disturbance calculated to interrupt the due course of its official proceedings.

THIRD—For illegal resistance to any order or process made or issued by it.

FOURTH—For disobedience to any subpœna issued by it and duly served or refusing to be swon or to answer as a witness.

FIFTH—For unlawfully detaining a witness or party to an action or proceeding pending before such court while going to or remaining at the place where the action or proceeding is thus pending.

SIXTH—Any other act or omission specially declared a contempt by law.

2. In addition to the above the supreme and district courts may punish the following acts or omissions as contempts:

First—Failure to testify before a grand jury where lawfully required to do so.

SECOND—Assuming to be an officer attorney or counsellor of the court and acting as such without authority.

THIRD—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.

FOURTH—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.

3. The punishment for contempts may be by fine or imprisonment or both but where not otherwise specially provided the supreme and district courts are limited to a fine of two hundred dollars and an imprisonment not exceeding thirty days and all other courts are limited to a fine of thirty dollars and an imprisonment of five days.

4. But if the contempt consists in an omission to perform an act which it is yet in the power of the person to perform he may be imprisoned until he performs it. In that case the act to be performed must be specified in the warrant of commitment.

5. 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.

6. Before punishing for a contempt unless the offender is already in the presence of the court he must be served personally with a rule to shew cause against the punishment and a reasonable time given him therefore; 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.

7. Where the action of the court is founded upon the evidence given by others such evidence must be in writing 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 where the court keeps no record

8. When the offender is committed the warrant must state the particular facts and circumstances on which the court acted in the premises and whether the same was within the knowledge of the court or was proved by witnesses. 9. No appeal lies to an order to punish for a contempt but the proceedings may in proper cases be taken to a higher court for revision by certiorari.

10. The punishment for a contempt constitutes no bar to an indictment. But if the offender is indicted and convicted for the same offence the court in passing sentence must take into consideration the punishment before inflicted.

11. Any officer authorised to punish for a contempt is a court within the meaning of this chapter.

prisonment not exceeding thi. 6 RATTANA all other courts are limited

OR GO DOTOTO OF ATTORNEYS AND COUNSELLORS.

A: But if the the poster of the perior to perform he may be im

SECTION 1. All persons who by the law heretofore in force were permitted to practice as attorneys and counsellors may continue to practice as such. 2. Any white male citizen of the United States who is actually an inhabitant of this state and who satisfies any district court of this

state that he possesses the requisite learning and that he is of good moral character may by such court be permitted to practice in all the district courts of the state upon taking the usual oath of office.

3. The supreme court may on motion admit any practicing attorney of the district court to practice in the supreme court upon taking the usual oath of office.

4. Any practising attorney of another state having professional business in either the supreme or district court may on motion be admitted to practice in either of those courts upon taking the oath as aforesaid.

5. The form of the oath aforesaid shall be in substance as follows: "You do solemnly swear that you will support the constitution of the United States and of this state and that you will faithfully discharge the duty of an attorney and counsellor of this court according to the best of your ability.

6. It is the duty of an attorney and counsellor, no bus shall allocit

FIRST—To maintain the respect due to the courts of justice and to judicial officers.

SECOND—To counsel or maintain no other actions proceedings or defences than those that appear to him legal and just except the defence of a person charged with a public offence.

 $T_{\rm HIRD}$ —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.

FOURTH—To maintain inviolate the confidence and at any peril to himself to preserve the secrets of his clients.

FIFTH—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.

SIXTH-Not to encourage either the commencement or continuance

of an action or proceeding from any motive of passion or interest. SEVENTH—Never to reject for any consideration personal to himself the cause of the defenceless or the oppressed.

7. An attorney and counsellor 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. 8. An attorney and counsellor has power;

FIRST—To execute in the name of his client a bond for an appeal certiorari or writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced;

SECOND—To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers but no evidence of any such agreement is receivable except the statement of the attorney himself—his written agreement signed and filed with the clerk or an entry thereof upon the records of the court;

THERD—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.

9. The court may on motion for either party on the showing of reasonable grounds therefor require the attorney for the adverse party or for any one of several adverse parties to produce or prove by his own oath or otherwise the authority under which he appears and until he does so may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

10. An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment: upon money in his hands belonging to his client: upon money due to his client and in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

11. Any person interested in such matter may release such lien by giving a security in a penalty double the amount claimed by the attorney conditioned to pay the amount that may be finally found due for his services.

12. The supreme or district courts may respectively revoke or suspend the license of any attorney or counsellor at law to practice therein and a revocation or suspension by the district court in one county operates to the same extent in the courts of all other counties.

13. The following are sufficient causes for such revocation or suspension:

FIRST—Where 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.

SECOND—Where 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.

THIRD—For a wilful violation of any of the duties of an attorney or counsellor as hereinbefore prescribed.

FOURTH-For doing any other act to which such a consequence is by law attached.

14. 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.

15. If the court deem the accusation sufficient to justify further 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.

16. 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.

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

18. In case of a removal or suspension being ordered by a district court an appeal therefrom lies to the supreme court and all the original papers together with a transcript of the records shall thereupon be transferred to the supreme court to be there considered and finally acted upon. A judgment of acquittal by the district court is final.

19. 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.

20. When the attorney claims to be entitled to a lien upon the money or property he is not liable to the penalties of the two preceding sections until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained.

21. 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.

firm's listed the manua so isclected to the county inder with the re-

Seven has soll of stail (CHAPTER 7. model lists of the other of the

term but must appear of the next term withoutinting second in the

to go of trand party shall be a STORUE JO. the first term in the year at

3)) ()

SECTION 1. 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.

2. The following persons are exempt from liability to act as jurors—to-wit: All persons holding office under the laws of the United States or of this state. All practising attornics—physicians—and clergyman. All acting professors or teachers of any college, school, or other institutions of learning—and all persons disabled by bodily

a box to be provided for that purpose.

REVISED CODE.-28

infirmity or over sixty-five years of age or specially exempted by any other statute from serving on juries.

3. Any person may also be excused from serving on a jury when for any reason his own interests or those of the public will be materially injured by his attendance or when the state of his own health or the death or sickness of a member of his family requires his absence.

4. A jury list of one hundred and fifty competent persons liable to serve on juries shall be annually made in each county from which to select jurors, for the year commencing on the first day of August annually.

5. Should there be less than that number of such persons in any county the list shall comprise all those who answer the above description.

6. On or before the first Monday in March in each year the county clerk shall apportion the number to be elected from each township as nearly as practicable in proportion to the number of votes polled therein at the last general election and shall deliver a statement thereof to the sheriff.

7. The sheriff shall cause a written notice to be delivered to one of the judges of election in the several townships of the county on or before the day of the April election in each year informing them of the number of jurors apportioned for the ensuing year to their respective townships.

8. Said judges shall thereupon make the requisite selection and return a list of the names so selected to the county judge with the returns of the election.

9. The judge shall thereupon file said lists in his office and cause a copy thereof to be recorded in the election book.

3.00

10. Grand jurors shall be selected for the first term in the year at which such jurors are required commencing next after the last day of July in each year, and shall serve for one year. Petit jurors shall be selected for each term wherein they are required.

11. At least twenty days previous to the first day of any term at which a jury of either kind is to be selected the clerk must write out the names on the lists aforesaid which have not been previously drawn as jurors during that year on separate ballots and the judge of the county court and sheriff having compared said ballots with the jury lists and rectified the same if necessary shall place the ballots in a box to be provided for that purpose. 12. After thoroughly mixing the same the clerk shall draw therefrom the requisite number of jurors to serve as aforesaid.

13. When grand jurors are to be selected their number must be fifteen and they shall serve for one entire year thereafter; the number of the petit jurors shall be the same unless the judge of the county court deems it expedient to cause a larger number to be summoned. 14. Within three days after such drawing the clerk must issue a precept to the sheriff commanding him to summon the said jurors to appear before the district court at eleven o'clock, A. M. of the first day of the next term thereof (naming the month and day) unless the judge of the district court has previously directed a different hour or day for their appearance—in which case such direction must be observed.

15. 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.

16. If a person summoned as a juror as aforesaid fail to appear the court may issue a rule returnable to that or the succeeding term requiring him to appear and show cause why he should not be fined for a contempt. Unless he render a reasonable excuse for his failure to attend the court may fine him on any amount not exceeding twenty dollars and costs.

17. Except where 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.

18. If the requisite number of jurors do not appear by the time appointed as aforesaid the court may at any time thereafter direct the sheriff to summon forthwith the number necessary to make up the deficiency.

19. Jurors shall be chosen in the manner heretofore prescribed to serve in all courts held prior to the first day of August in the year 1852. But the number of jurors must be such as is above fixed.

20. Within ten days after the close of each term the clerk of the court must make out a certificate to each juror of the amount to which he is entitled for his services which must be allowed by the county court and paid as other demands against the county.

CHAPTER 8. from the requisite number of jurges to serve as aforesaid; OF THE APPOINTMENT OF REFEREES.

SECTION 1. Referees may be appointed in the cases and for the purposes provided by law.

2. When the number is not specified they shall consist of three who shall possess the qualification of jurors and be sworn to the faithful discharge of their duties. They must also be competent jurors as between the parties.

3. Where not otherwise declared all the referees must meet to hear proofs and to deliberate but the decision of a majority shall be regarded as their decision.

4. When appointed by a court any judge of that court may fill vacancies in vacation. 5. Any one of such referees has power to issue subpænas having the same force and to the same extent as those issued by a justice of the peace and which shall be served by the same officers. They may also administer all oaths necessary for the discharge of their duties and the full exercise of all their powers. 6. Unless specially otherwise provided referees shall be entitled to two dollars per day for all the time actually and necessarily occupied dollars and costs. by them in the business of the reference.

The Breek where required at a special term which has been call

ed in viloritation the grand jury need set to commoned after the first

ell porib rathered on the OF RECEIVERS. 66 of bissorold as bothing

CHAPTER 9.

(1)

SECTION 1. On the petition of either party to a civil acton or proceeding wherein he shows that he has a probable right to any of the property which is the subject of the controversy and that such property or its rents and profits are in danger of being lost or materially injured or impaired the court if satisfied that the interests of one or both the parties will be thereby promoted and the substantial rights of neither unduly infringed upon may appoint a receiver to take charge of and control such property under its direction.

2. Before entering upon the discharge of his duties he must be

221

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 conditioned for the faithful discharge of his duties and that he will obey the orders of the court in respect thereto.

3. Subject to the control of the court a receiver has power to bring and defend actions-to take and keep possession of property-to collect debts-to receive the rents and profits of real property and generally to do such acts in respect to the property committed to him as the court may authorise. the time allowed for the commencering derived time by wanter markly

or it of he delivery of the original patice to disadentified the proper county with intent that it be served immediately (which intent shall PART THIRD-TITLE II. Of the course of proceeding in the district and supreme courts.

CHAPTER 1. hall be the same defence have as though it had arisen under the pro-

SECTION 1. The following actions may be brought within the times herein limited respectively after their causes accrue and not afterwards except when specially otherwise declared-that is to say,

FIRST-Actions of slander, libel, malicious prosecutions, injuries to the person, or for a statute penalty, within two years.

SECOND-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.

THIRD-Those founded on unwritten contracts or 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.

FOURTH-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.

FIFTH-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.

2. In actions for relief on the ground of fraud as above contemplated the cause of actien will not be deemed to have accrued until the discovery of the fraud by the party aggrieved.

3. In actions founded upon contract the above limitations shall not apply if from the answer of the defendant or from his testimony as a witness it appears affirmatively that the cause of action still justly subsists. But the answer of one of several defendants shall not prejudice the interests of others in this respect.

4. 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.

5. 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.

6. The times during which a defendant is a non-resident of the state shall not be included in computing any of the periods of limitation above prescribed.

7. But where 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 defence here as though it had arisen under the provisions of this chapter.

8. The above limitations of actions for the recovery of real property shall not apply to minors so far as to prevent them from having at least one year after attaining their majority within which to commence such actions.

9. 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.

10. 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.

11. The above limitations and provisions shall not apply to evidence as 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.

12. Causes of action founded on contract are revived by an admis-

0

sion that the debt is unpaid as well as by a new promise to pay the same.

13. The provisions of this chapter are intended to apply to causes of action which have already accrued and are not yet barred subject to the regulations contained in the two following sections.

14. The times hereafter allowed for commencing actions in such cases shall not be less than one-half the periods of limitation herein respectively prescribed except as provided in the next section.

15. But where the period of limitation heretofore fixed by statute is not enlarged by the provisions of the first section of this chapter the time allowed for the commencement of a suit shall in no case be greater than that fixed by the law heretofore in force as applied to ose cases. 16. The time of limitation in relation to actions for the recovery those cases.

of real estate as prescribed in this chapter shall not commence to run in favor of a settler on any public lands belonging to this state until such lands have been sold by the state.

11. At any time before, answering the definidant may, obtain the substitution in his place of any person not already a party who claims he money or property strich is the subject matter of the suit. 12. For this purpose he must file his addavitestating the facts on nying all collasion with the person whom he seeks to substitute as the defendant and most prof-

SECTION 1. The party seeking to obtain or enforce a remedy by any proceeding is-so far as that proceeding is concerned-the plaintiff; the other party the defendant.

OF THE PARTIES TO AN ACTION.

2. Civil actions must be prosecuted in the names of the real parties in interest except in the case of a trustee or other person legally authorized to sue for another and except when otherwise provided for by law.

3. The preceding section merely prescribes a rule of practice and is in no wise to affect substantial rights.

4. Where not otherwise specially provided all persons interested in obtaining the relief sought may be joined as plaintiffs-those having adverse interests may be joined as defendants.

5. Persons having an united interest must be joined on the same side either as plaintiffs or defendants. But when some who should thus be made plaintiffs refuse to join they may be made defendants the reason thereof being set forth in the petition.

6. 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.

7. Persons severally liable on the same instrument, including the makers and endorsers of negotiable paper and sureties may allor any part of them be joined in the same action.

8. Persons jointly and severally liable on the same instrument may all or any part of them be sued at once.

9. If a complete determination of the controversy cannot be had without joining other parties they may be brought in by amendment of the petition or by a supplemental petition and notice.

10. In actions for the recovery of property any person not a party thereto on showing himself interested in the subject matter of the suit may be allowed to appear as defendant therein.

11. At any time before answering the defendant may obtain the substitution in his place of any person not already a party who claims the money or property which is the subject matter of the suit.

12. For this purpose he must file his affidavit stating the facts on which he founds his application and denying all collusion with the person whom he seeks to substitute as the defendant and must proffer to pay the money into court or deliver the property to any one the court shall direct. If an answer to a rule against the plaintiff and the person thus sought to be substituted as defendant sufficient cause to the contrary be not shown the court shall make the order of substitution and discharging the original defendant to all liability to either party.

13. A married woman may be a party in her own name when the action is founded on her own contract or relates to her separate property or is between herself and her husband.

14. When sued alone judgment shall be enforced against her separate property.

15. When sueing alone judgment may be enforced against her separate property or a rule being taken against her husband unless sufficient cause be shown to the contrary execution may issue against him also. 16. It shall be a sufficient answer to such a rule that the husband is not interested in the suit by the wife.

17. If husband and wife are sued together the wife may defend for her own right and if the husband neglect to defend she may defend for his right also.

18. Minors may sue by their guardians who shall be responsible for the costs of suit. They may also defend by guardian.

19. Those who have no guardian may sue by next friend who shall be responsible for costs. The court may appoint a guardian *adlitem* to defend for a minor who has no other guardian. 20. Partners may sue or be sued either in their partnership name or by setting forth their individual names at the option of the plaintiff.

21. If sueing or sued in their partnership name their individual property may be made liable to any judgment against them unless sufficient cause be shown to the contrary.

22. Where an action is founded on a written instrument suit may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument.

23. When a bond or other instrument given to the state or to a county or to any officer or person is intended either 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 any injury in consequence of a breach thereof. 24. 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 substitured in the proceedings.

25. The state may be made a party defendant by any person having a claim against it: Such suit shall be brought in the district court of the county containing the seat of government.

26. Corporations foreign or domestic may bring suit in the courts of this state in their corporate name. 27. An unmarried female may prosecute an action for her own seduction and may recover therein such damages as shall be assessed in her favor.

28. The father mother or guardian as the case may be may also bring suit for the seduction of a minor daughter or ward though such daughter or ward be not living with or in the service of the plantiff as

REVISED CODE-29

00 0

there be no loss of service: but where the action is brought by the guardian the damages recovered shall enure to the sole benefit of the ward.
29. Actions do not abate by the death marriage or other disability of either party or by the transfer of any interest therein if from the nature of the case the cause of action can survive or continue.
30. In such cases the court on motion may allow the action to be continued by or against his representatives or successor in interest.
31. An action may be brought by one person against another for the purpose of settling an adverse claim which the latter makes against the former—to be regulated by such rules as the court shall prescribe.

treet if sucing or seed in their peritorship frame their individual property may be made liable to any judgment against them unless sufficient cause belenown to a service of service of a service of a

OF THE PLACE OF BRINGING SUIT. 25 TO YO JUNE OF BRINGING SUIT.

SECTION 1. Except where otherwise provided personal actions must be brought in a county wherein some of the defendants actually reside. But if none of them have any residence within this state they may be sued in any county wherein either of them may be found. 2. If a suit be brought in a wrong county it may be then prosecuted to a termination unless the defendant demand a change of venue to the proper county. In cases of such change of venue the court may award the defendant a reasonable compensation for his trouble and expenses in attending at the wrong county. 3. In cases of attachment of property where the defendant is not served or in cases where the suit is brought to obtain possession of personal property or to enforce a lien or mortgage, or where it relates to real property—it may be brought in any county where the real property or any portion of it lies or where any part of the personal property may be found.

4. When by its terms a contract is to be performed in any particular place suit for a breach thereof may be brought in the county wherein such place is situated.
5. Where a corporation company or individual, has an office or agency in any county for the transaction of business any suits grow-

BEVISED CODE - 20

ing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located as though the principal resided therein and service on any agent or clerk employed in such office or agency shall be sufficient service upon the principal.

CHANGE OF VENUE. SECTION 1. A change of venue in any civil action may be had in any of the following cases

CHAPTER 4. 18 28 bestidened ors erected

· clerk may require the payment of shell casts before the transcript and

FIRST-Where the county in which the suit is pending is a party thereto.

SECOND—When the judge is a party or is directly interested in the suit or is connected by blood or affinity with any person so interested nearer than in the fourth degree.

THIRD—Where either party files an affidavit stating that the inhabitants of the county are so prejudiced against him; or that the opposite party or his attorney has such an undue influence over the inhabitants of the county that he cannot expect an impartial trial.

2. The venue shall be changed to some other county in the same district unless the objection for which the change was made exists to all the other counties of the district.

3. The application for the change of venue may be made either to the court or to the judge in vacation and the change shall be to the most convenient county to which there is no exception of the character of any of those above enumerated.

4. No party is entitled to more than one change of venue except for causes not in existence when the first change was taken.

5. If the change is ordered by the judge in vacation he must immediately transmit to the clerk of the court where the cause is pending the affidavit if any and the order for the change.

6. In such cases as well as where the order is made in open courtthe clerk shall forthwith transmit to the clerk of the proper court a transcript of the record and proceedings in such cases with all the

may be made by mail and the postage thereon taxed among the edule.

7. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified the cause shall be docketed and proceeded in as though it had originated in that court.

8. The costs occasioned by such change of venue shall be paid by the applicant and not taxed as a part of the costs of the case and the clerk may require the payment of such costs before the transcript and papers are transmitted as aforesaid.

9. No discontinuance shall result from the papers not being transmitted and filed in due time in the manner aforesaid provided such failure was not owing to the negligence of the plaintiff in the cause. Secrets I. A change of venue in day civil action may be had in

any of the following cases Fast-Where the county in which the suit is pending is a party

Delegation of the MANNER OF COMMENCINC ACTIONS. nearer than in the fourth degree.

SECTION 1. Actions originating in the district court are to be commenced by serving the defendant with the notice hereinafter deindue influence scribed. ite party or his automey has such an

2. Such notice is to be known as the original notice and must inform the defendant of the name of the plaintiff-that on or before a certain day therein named a petition will be filed in the office of the clerk of the district court of ----- county claiming of him (here state briefly the substance of the remedy sought) and that unless he appears, and pleads thereto by (stating the time when by law or by the rules of court he is required to plead) default will be entered against him and judgment rendered thereon. ter of any of those above count 3. If the petition is not filed by the time thus fixed or if not filed ten

days before the first day of the next term the action will be deemed discontinued unless good cause be shown for the failure.

4. If the notice is placed in the hands of the sheriff for service he must note thereon the time when thus left with him. 5. The notice may be served by any person not a party to the ac-

tion and either within or without the limits of the state.

6. If served out of the county in which the suit is pending return may be made by mail and the postage thereon taxed among the costs.

7. If not served ten days before the then next term the cause shall stand continued unless a trial be had by consent of parties. 8. The service is to be made by reading the notice to the defendant and giving him a copy if demanded. If not found he may be served by a copy left at his usual place of residence with some member of the family more than fourteen years of age. and approximative berroe 9. Unless previously served with a copy of the petition the defend ant may at any time require a copy thereof to be sent to him through the post office directed to any place he may designate.

229

10. The return must state the time and manner of making the service. If made by leaving a copy as aforesaid it must state at whose house and the name of the person with whom the same was left or a sufficient reason must be given for omitting to do so. If served personally it must state whether a copy of the petition was required and if so to what point it was to be directed. The bills of the own T

11. The plaintiff may notify either of the defendants that no personal claim is made against him in which case a copy of that notice must accompany the return. If after such notice and return such defendant unreasonably defend the action he must pay costs to the plaintiff.

12. Upon a return of "not found" as to all or any of the defendants service on such defendants may be made by giving notice of the commencement of the action for four weeks successively in some newspaper printed as conveniently as practicable to the court wherein the suit is pending to be determined by the clerk of the court.

13. If the state is defendant service may be made upon the governor, secretary of state, or auditor. If a county upon the judge or clerk of the county court. If any other civil corporation upon a trustee or other officer thereof. but nomino edt of ned W-

14. Where action is brought against a corporation of any other description service may be made upon either of its officers or upon any clerk engaged in the active management of the ordinary business of the corporation division above particular of the corporation

15. If brought against a partnership or corporation having no offices service may be made upon any member thereof or upon any agent employed in the general management of their business.

16. If against a minor or insane person service must be made upon the defendant personally and in case of insane defendants or those under the age of fourteen years service must be made upon the father mother or guardian and if there be none such within the state then

228

upon the person having the legal care and control of such person if there be any not to trace of had od hair a evelow bounite a brate 17. Upon being served with notice in either of the methods hereinbefore prescribed the defendant shall be considered in court. 18. When a part of the defendants who should be individually served with process cannot be found the plaintiff instead of procuring service upon them by publication may proceed as though all the defendants were in court but the judgment in such cases shall not be valid as to those not served until on scire facias they have had a full opportunity of showing cause against the judgment. 19. The service of papers is sufficiently proved,

First-By the written admission of the defendant.

SECOND-By the return of the sheriff of the county when made by sonally it must state whether a copy of the patition was requiredmind

THIRD-By the affidavit of any other person who made the same. FOURTH-By the proof of publication in the manner above required. al claim is mode against him in which ease a copy of that notice must accompany the return. If affeir such notice and return such defend out unreasonably defend the action becaust pay gets to the plaintiff.

etreshesish odd to you as If a CHAPTER 6. at lo attest a good SI

service on such defendants may be made by giving notice of the omoa ni vieroone alo OF THE PLEADINGS. oh to thomas and the thomas and the strange of the strang newspaper printed as conveniently as practicable to the court where-SECTION 1. All technical forms of action and of pleadings are hereby abolished. about oil your apivase, tablingtoh si ptate of 2. Any pleading which possesses the following requisites shall be deemed sufficient. This were all as the states where a state of the state

FIRST-When to the common understanding it conveys a reasonable certainty of meaning; series a depend a poitos erod V . M SECOND-When by a fair and natural construction it shews a sub-

stantial cause of action or defence. 3. If defective in the first of the above particulars the court on motion shall direct a more specific statement-if in the latter it is ground of demurrer. logist the made upon any member thereof rarring be

4. The first pleading on the part of the plaintiff is the petition. which must contain a statement of the facts constituting the cause of action as well as a claim of the remedy sought. If money be the object of the action the amount demanded must be stated. 5. The defendant shall demur or answer or do both on or before

the morning of the second day of the term at which he is required to appear unless the court by general rule or special order otherwise di-116. Such reply must be sworn to by the plicty himself or som torr 6. The demurrer may be to one portion of the petition and the answer to another or each may apply to the whole. Despessor of of 198

7. In the latter case the answer shall not be held to over rule the demurrer, but the issues growing out of such pleadings shall be disposed of in their order, they a nee too ivhay off tenisus goldaneour

8. The defendant may also set up by way of set-off, or cross action any claim which would have been the subject of an action against the plaintiff and which was held by the defendant either matured or not at the time the suit was commenced. But such claim must be matured at the time it is so offered as a set-off.

9. Where the answer contains new matter by way of avoidance or set-off, the plaintiff may reply thereto by demurrer or otherwise and like proceedings shall if necessary be continued by way of rejoinder or further pleadings until a final issue is joined.

- 10. Each pleading subsequent to the petition shall in relation to every affirmative allegation to which it should respond contain a specific admission or denial-or it must state some sufficient reason for not doing so. Allegations not thus responded to will be taken as true, trapm ad explored and to reduce the other ware they doa'd 102

11. Where the pleading thus shews a reason for not admitting or denying a previous allegation it shall for the purpose of forming an issue and putting the other party to the proof be regarded as a denial of the truth thereof. deilode one stollab lamot pot stortune (.22 12. The plaintiff in his petition may at his option require the answer of the defendant to be given under oath. And in like manner the party filing any subsequent pleading setting forth new matter may require the reply thereto to be given under oath.

13. Any pleading thus required to be made under oath shall be considered as evidence in the cause of equal weight of that of a disinterested witness provided it be sworn to by the party himself who was called upon to answer but not otherwise. 14. The pleading thus calling for a reply under oath must itself be sworn to. If sworn to by any other than the party himself he must show that he has reasonable means of information on the subject and what those means are. The principal of the bolishes at the office at the second s 15. When the reply under oath is to create much delay or inconve-

0

nience the court may require satisfactory evidence (by oath of the party or otherwise) that such sworn reply is important.

16. Such reply must be sworn to by the party himself or some one of the parties where there are several or by some one showing himself to be possessed of equal information with the party on the subject matter thereof and that he has authority to make such sworn reply.--No pleading verified as above required can be used in a criminal prosecution against the party; nor can a party be compelled to state facts which if true would subject him to a prosecution for felony. 17. Either party may make a supplemental pleading alledging any material facts which have come to his knowledge since the filing of

18. When a pleading is founded upon a written instrument or account, a copy thereof must be annexed to such pleading or it will be sufficient ground for a demurrer thereto. A set off is a pleading within the meaning of this section. Associate in lists analyzon and

19. Several causes of action may be united in the same petition provided they affect all the parties thereto in the same capacities and if suit on all might be brought in that county. But the court to prevent confusion thereon may direct all or any portion of the issues

20. Each party may state in either of his pleadings as many different grounds of action or defence as he may think material. 21. The court on motion may cause irrelevant, redundant or scandalous matter to be expunged from any pleading. Southog bas oneal

22. Demurrers for formal defects are abolished. Those for substantial defects must set forth the true ground of objection to the 23. Upon the determination of any demurrer the failing party may

amend or plead over upon such terms as the court deems just or as it may by general rule prescribe. beinper and guibeald ynA. 81

-224. No cause shall be continued in consequence of the amendment of any pleading unless the court is satisfied that substantial justice requires such continuance. Todio for trid noviene of norm bolles envi 25. Immaterial variances errors or defects may be disregarded or the court may direct an amendment without costs. 26. No variance error or defect shall be deemed material unless the court is satisfied that the objecting party will be prejudiced by disregarding it or by allowing it to be amended. In such cases

amendments shall be allowed in any stage of the proceedings upon such terms as the court deems just. Ind non stast done doidy ad ason

233

27. The court may allow material amendments at any stage of the proceedings upon such terms and subject to such rules as they may prescribe. He ro yas, ban Minisig out any other and any or all

28. If an original pleading or paper be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original moisillue, on a vitren a lo experiment, ad I .C. ance nor shall a cause be continued on account of the death of a purty unless the court is also satisfied that further proceedings, curnot then take place without causing substantial injury to some of the be permitted to separate CHAPTER 7. per instructions of the soliting

10. Issues of law shall first be tried but by going to trial on an is-

beying orothol ber OF THE TRIAL AND ITS INCIDENTS. Inciding Justice Size

SECTION 1. The clerk shall keep a calender of the causes pending in his court arranging the civil and criminal causes respectively in the order of their commencement and shall furnish the court and bar each

2. The court may in its discretion direct the clerk to apportion the causes for as many days of the term as shall be thought necessary. The clerk shall thereupon issue subpœnas for witnesses returnable on the days respectively on which the causes are set for trial.

Except where otherwise provided causes shall be tried at the first term after they are commenced unless reasonable causes for a contheir challenges for cause. They may then in thr. nwode ad annuit 4. When time is asked for making application for a continuauce the cause shall not loose its place on the calender or it may be continued at the option of the other party and at the costs of the party applying therefor. up we and any but any me challenge with soil

5. Continuances shall not be granted for any cause growing out of the fault or negligance of the party applying therefor. Subject to this rule they may be allowed for any cause which satisfies the court that substantial justice will thereby be more nearly attained.

6. Actions for a continuance on account of the absence of witnesses must be founded on the affidavit of the party, his agent or attorney showing that due diligence has been used to obtain such testimony-also the name and residence of such witness-what particular

8. A seperate trial between the plaintiff and any or all of several defendants may be allowed by the court whenever in its opinion justice will be thereby promoted.

9. The marriage of a party is no sufficient ground for a continuance nor shall a cause be continued on account of the death of a party unless the court is also satisfied that further proceedings cannot then take place without causing substantial injury to some of the parties.

10. Issues of law shall first be tried but by going to trial on an issue of fact without objection a party shall be deemed to have waived his demurrer.

11. Upon the decision of a demurrer if the unsuccessful party fail to amend or plead over the same consequences shall ensue as though a verdict had passed against the plaintiff, or the defendant had made default, as the case may be.
12. Issues of fact shall be tried by the court unless one of the parties require a jury. Where a jury is thus required a fee of three dollars shall be assessed against the party having to pay the cost of trial.
13. Where a jury trial is demanded the clerk shall select twelve jurors by lot for the regular panel.

14. The plaintiff first and afterwards the defendant shall complete their challenges for cause. They may then in turn in the same order have the right to challenge one juror each until each shall have per. emptorily challenged five jurors but no more.

15. After each challenge the vacancy shall if required be filled before further challenges are made and any new juror thus introduced may be challenged for cause as well as peremptorily.

16. Or where both parties desire it a struck jury may be ordered whereupon eighteen jurors shall be called into the box and the plaintiff first and then the defendant shall strike out one juror in turn until each has struck out six and the remaining six shall try the cause.

17. Where the requisite number of jurors cannot otherwise be obtained the sheriff shall select talismen to supply the deficiency from the by-standers or the body of the county.

18. 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 this privilege.

19. Whenever in the opinion of the court it is proper that the jury should have a view of the localities connected with the pending controversy it may order them to be conducted in a body in the custody of proper officers to the place. And while thus absent no person must speak to them on any subject connected with the trial except in a public manner to point out the localities which they have come to examine.

20. At any time before the cause is submitted to the jury they may be permitted to separate under the proper instructions of the court. 21. After the cause is submitted to the jury they must be kept together without drink except water and without food except when otherwise directed by the court.

22. If after the empannelling of the jury and before verdict a juror becomes sick so as to be unable to perform his duty he may be discharged. In such cases unless otherwise arranged by consent the vacancy thus made must be filled and the trial commence anew or the court may in its discretion order the jury to be discharged and a new one empanneled.

23. Upon retiring for deliberation the jury may take with them all papers except depositions which have been received as evidence in the cause.

24. While the jury is absent the court may adjourn from time to time in respect to other business but is to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

25. When by consent the jury have been permitted to seal their verdict and separate before it is rendered—such sealing is equivalent to a rendition and recording thereof in open court. The jury shall not be polled nor shall they be permitted to disagree thereto unless such a course has been agreed upon between the parties.

26. In every action for the recovery of money only or for specific real or personal property the jury in their discretion may render a general or special verdict. 27. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues or may direct them to return a 28. Where an action is for the recovery of money only the jury shall assess the amount of the recovery.
29. The verdict shall in all cases be returned in writing and filed with the clerk and entered upon the record after having been put in form by the court if necessary.
30. The verdict shall be sufficient in form if it expresses the intention of the jury.

31. The charge of the court shall be confined strictly to matters of law and shall if desired by either party be in writing and placed in the hands of the jury.
32. The court may in its discretion require any instructions asked by either party to be committed in writing.

33. Upon a trial of a question of fact by the court its decision if requested by either party shall be given in writing stating the facts found and the conclusion founded thereon separately all which shall be entered upon the record.
34. Any or all of the matters involved in any suit may be submitted to three reference and and the shall be submitted.

to three referees unless one of the parties object thereto. A different number of referees may be fixed upon by consent. 35. Where the parties cannot agree upon the referees, the court may appoint them or it may allow each party to select one and itself choose a third.

36. The referees when selected shall stand in place of the court and shall possess the same power to preserve order. They may be required to state the facts found and upon them the court shall render judgment. The court may upon a sufficient showing set aside their report in whole or in part and refer the matter anew or any part thereof either to the same or other referees.
37. By the consent of the court and parties any person may be selected to act as judge for the trial of any particular cause or question and while thus acting he shall possess all the powers of the district court.
38. Where a set-off is proved a balance shall be struck between it and the demand established by the plaintiff for which balance judgment shall be rendered in favor of the party entitled thereto.
39. In all other cases judgment shall be rendered in accordance with the law and the facts found in either of the modes above provided.

40. Damages are recoverable at the same rate to which the plaintiff would have been heretofore entitled for the same substantial cause of action. 41. The plaintiff cannot take a nonsuit without the consent of the defendant after the latter has claimed a set-off—but he may in such cases at any time before the jury retire to consider of their verdict dismiss his cause of action leaving the defendant to proceed on his set-off or counter claim in the capacity of plaintiff.

42. The defendant may in like manner withdraw his counter claim at any time before the jury withdraw. 43. Where there is no counter claim to be considered the plaintiff

43. Where there is no counter chain to be consistent with their verdict submit to a nonsuit at his own costs. A more than the last three sections 44. If in any of the cases contemplated in the last three sections the trial is by the court instead of being by a jury the taking a non-suit—the dismissal of the cause of action—or the withdrawal of the counter claim therein provided for may take place at any time before the court is prepared to make its decision on the question of fact but not afterwards.

45. Either party may except to any decision or opinion of the court. If for matters occuring during the trial the exceptions must be taken and reduced to writing before the verdict is rendered unless otherwise arranged by consent and where a bill of exceptions is subsequently filed such consent shall be presumed unless the contrary is shown by the record. The monthly out should also a point a boot 46. Such exception must be in writing but the court may allow such time as may be deemed reasonable to settle and reduce the same to form any indribent is set saille or shished by execution 47. If the truth of the case be fairly stated in such bill of exceptions the judge shall sign the same and it shall thereupon become a part of the record of the case. Mining out of Botterry following . 10 48. Motions in arrest of judgment or for a new trial must be made within a reasonable time and at the term of the court at which the 62. The defendant may at any time submit to any isola koot lairt 49. The party making such motion shall forthwith furnish the counsel of the opposite party as well as the court with a copy of the points upon which he relies which points must be plainly and particularly place in vacation. In such cases the slerk may at once mak droft tas

50. In applications for new trials the affidavits of jurors or officers of the court may be taken and used in relation to such application. 51. Costs shall be recovered by the successful against the losing party. But where the plaintiff is successful as to part of his denands and fail as to others an equitable apportionment of costs may be made by the court.

52, The aggregate amount of costs of the parties adjudged against the losing party shall be added to and become a part of the judgment.

54. Costs may be returned by the court and the judgment corrected in that respect at any time before it is paid off and satisfied.55. All final adjudications of civil actions are judgments.

56. Judgments may be rendered for or against one or more of several plaintiffs or defendants or the court when practicable may determine the ultimate rights of the parties on each side as between themselves and give judgment accordingly.

57. A judgment may be rendered for or against one or more of several plaintiffs or defendants before the case is ripe for decision as to all where such a course will not unjustly prejudice the interests of other parties.

58. In cases where the title to lands is involved and is finally settled or determined the clerk shall make a complete record of the whole cause and enter it in the proper book. But in no other case need a complete entry be made except at the request of a party who pays beforehand the expense of such record.

59. In actions on penal bonds the petition must set forth the breaches and the judgment rendered thereon must be for the actual damages only.

60. When any judgment is set aside or satisfied by execution or otherwise the clerk shall enter a memorandum thereof in the column left for that purpose in the judgment docket.

61. The relief granted to the plaintiff cannot exceed that which he has demanded in his petition. In other respects the court may grant any relief consistent with the case made.

62. The defendant may at any time submit to any judgment which shall be agreed upon between the parties which must be in writing and filed with the clerk unless done in open court.
63. Nonsuits when allowable or judgments by agreement may take place in vacation. In such cases the clerk may at once make the en-

try accordingly and execution thereon issued forthwith unless otherwise agreed upon between the parties. 64. The provisions in this title relative to juries are intended to be applied to the court when acting as a jury in the trial of a cause so far as they are applicable and not incompatible with other provisions herein contained.

SECTION 1. If the defendant fails to file his answer or other plead-

ing by the time prescribed or if having pleaded he withdraws his pleading without permission or authority to replead judgment by default may on motion of the plaintiff be entered against him. 2. The district courts may provide by rule for entering default in vacation.

3. When service has been made by publication only and no appearance had, default shall not be entered until proof has been made that a copy of the petition and notice was directed to the defendant through the post office at his usual place of residence (stating the place) in sufficient time for his appearance or that such residence is unknown to the plaintiff or his attorney or business agent and could not with reasonable diligence be ascertained.

4. Default may be set aside on such terms as the court may deem just but not unless an affidavit of merits be filed and a reasonable excuse be shown for having made such default, nor unless application be made therefor at the term on which the default was entered or if entered in vacation on the first day of the next succeeding term.

5. When the action is for a money demand and the amount of the proper judgment is a mere matter of computation the clerk shall assess the amount.

6. When long accounts are to be examined the court may refer the matter to referees.

7. In other cases the court shall assess the damages unless a jury be demanded by the party not in default. 8. The defendant may appear at the time of the assessment and cross-examine the plaintiff's witnesses but for no other purpose.
9. The proper amount having been ascertained by either of the above methods judgment shall be rendered therefor.
10. Where the proceedings are of an equitable character the court upon reading the pleadings and proofs and hearing the testimony offered shall render such judgment as is consistent with the rules here-tofore observed in chancery cases.

11. When judgment by default is rendered against any defendant who has not been personally served the court before issuing process to enforce such judgment may require the plaintiff to give security to abide the future order of the court as contemplated in the next succeeding section.

12. If such defendant or any person legally representing him shall at the next term of the court after being notified of the judgment and within one year after the rendition thereof petition the court to set aside such judgment and shall give such security and comply with such conditions as the court shall direct the court may in its discretion open the judgment and permit the defendant to defend against the petition.

13. Such proceedings shall not disturb the rights of bona fide purchasers of property under the judgment thus set aside but the court may make such order on behalf of the defendant and against the plaintiff as the circumstances of the case require.

4. Default may be set aside on such terms as the enset into deer just but not unless an affide (e) RATTARD is filed and a reasonable of cuse he show a for having made such detaut, non unless application be made therefore at t.NORSERNO YE TREMEDUL [with was entered or if

SECTION 1. A judgment by confession without action may be entered by the clerk of the district court or by a justice of the peace if within his jurisdiction in the manner hereinafter prescribed.

Such confession can only be for money due or to become due or to secure any person against contingent liabilities on behalf of the defendant and must be for a specified sum.
 A statement in writing must be made and signed by the defen-

dant and verified by his oath to the the following effect and filed with the clerk or justice of the peace.

FIRST—For the money due or to become due it must state concisely the facts out of which it arose and that the sum confessed therefor is justly due or to become due as the case may be.

SECOND—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.

4. If in the district court the clerk shall thereupon make an entry of judgment in his court record for the amount thus confessed and five dollars costs and shall issue execution thereon forthwith unless otherwise stipulated by the defendant in his confession.

5. If in a justice court he shall thereupon enter a judgment on his docket with one dollar costs and issue execution as above directed.—If a transcript of such judgment be filed with the clerk of the district court a copy of the statement must be filed with it.
6. Upon an authority given before this law takes effect and which was valid when given judgment may be rendered up as herein mentioned or as nearly so as the circumstances of the case will permit.

which must be more than 1 ve dollate in order to sutherise an attach

CHAPTER 10.

OF SUBMITTING CONTROVERSIES WITHOUT ACTION.

SECTION 1. Parties to a question in difference which might be the subject of a civil action may present an agreed statement of the facts thereof to any court having jurisdiction of the subject matter.

2. 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.

3. The court must thereupon hear and determine the case and the judgment rendered thereon will be the same in all respects as though suit had been regularly brought and will be followed by the same consequences. REVISED CODE. -31 vissionovotate an OF ATTACHMENT AND GARNISHMENT.

242

SECTION 1. In an action for the recovery of money the plaintiff may cause any property of the defendant which is not exempt from execution to be attached at the commencement of or during the progress of the proceedings by pursuing the course hereinafter prescribed.

2. If it be subsequent to the commencement of the action a seperate 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.

3. The petition which asks an attachment must in all cases be sworn to. It must state that as the affiant verily believes the detendant is a foreign corporation or acting as such—or that he is a non-resident of the state—or that he is in some manner about to dispose of or remove his property out of the state without leaving sufficient remaining for the payment of his debts—or that he has disposed of his property (in whole or in part) with intent to defraud his creditors—or that he has absconded so that the ordinary process cannot be served upon him.

4. 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 authorise an attachment.

5. 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.

6. If the demand is not founded on contract the original petition must be presented to some judge of the Supreme or District court or the judge of the county court who shall make an allowance thereon of the amount in value of the property that may be attached. The provisions of this section only apply to cases in the District court.

7. The property of a debtor may be attached previous to the time when the debt becomes due where nothing but time is wanting to fix an absolute indebtedness and where the petition in addition to that fact states that the defendant is about to dispose of his property with intent to defraud his creditors or that he is about to remove from the state and refuses to make any arrangament 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.

8. Before any property can be attached as aforesaid the plaintiff must file with the clerk a bond for the use of the defendant with sureties to be approved by the clerk in the penalty at least of double the value of the property sought to be attached and in no case less than two hundred and fifty dollars if in the District Court nor less than fifty dollars if in the justices court conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

9. In an action on such bond the plaintiff therein may recover if he shows that the attachment was wrongfully sued out and if wilfully wrong he may recover exemplary damages. Nor need he wait until the principal suit is determined before he bring suit on the bond.

 10. Where suits are properly commenced in the District court of any county the auxiliary process of attachment may run into any other county where property of the defendant can be found.
 11. The clerk shall issue a writ of attachment directing the sheriff of the county therein named to attach property of the defendant to the requisite amount therein stated.

12. The sheriff shall in all cases attach the amount of property directed if sufficient not exempt from execution be found in his county giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable. 13. Writs of attachment from the District court may be thus sent into different counties at the same time but if more property be attached, in the aggregate than the plaintiff is entitled to hold in that manner he must abandon the overplus and pay all costs incurred in relation to it.

14. Stock or interest owned by the defendant in any company and also debts due him or property of his held by third persons may be attached.

15. The mode of attachment must be as follows:

FIRST—By giving the defendant in the action if found within the county and also the person occupying or in psssession of the property if it be in the hands of a third person notice of such attachment. SECOND—If the property is capable of manual delivery the sheriff must take it into his custody if it can be found.

THIRD-Stock in a company is attached by notifying the President

or delivering the same to the sheriff as above provided. 28. Property attached otherwise than by garnishment is bound thereby from the time of the service of the attachment only.

29. All money attached by the sheriff or coming into his hands by virtue of the proceeding in attachment shall forthwith be paid over to the clerk to be by him retained till the further action of the court.

30. The defendant may any time before judgment discharge the property attached or any part thereof by giving bond with surety to be approved by the sheriff in a penalty at least double the value of the property sought to be released conditioned that such property or its estimated value shall be delivered to the sheriff to satisfy any judgment which may be obtained against the defendant in that suit within twenty days after the rendition thereof. This bond shall be filed with the clerk of the conrt.

31. To determine the value of the property in such cases unless the parties agree otherwise the sheriff shall summon two disinterested persons having the qualification of jurors who after being sworn by him to make the appraisement faithfully and impartially shall proceed to the discharge of their duty.
32. If such persons disagree as to the value of the property the sheriff shall decide between them.
33. In an action brought upon the bond above contemplated it shall be a sufficient defence 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.

34. The sheriff must in all cases return an inventory of the property attached as well as the appraisement above provided for in cases where such appraisement has been made.

35. When the sheriff thinks the property attached in danger of serious and immediate waste or decay he may summon three persons having the qualification of jurors to examine the same. If they are of the opinion that the property requires soon to be disposed of they shall specify a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. He shall thereupon give the same notice as for the sale of goods on execution and for the same length of time unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. 36. The money arising from such sale shall remain in the hands of the clerk to abide the event of the suit.

37. The word "sheriff" as used in this chapter is meant to apply to constables, where the proceedings are in a justice's court.
38. When the proceedings are in a justice's court the justice is to be regarded as the clerk of the court for all the purposes herein contemplated.

indes give the course of CHAPTER 12. When the course in the state of t

district or other civil anguation and any other public property which

not provide interest out to of EXECUTIONS. Second his proceeding at

SECTION 1. 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.
2. Executions may issue at any time within five years from the entering of the judgment.
3. After the lapse of five years such execution can only issue after sueing out a scire facias and obtaining the requisite order of the court thereon.

4. Executions from the district court may issue in the first instance into any county which the party ordering them may direct.

5. 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.

6. The execution must intelligibly refer to the judgment stating the time and place at which it was rendered the names of the parties thereto—its amount—and the amount still to be collected thereon if for money and if not for money it must state what specific act is required to be performed.

7. Where the judgment is against the husband and wife the execution may issue against the property of either or both of them.
8. Stock or interests owned by the defendant in any company and also debts due him and property of his in the hands of third persons may be levied upon in the manner provided for attaching the same

and the proceedings by garnishment shall be the same as nearly as practicable.

9: Bank bills and other things in action may be levied upon and sold or appropriated as hereinafter provided and assignments thereon by the officer when necessary shall have the same effect as if made by the defendant and may be treated as so made.

10. After the rendition of judgment any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness or so much thereof as is necessary to satisfy the execution and the sheriff's receipt shall be a sufficient discharge therefor.

11. Public buildings owned by the state or any county, city, school district or other civil corporation and any other public property which is necessary and proper for carrying out the general purpose for which any such corporation is organized are exempt from execution. The property of a private citizen can in no case be levied upon to pay the debt of civil corporation. To poissoned add to provideb edd to 10 12. In case no property is found on which to levy which is not exempted by the last section or if the judgment creditor elect not to issue execution against such corporation he is entitled to the amount of his judgment and costs in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no script or evidences of debt a tax must be levied as early as practicable sufficient to pay off the judgment with interest and costs. dt moo 13. A failure on the part of the officers of the corporation to comply with the requirements of the last section renders them personally responsible for the debt. 14. The following property of private individuals is also exempt from execution. All wearing apparel kept for actual use and suitable to the condition of the party and trunks and other receptacles to contain the same, one musket or rifle, the proper tools instruments or books of any farmer mechanic surveyor physician teacher or professor. The horse or team and wagon or other vehicle with the proper harness or tackle by the use of which any phisician public officer farmer, teamster or other laborer habitually earns his living. All libra-

ries, family bibles portraits and paintings. A seat or pew occupied by the debtor or his family in any house of public worship and an interest in a public or private burying ground not exceeding one acre for any one defendant. 15. If the debtor is the head of a family there is further exempt his homestead as provided by law one cow and calf one horse unless a horse has previously been exempted—fifty sheep and the wool therefrom five hogs and all pigs under six months old—the necessary food for all animals exempt from execution for sixty days. All flax raised by the defendant and the manufactures therefrom, one bedstead and the necessary bedding for every two in the family. All cloth manufactured by said defendant not exceeding one hundred yards in quantity—household and kitchen furniture not exceeding one hundred dollars in value, all spinning wheels and looms and other instruments of domestic labor kept for actual use and the necessary provisions and fuel for the use of the family for six months.

.

16. The earnings of such debtor for his personal services or that of his family at any time within ninety days next preceding the levy are also exempt from execution and attachment.

17. The officer shall in all cases as far as practicable select such property and in such quantities as will be likely to bring the exact amount required to be raised as nearly as practicable.

18. He must execute the writ by levying on the property of the judgment debtor collecting the things in action by suit in his own name if necessary or by selling the same—selling the other property and paying to the plaintiff the proceeds or so much thereof as will satisfy the execution.

19. The sheriff must give four weeks notice of the time and place of selling real property and two weeks notice of that of personal property.

20. Such notices shall be given by being posted up in at least three public places of the county one of which shall be at the place where the last district court was held. In addition to which in case of the sale of real estate or where personal property to the amount of two hundred dollars or upwards is to be sold there shall if either party make of the sheriff a written request therefor be two publications of such notice made in some newspaper printed in the county if there be one.

21. 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.

22. The sale must be at public auction between nine o'clock, A.M. and sunset. ab and y difficient between a product and an arrive in the sale must be at public auction between nine o'clock, A.M. REVISED CODE.--32

1.1

23. Where there are no bidders, or where the amount offered is grossly inadequate or where for any cause the sale is prevented from taking place on the day fixed the sheriff may postpone the sale for not more than three days without being required to give any further notice thereof but he shall not make more than two such postponements. The state of the set of the set of the best

24. Where 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.

25. 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.

26. Where property is unsold for want of bidders the levy still holds good and if there is sufficient time the property may again be advertised and sold under the same execution or the execution may be returned and a venditioni exponas issued.

27. When the purchaser fails to pay the money when demanded the plaintiff or his attorney may elect to proceed against him for the amount--otherwise the sheriff shall treat the sale as a nullity and may sell the property again on the same day or after a postponement as above authorised.

28. Money levied upon may be appropriated without being advertised or sold. The same may be done with bank bills, drafts promissory notes, or other papers of a like character if the plaintiff will receive them at their par value as cash or if the officer can exchange them for cash at that value.

29. Where by the endorsement of the clerk upon the writ it appears that either of the persons against whom it is issued is only a surety for some of the others the sheriff shall in selling first exhaust the property of the principals before he sells any of the property of the surety.

30. Where the sheriff has doubts as to the defendants ownership of personal property he may refuse to levy or if he has levied he may refuse to sell and may surrender the property to the claimant unless the plaintiff will first give him a bond of indemnity to enable him to proceed safely. In normal notions bidding to ad teum offer all .S?

31. Where personal property is owned jointly by the defendant and

REVISED CODE .--- 32

another the sheriff may take it into custody subject to be released by a delivery bond or a bond conditioned to pay the debt to the value of the defendants interest in the property levied on.

32. Where a judgment has been obtained against the executor of of one deceased which his personal estate is insufficient to satisfy the plaintiff may file his petition in the office of the clerk of the district court wherein judgment was rendered against the executor heirs and devisees of real estate (if there are such) setting forth the facts and that there is real estate of the deceased within the state describing its location and extent and praying the court to award execution against the same.

33. A notice shall thereupon be endorsed upon said petition notifying the persons against whom the petition is filed to appear on the first day of the next term and shew cause if any they have why the execution should not be awarded.

34. The petition and notice shall be served and returned in the ordinary manner and the same consequences as in civil actions shall result from not serving them ten days before the next term of the per minim together with costs subject to the exception con court.

35. At the proper time the court shall award the execution unless sufficient cause be shown to the contrary.

36. The nonage of the heirs or devisees shall not be deemed such sufficient cause.

37. Mutual judgments the executions on which are in the hands of the same officer may be set off the one against the other except that the costs shall not be so set off unless the balance of cash actually collected on the larger judgment is sufficient to pay the costs of both judgments and such costs shall be paid therefrom accordingly.

38. Where 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. Where the estate is of a larger amount the property is redeemable as hereinafter prescribed. This we make not a busi

39. At the time of the sale the sheriff shall give to the purchaser a certificate containing a description of the property and the amount of money paid by such purchaser and stating that unless redemption is made within one year thereafter according to law he or his heirs or assigns will be entitled to a deed for the same. and add seeled 1.00

40. The defendant may redeem such property at any time within

aforesaid will hold the property absolutely.

one year from the day of sale as hereinafter provided and will in the meantime be entitled to the possession of the property.

41. For the first six months after such sale his right to redeem is exclusive but if no redemption is made by him at the end of that time any creditor of the defendant whose demand is a lien upon such real estate may redeem the same at any time within nine months from the day of sale. But a mechanic's lien before judgment thereon is not of such a character as to entitle the holder to redeem.

42. Any creditor whose claim becomes a lien prior to the expiration of the time allowed by law for redemption by creditors may redeem. A mortgagee may thus redeem before or after the debt secured by the mortgage falls due.
43. Creditors having the right of redemption may redeem from each other within the time above limited and in the manner herein provided.

44. 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.

45. Where a senior creditor thus redeems from a junior he is only required to pay off the amount of those liens which are paramount to his own with the interest and costs appertaining to those liens.

46. But the junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off that lien or by leaving with the clerk beforehand the amount necessary therefor.

47. Wherever 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.
48. 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.

49. Unless the defendant thus redeems the purchaser or the creditor who last redeemed prior to the expiration of the nine months aforesaid will hold the property absolutely. 50. In case it is thus held by a redeeming creditor his lien and the claim out of which it arose will be held to be extinguished unless he pursues the course pointed out in the next section.

51. If he is unwilling to hold the property and credit the defendant therefor with the full amount of his lien he must within ten days after the expiration of the nine months aforesaid enter on the execution docket the utmost amount that he is thus willing to credit on his claim.

52. Any unsatisfied lien creditor within ten days after the expiration of the time thus allowed to make the entry required in the last section may redeem the property by paying the amount of the legal disbursements of the last holder as hereinbefore regulated added to the amount thus entered on the execution docket together with interest and costs.

53. 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 execution docket in which case any other unsatisfied lien creditor may in like manner redeem within ten days as aforsaid 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.

54. The mode of making the redemption is by paying the money into the clerk's office for the use of the persons thereto entitled. The person so redeeming if not the defendant in execution must also file his affidavit or that of his agent or attorney stating as nearly as practicable the amount still unpaid and due on his own claim.

55. 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 execution docket a minute of such redemption—of the amount paid and the amount of the lien of the last redemptioner as sworn to by him.

56. 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.

57. Where the property has been sold in parcels any distinct portion may be redeemed by itself.

58. Where the interest of several tenants in common has been sold on execution the undivided portion of any or either of them may be redeemed separately. 59. The rights of a defendant in relation to redemption are transferable and the assignce has the like power to redeem.

60. 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 his assignee.

61. If the person so entitled be dead the deed shall be made to his heirs but the property will be subject to the payment of the debts of the deceased in the same manner as if acquired during his life time.

62. 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 are constructive notice of the rights of the purchaser but no longer.

63. Deeds executed by a sheriff in pursuance of such sales are presumptive evidence of the regularity of all previous proceedings in the case and may be given in evidence without preliminary proof.

64. Where 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.

65. Lands sold previous to the taking effect of this act shall be redeemed according to the laws heretofore in force 66. The term "defendant" as herein used is intended to designate the party *against* whom and the term "plaintiff" the party in *favor* of whom any execution has issued.

67. The provisions of this chapter are intended to embrace proceedings in justice's courts so far as they are applicable; and the term "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 attachments.

36. A creditor redecting as above contemplated is entitled to reoeiffe an assignment of the centration issued by the sherif to the original purchaser as hereinbefore directed. 37. Where the property 1.81 astrony in parcels any dispact purtion may be redecined by itself.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION. Section 1. Where an execution against the property of any judgment debtor has been issued from the district or supreme court to the sheriff of the county where such debtor resides or to the sheriff of the county wherein the cause was orignally tried in case the said debtor resides out of the state and is returned unsatisfied in whole or in part the judgment creditor is entitled to an order for the appearance and examination of the said debtor.

2. The like order may be obtained at any time after the issuing of an execution upon proof—by affidavit of the party or otherwise—to the satisfaction of the court or officer who is to grant the same that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment.

3. Such order may be made by the court in which the judgment was rendered or by any judge thereof in vacation or by the county court of the county to which this execution has been issued as aforesaid or by the judge thereof. And the debtor may be required to appear and answer before either of such courts or officers or before a referee appointed by the court or judge who issued the order.

4. The debtor on his appearance may be interrogated in relation to any fact calculated to show the amount of his property or the disposition which has been made of it or any other matter pertaining to the purpose for which the examination is permitted to be made. And the interrogations and answers shall be reduced to writing and preserved by the court or officer before whom it is taken.

5. If any property rights or credits subject to execution are thus ascertained an execution may be issued and they may be levied upon accordingly.

6. Should the judgment debtor fail to appear after being personally served with notice to that effect or should he fail to make full answer to all proper interrogations 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.

7. 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.hinds out or a soliton radiab dour and with the like effect as is above provided hide all as a high radiable dour and a soliton of the soliton rad ni to soliton in benefities and a soliton and to the soliton base some and the soliton and the soliton and to the soliton base soliton and the soliton and the soliton and the soliton and the chapter 14.

WRITS OF ERROR CORAM NOBIS.

SECTION 47. Any person aggrieved by the judgment of the District court by reason of any material error in fact may within one year after the rendition thereof obtain from the clerk of the court which rendered the judgment a writ of error *coram nobis* returnable to the next term of said court.

48. Such writ of error does not operate as a supersedeas unless the party suing out the same give bond in like manner as is required in cases of appeals to the Supreme court.

49. Notice of the suing out of such writ must be served on the opposite party or his attorney at least ten days prior to the next term of the court or the cause shall be continued to the next succeeding term unless the defendant in error consents to a trial at the first term.

50. In all cases of affirmance when the original judgment has been superseded judgment shall be rendered against the plaintiff in error and his sureties for the amount of the former judgment interests and costs together with damages at the discretion of the court not exceedina ten per cent on the amount of the judgment.

51. The court may prescribe for the service by publication upon defendants who reside out of the state having no known attorney therein for the assignment of errors, making up the issue thereon and all such other matters as are necessary to give full effect to this proceeding.

Descriptions and the second se

board or officer exercising judicial functions is alleged to have exceeded their proper jurisdiction or is otherwise acting illegally where in the judgment of the court applied to for the writ there is no other plain, speedy, and adequate remedy.

2. The writ may be grantedby the district court of the proper county but if to be directed to a district court or the judge thereof then by the supreme court, and shall 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 record and proceedings as well as the facts of the case (describing and referring to them or any of them with convenient certainty) and also to have then and there the writ.

3. If a stay of proceedings is sought the court may require a bond and may fix the penalty and conditions thereof.

4. The motion for this writ must be made on affidavit, and the court may require a notice of the application to be given to the adverse party or may grant an order to show cause or may in its discretion grant the writ without notice.

5. 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.

6. If the return to the writ be defective the court may order a farther return to be made and may compel obedience to the writ and to such farther order by attachment if necessary.

7. When a full return has been made the court must proceed to hear the parties or such of them as may attend for that purpose and may thereupon give judgment affirming or annulling the proceedings below or in its discretion correcting those proceedings and prescribing the manner in which the defendant shall proceed farther in the matter.

8. From the decision of the district court an appeal lies to the supreme court as in other cases.

CHAPTER 16. OF APPEALS FROM THE DISTRICT TO THE SUPREME COURT. SECTION 1. Appeals in all cases hereafter tried must be taken with

REVISED CODE-33

in one year from the time the judgment is rendered-in all cases heretofore tried within one year from the time this law takes effect. But the time allowed the appellant by the pre-existing law is not to

plain, streedy, and adequate remu 2. Appeals are taken by the service of a notice in writing on the adverse party his agent or attorney and also on the clerk of the court in which the proceedings were had-stating the appeal from the same or some specific part thereof. and don't don't don't the state of the visit

3. The clerk of the district court should not make out the transscript as required in the next section until payment therefor is made by the appellant and if he sends up such transcript he is in all cases responsible to the county for the amount of the fee for such transcript.

4. Upon receiving the notice and the payment aforesaid the clerk shall forthwith transmit to the supreme court a transcript of the record in the cause or so much thereof as the appellant in writing directs-to which shall be appended the notice of the appeal and the written directions of the appellant above contemplated (if any.)

5. All proper entries made by the clerk and all papers pertaining to a cause and filed therein (except subpœnas, depositions and other papers which are used as mere evidence) are to be deemed parts of the record. But a transcript of motions affidavits and other papers when they relate to collateral matters should not be certified up 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. 6. The notice of the appeal must be served on the respondent fif-

teen days prior to the next term or the cause will not be then tried unless by consent of the appellee.

7. A part of several co-parties may appeal but in such a case they must serve notice of the appeal upon all the other co-parties and file the proof thereof with the clerk of the supreme court.

8. If the other co-parties refuse to join they cannot take an appeal afterwards nor shall they derive any benefit from the appeal unless from the necessity of the case.

9. Unless they appear and decline to join they shall be regarded

as having joined and shall be liable for their due proportion of costs. 10. The death of any or all of the parties shall not cause the proceedings to abate but the names of the proper persons being substituted the cause may proceed. The court in such cases may in its dis-

REVISED CODE-33

cretion grant a continuance where such a course will be calculated to promote the ends of justice. 11. Nor shall the appeal in any case stay the execution of the judgment unless a bond be filed in the office of the clerk of the court which rendered the judgment in a penalty and with sureties to be approved by the clerk thereof conditioned that if the judgment appealed from or any part thereof is affirmed or judgment rendered against him in the supreme court the appellant will pay the judgment and all the damages and costs which may be awarded against him and otherwise obey the orders of the court.

12. If the judgment was for the payment of money, then the penalty shall be in at least twice the amount of the judgment and costs. If not for the payment of money the penalty shall be sufficient to save the appellee harmless from the consequences of taking the appeal. It shall in no case be less than one hundred dollars.

13. The taking of the appeal to a part of a judgment and the filing of the bond as above directed does not cause a stay of execution as to any portion of the judgment not appealed from.

14. The supreme court when it affirms the judgment shall also if the appellee moves therefor render judgment against the appellant and his sureties in the bond above mentioned for the amount of the judgment damages and costs referred to therein in case such damages can be accurately known to the court without an issue and trial. 15. If execution has issued prior to the giving of the bond above contemplated the clerk shall countermand the same.

16. 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, traduciob out of bood s study a oals lists off

9

17. The supreme court may reverse or affirm the judgment below or render such judgment as the district court should have done according as they may think proper.

18. Upon the affirmance of any judgment where a stay of execution was obtained as above contemplated the court may award to the appellee such damages as it may deem proper not exceeding twelve per cent. upon the amount of the judgment. If linds and a state of the

19. If the supreme court affirm the judgment it may remand the cause to the district court to have the same carried into effect. Or it may itself issue the necessary process for this purpose and direct such process to the sheriff of the proper county. The of considered all ...

20. If by the decision of the Supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment either the supreme or district court may direct execution or writ of restitution to issue for the purpose of restoring to such appellant his property or the value approved by the clark thereaf conditioned that if the judgm.hosrad 21. Property acquired by a bona fide purchase under a judgment subsequently reversed shall not be affected by such reversal. and all the damages and costs which may be swarded against him and otherwise obey the orders of the court, int at training an at alty shall be in at least twicHII HITTL of the judgment and costs. If not for the payment of money the penalty shall be sufficient to save Isonge all gaid Of special actions and proceedings. it shall in no sare be less than one hundred dollars, some add to be in the faith of the faith of the spirit ATCHAPTER 1. The faking of the spirit ATCHAPTER 1. ling of the bond as above directed does not emise a stay of excention and belosting REPLEVIN. tobut of the noticog via of so

SECTION 1. When the object of the action is to recover the possession of personal property the petition must in all cases be under oath. 2. It must state that the property (describing it) is wrongfully detained by the defendant—that the plaintiff is entitled to the present possession thereof—that it was not taken from him by any legal process or if so taken that it was exempt from seizure by such process. It must also state the alledged cause of detention according to his best knowledge and belief and also the value of the property.

3. He shall also execute a bond to the defendant with sureties to be approved by the clerk in a penalty at least equal to twice the value of the property sought conditioned that he will appear at the next term of the court and prosecute his suit to judgment and return the property if a return be awarded and also pay all costs and damages that may be adjudged against him. This bond shall be filed with the clerk of the court and is for the use of any person injured by the proceeding.

4. The clerk shall thereupon issue a writ of replevin directed to the sheriff to take the property therein described and deliver the same to the plaintiff. The ordinary original notice must also be served on the defendant in the usual manner.

5. In obedience to such writ the sheriff must forthwith take posses-

ion of the property if in the possession of the defendant or his agent for which purpose he may break open any dwelling house or other enclosure having first demanded entrance and exhibited his authority if required.

6. If a third person claim the property he must be made a co-defendant.

7. If the property sought be not obtained the plaintiff if he establishes his right thereto shall recover the value of that right. Whether obtained or not he shall recover the damages he has sustained in consequence of the illegal detention thereof.

8. If the plaintiff fail to establish his right to the property the defendant shall recover such damages as under the circumstances he shows himself entitled to.

those in actions relating to personal property except as herein other

wise provided. 13. The preceding section is only intended to apply to interest existing at the time of the trig garqAHO tintended to prevent a new action to test the validity of rights acquired subsequently to the for

ACTIONS FOR THE RECOVERY OF REAL PROPERTY. SECTION 1. Any person having a valid subsisting interest in real property and a right to the immediate possession thereof may recover the same by action which may be brought against any person acting as owner, landlord or tenant of the property claimed. 2. Whenever it appears that the defendant is only a tenant—the landlord may be substituted—reasonable notice thereof being given him.

3. Where the defendant is a non-resident having an agent for the property in the state service may be made upon such agent in the same manner and with the like effect as though made on the principal.

4. The answer of the defendant must set forth under what claim of right (if any) he holds possession and if as mere tenant the name and residence of his landlord must be given.

5. The court may grant continuances in cases of this nature for reasons of less importance than those required to be set forth in ordinary civil actions. The appendix provide the set of the set of

6. When the defendant makes defence it is not necessary to prove him in possession of the premises. 7. The plaintiff cannot recover for the use and occupation of the premises for more than six years prior to the commencement of the action.

8. Where the plaintiff shows himself entitled to the immediate possession of the premises judgment shall be entered and a writ of possession issued accordingly.

9. If the interest of the plaintiff expire before the time in which he could be put in possession he can only obtain a judgment for damages.

10. Where there is no proof against some of the defendants the court may order a discontinuance as to them before the testimony in the case is closed.

11. Judgments in proceedings of this nature are as conclusive as those in actions relating to personal property except as herein otherwise provided.

12. The preceeding section is only intended to apply to interests existing at the time of the trial and is not intended to prevent a new action to test the validity of rights acquired subsequently to the former trial.

13. The court in its discretion may grant a new trial on the application of a party or those claiming under him made at any time within two years after the determination of the former trial.

14. The result of such new trial (if granted after the close of the term at which the first trial took place) shall in no case affect the interest of third persons acquired in good faith for a valuable consideration since the former trial.

15. But the party who on such new trial shows himself entitled to lands which have thus passed to a bona fide purchaser may recover the proper amount of damages against the other party either in the same or a subsequent action.

16. 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.

17. In an action against a tenant the judgment shall be conclusive against the landlord who has received notice as hereinbefore provided for.

18. If not notified he shall be regarded as a defendant who has not been served with the original notice and shall be treated accordingly.19. The plaintiff must recover on the strength of his own title.

20. The court on motion and after notice to the opposite party may for cause shown grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof for the purposes of the action.

21. 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.

22. Where the plaintiff in an action of this nature is entitled to damages for withholding or using or injuring his property the defendant may set off the value of any permanent improvements made thereon to the extent of such damages unless he prefers to avail himself of the law for the benefit of occupying claimants.

23. In case of wanton aggression on the part of a defendant the jury may award exemplary damages.

24. An action in the nature of that authorised in this chapter may also be brought by one having a reversionary interest or by one either in or out of possession against another who claims title to real property although the defendant may not be in the possession thereof for the purpose of determining and quieting the question of title.

25. The rules above prescribed shall in such cases be observed as far as they are applicable.

26. In an action for the recovery of dower before admeasurement, or by a tenant in common or joint tenant of real property against his co-tenant the plaintiff must show in addition to his evidence of right that the defendant either denied the plaintiffs right or did some act amounting to such denial.

CHAPTER 3. House participation of J 11 CHAPTER 3. CHAPT

SECTION 1. Where the object of the action is to effect a partition of real property among several joint owners the petition must describe the property and the respective interests of the several owners thereof if known. 2. If the number of shares or interests are known but the owners thereof are unknown or if there are known or are supposed to be any interests which are unknown contingent or doubtful these facts must be set forth in the petition with reasonable certainty.

3. Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties at the option of the plaintiff.

4. If the lien is upon one or more individual interests of any of the parties it shall after partition or sale remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

5. 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.

6. Where there are two or more plaintiffs they may reply jointly or either of them may reply to any or all the answers of the defendants. 7. Issues may thereupon be joined and tried between any of the contesting parties the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

8. Each of the parties appearing whether as plaintiffs or defendants must exhibit his documentary proof of title (if he has any) and must file the same or copies thereof with the clerk.

9. If the statements in the petition and answers are not contradicted in the manner aforesaid or by the documentary proof exhibited as above required they shall be taken as true.

10. 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.

11. Upon entering such judgement the court shall appoint referees to make partition into the requisite number of shares.

12. 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.
13. If it appears to the referees that a partition cannot be made without great prejudice to the owners they shall so report to the court.
14. If satisfied with such report the court shall cause an order to the court of the satisfied with such report the court shall cause an order to the court.

be entered directing the referees to sell the premises so situated and shall also fix the terms of sale.

15. Before proceeding to sell the referees shall each give security to be approved by the court or judge thereof conditioned for the faithful discharge of his duties. At any time thereafter the court may require further and better security.

16. 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.

manner. 17. 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.

18. After making the order of sale as aforesaid the court shall direct the clerk to report whether there is any general encumbrance by mortgage judgment or otherwise upon any portion of the property.

19. If deemed advisable the court may appoint a referee to inquire into the nature and amount of incumbrances and to report accordingly. From that report an appeal lies to the court.

20. The referee shall give the parties interested at least five days notice of the time and place when he will receive proofs of the amounts of such encumbrances.

21. In taking such proof he may receive among other evidence the affidavit of the parties interested.

22. If any incumbrance be ascertained to exist the proceeds of the sale of that portion (after the payment of costs) or so much thereof as is necessary shall if the owner consent be paid over to the incumbrancer.

23. If the owner object to the payment of such incumbrance the money shall be retained or invested by order of court to await final action in relation to its disposition and notice thereof forthwith given to the incumberancer unless he has already been made a party.

24. The court may direct an issue to be made up between the incumbrancer and the owner which shall be decisive of their respective rights.

25. If an estate for life or years be found to exist as an incumbrance upon any part of said property and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate the court shall direct the avails of the encumbered property to be in-

REVISED CODE.-34

vested and the proceeds to be paid to the encumbrancer during the life time of the incumbrance.

26. The proceedings in relation to incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no such difficulties exists.

27. The court in its discretion may require all or any of the parties before they receive the monies arising from any sale authorised in this chapter to give satisfactory security to refund such monies with interest in case it afterwards appears that such parties were not entitled thereto.

28. If the sales aforesaid be approved and confirmed by the court an order shall be entered directing the referees or any two of them to execute conveyances pursuant to such sales. But no conveyances can be made until all the money is paid without receiving from the purchaser a mortgage of the land sold or other equivalent security.

29. Such conveyances so executed being recorded in the county where the premises are situated shall be valid against all subsequent purchasers and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

30. 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.

31. If the sales are disapproved the money paid and the securities given must be returned to the persons respectively entitled thereto.

32. Where 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.

33. 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 with a plat of the premises.

34. Unless the shares are attached to their respective owners by the referees as hereinbefore contemplated the clerk shall number the shares and draw the names of the future owners by lot.

35. Where a partition can be conveniently made of part of the pre-

19.1

mises but not of all, one portion may be partitioned and the other sold as hereinbefore provided.

36. On good cause shown the report may be set aside and the matter again referred to the same or other referees.

37. Upon the report of the referees being confirmed judgment thereon shall be rendered that the partition be firm and effectual forever.

38. Where all the parties in interest have duly notified to appear and answer either by the service of the petition and notice or by the publication prescribed by law any of the proceedings above authorised shall be binding and conclusive upon them all. If only a portion of such parties be served they only shall be bound by such proceedings.

39. This judgment of partition shall be presumptive evidence of title in all cases and as between the parties themselves it is conclusive evidence thereof subject however to be defeated by proof of a title paramount to or independent of that under which the parties held as joint tenants or tenants in common.

40. 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.

41. Any person claiming to hold an incumbrance upon any portion of the property involved in the suit may in default of the owner appear and act as his representative in any of the proceedings under this act.

42. 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.

43. The ascertained share of any absent owner shall be retained or the proceeds invested for his benefit.

property or recorded with the deed of real property and shall then be receivable in evidence to prove the facts they state.

FORECLOSURE OF MORTGAGES.

SECTION 1. Any mortgage to secure the payment of money only and

where the time of payment is therein fixed may be foreclosed by notice and sale as hereinafter provided unless a stipulation to the contrary has been agreed upon by the parties. and another been not ask

2. The notice must contain a full description of the property mortgaged together with the time place and terms of sale. draod

3. Such notice must be served on the mortgagor and upon all persons having recorded liens upon the same property which are paramount to the mortgage or they will not be bound by the proceedings.

4. The service and return must be made in the same manner as in case of the original notice by which civil actions are commenced except that no publication in the newspapers is necessary for this purpose-the general publication directed in the next section being a sufficient service upon all the parties in cases where service is to be made by publication.

5. 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 sales of like property on execution and the sale shall be conducted in the same manner.

6. The purchaser shall take all the title and interest on which the mortgage operated as a lien. a should tranze starting right of million

7. The sheriff conducting the sale shall execute to the purchaser a bill of sale of the personal property or a deed of the real estate which shall be respectively effectual to carry the whole title and interest purpear and act as his representative in any of the proceeding, beas

8. Deeds of real estate must be acknowlegded and recorded like deeds for lands sold on execution. I transition privad anorrol . St

9. 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 af-

10. Such affidavits shall be attached to the bill of sale of personal property or recorded with the deed of real property and shall then be receivable in evidence to prove the facts they state.

11. Sales made in accordance with the above requirements are valid in the hands of a bona fide purchaser whatever may be the equities between the mortgagor and mortgagee.

12. The right of the mortgagee to foreclose as well as the amount claimed to be due may be contested by any one interested in doing

Section I. Any morigage to secure the payment of money only and

so and the proceeding may be transferred to the district court for which purpose an injunction may issue if necessary.

269

13. The holder of any mortgage may in all cases-and where the mortgage is given for any other purpose than to secure the payment of money at a day certain he must proceed by civil action in the district court where he wishes to foreclose the same.

14. If any thing be found due the plaintiff the court shall render a judgment therefor and must direct the mortgaged property-or so much thereof as is necessary-to be sold to satisfy the amount due with interest and costs. A special execution shall issue accordingly.

15. 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.

16. If separate suits are brought on the bond or note and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at his costs.

17. Where a judgment is obtained in an action on the bond the property mortgaged may be sold on the execution issued thereon and the judgment shall be a lien thereon from the date of the recording of the mortgage. and taistable add at noise red bosologich but para

18. At any time prior to the sale made in accordance with either of the above modes of foreclosure a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage by paying him the amount secured with interest and costs together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure or discontinue it at his option.

19. If there is an overplus remaining after satisfying the mortgage and costs and if there are no other liens upon the property such overplus shall be paid to the mortgagor,

20. If there are other liens on the property sold or other payments secured by the same mortgage they shall be paid off in their order. And if the money secured by any such lien is not yet due a suitable rebate of interest must be made by the holder thereof or his lien on such property will be postponed to those of a junior date and if there are none such the balance will be paid to the mortgagor.

21. As far as practicable the property sold must be only sufficient to satisfy the mortgage foreclosed in either of the methods aforesaid. 22. The same costs and fees shall be allowed for services rendered

and acts performed under the provisions of this chapter as for like acts and services in other cases which will be paid out of the proceeds of the sale made.

23. Whenever the amount due on any mortgage is paid off the mortgagee or those legally acting for him must acknowledge satisfaction thereof in the margin of the record of the mortgage. If he fails to do so within a reasonable time after being requested he shall forfeit to the mortgagor the sum of twenty-five dollars.

24. The vendor of real estate where part or all the purchase money remains unpaid after the day fixed for payment whether time is or is not the essence of the contract may file his petition asking the court to require the purchaser to perform his contract or to foreclose and sell his interest in the property.

25. 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.

26. Deeds of trust of real or personal property may be executed as securities for the performance of contracts and all sales made in accordance with their terms are valid. Or they may be treated like a mortgage and foreclosed by action in the district court.

27. Nothing herein contained is intended to prevent parties from fixing their own terms to any contract and prescribing the manner in which those contracts shall be enforced nor to change the rule or affect the rights of the vendor of real estate in those cases where time is of the essence of the contract.

off any other tiens of the same holder which are parameter to his estion, may then proceed with the fore-destine, or discontinue, it at his estion, and there is an ororphic remaining after satisfying the mortgage and costs and if there are n.2. RETARN upon the property such over-

alightered units to blow view ARBITRATIONS, and to are orbit 11 .09

SECTION 1. All controversies which might be the subject of civil actions may be submitted to the decision of one or more arbitrators as hereinafter provided. 2. The parties themselves or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter must sign a written agreement specifying particularly what demands are to be submitted the names of the arbitrators and the court by which the judgment on their award is to be rendered.

3. They shall then appear before some justice of the peace of the county and acknowledge the instrument by them signed to be their free act and deed.

4. The submission may be of some particular matters or demands or of all demands which the one party has against the other or of allmutual demands on both sides.

5. 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.

6. 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.

7. Neither party shall have power to revoke the submission without the consent of the other.

8. If either party neglect to appear before the arbitrators after due notice they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them.

9. 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.

10. If the time of fixing the award is not fixed in the submission it must be filed in one year from the time such submission is signed and acknowledged unless by mutual consent the time is prolonged.

11. 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 order.

12. 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.

13. 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.

14. 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 accor-3. They shall then appear before some justice of the peace, yignif 15. When an appeal is brought on such judgment copies of the submission and award together with all affidavits which may be required by either of the parties shall be returned as a part of the tran-

or of all demands which the one party b script to the supreme court.

16. If there is no provision in the submission respecting costs the arbitrators may award them at their discretion.

17. The compensation of the arbitrators shall be two dollars per day for the time actually and necessarily spent unless the court fix a less amount, and the fees of the justice of the peace shall be twentyfive cents for making out the agreement of submission (in case he does so) and the like amount for taking and certifying the acknowledgement thereto.

18. Nothing herein contained shall be construed to affect in any manner the control of the district court over the parties, the arbitrators or their award; nor to impair or affect any action upon an award or upon any bond or other engagement to abide an award.

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 CHAPTER 6. CHAPTER 6. Of the average in the submission is

must be filed in one years and a reaction and and and a sector of a signed and a cknowledged unless by mutual consent the time is prolonged.

SECTION 1. Any boat found in the waters of this state is liable. FIRST—For all debts contracted by the master, owner, agent, clerk. or consignee thereof on account of supplies furnished for the use of such boat-on account of work done or services rendered for such boat-or on account of work done or materials furnished in building. repairing, fitting out, furnishing, or equipping such boat.

SECOND-For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment-or any contract relative to the transportation of persons or property entered into by the master, owner, agent, clerk, or consignee thereof.

THIRD—For all injuries to persons or property by such boat or by the officers or crew done in connection with the business of said boat. 2. Claims growing out of any of the above causes are liens upon

the boat, its apparel, tackle, furniture and appendages including barges and lighters if owned by the owners of the boat and used therewith at the time the suit is commenced.

3. Such liens take preference of any claims against the boat itself or any or all of its owners growing out of any other causes than those above enumerated and as between themselves they are to be preferred in the following order : and out not parishonds doesnot de evolution

FIRST-Those resulting from wages for services rendered on board of such boat within the year then passed provided suit be commenced within twen ty days after the cessation of such labor. and done block

SECOND-Those resulting from contracts made within this state.

THIRD-All other causes. A long of bobient work as beautil 4. Actions against boats under the provisions of this chapter cannot be brought after the lapse of one year from the time 'the cause of

action accrued. 5. The lien attaches from the commencement of the suit subject only to such other liens as are of a preferred class. All outs of ill dial

6. 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.

7. The usual notice shall also be issued directed to the boat by name and served upon the master, owner, agent, clerk, or consignee thereof and if none of them can be found it may be served by posting up a copy in some conspicuous part of the boat. The warrant shall be served according to the direction it contains.

S. Any person interested in the boat may appear for the defendant by himself, his agent or attorney and conduct the defence of the suit and no continuance shall be granted to the plaintiff while the boat is held in custody., transverse elderedines off div erstrate, of alleitness

9. The boat may be discharged at any time before final judgment by the giving of a bond with sureties to be approved by the officer serving the warrant or by the clerk or justice who issued it in a penalty double the plaintiffs demand conditioned that the obligors therein will pay the amount which may be found due to the plaintiff together with costs. abated and damages recovered therefor.

10. If judgment is rendered for the plaintiff before the boat is thus discharged a special execution shall be issued against it. If it has

REVISED CODE.-35

been previously discharged the execution shall issue against the principal and sureties in the bond without further proceedings.

11. The sheriff may sell any of the furniture or appendages of the boat if by so doing he can satisfy the demand. If he sell the boat itself he must sell it to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share of the boat unless the person appearing for the boat desire a different and equally convenient mode of sale.

12. If a fractional share of the boat is thus sold the purchaser shall hold such share or interest jointly with the other owners.

13. If an appeal be taken by the defendant before the boat is discharged as above provided the appeal bond if one is 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.

14. 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.
15. 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.

7. The neural notice shall at <u>a latitude</u> directed to the boat by name and served upon the master owner, agent, clerk, or consigner theorem and it notes of theory 7. CHAPTER 7. The warrant shall be served second source of the boat. The warrant shall be served second source as a second se

SECTION 1. Whatever is injurious to health, or indecent, or offensive to the senses; or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property is a nuisance and the subject of an action.

2. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance.

-3. Where a proper case is made the nuisance may be enjoined or abated and damages recovered therefor.

•4. 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.

5. 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.

6. Any person whose duty it is to prevent waste who has not used reasonable care and diligence to prevent it is deemed to have committed it.

7. For wilful trespasses in injuring any timber, tree or shrub on the land of another or in the street or highway in front of another's cultivated ground, yard, or town lot or on the public grounds of any town, or any land held by this state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

8. Nothing herein contained authorises the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land in its immediate neighborhood.

9. 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.

10. 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.

11. 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.

12. This provision is not intended to prevent the person who occupies the lands in the mean time from using them in the ordinary course of husbandry or from using timber for the purpose of making suitable repairs thereon.

13. 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.

14. Any person settled upon and occupying any portion of the pubtic 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.

woherry waited and when the action is brought by the perion cutith

CHAPTER 8.

ACTIONS ON OFFICIAL SECURITIES AND FOR FINES AND FORFEITURES.

whose daty it is to she cent waste who has not used

SECTION 1. 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.

2. The individual injured by the breach of such bond may sue thereon in his own name or in the name of the obligee. The body politic may sue in the name of the obligee in the bond.

3. 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 only be made liable in the aggregate to the extent of their undertaking.

4. 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.

5. 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.

6. A judgment for a penalty or forfeiture rendered by collusion does not prevent another prosecution for the same subject matter.

"uping the that in the mean-time from using them in the ordinary surve of husbandry of from theiner finder for the purpose of making soundle realizes the source of the structure source in the finder of the

of information may be filed against any person unlawful-

J holding or exercising any public office or franchise within this state or any office in any corporation created by the laws of this state or when any public officer has done or suffered any act which works a forfeiture of his office. Or when any persons act as a corporation within this state without being authorized by law or if being incorporated they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation or when they exercise powers not conferred by law.

2. Such information may be filed by the district attorney of the proper county county whenever he deems it his duty to do so.

3. He must file such information when directed to do so by the governor the general assembly or the district court.

4. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceedings addressed to the court and which shall stand for an original petition.

5. Such statement shall be filed in the clerk's office and notice is sued and served in the same manner as is hereinbefore provided for the commencement of actions in the district court.

6. The defendants shall appear and answer such information in the usual way and issue being joined it shall be tried in the ordinary manner.

7. Where the defendant is holding an office to which another is claiming the right, the information should set forth the name of such claimant and the trial must if practicable determine the rights of the contesting parties.

8. If judgment is rendered in favor of such claimant he shall proceed to exercise the functions of the office after he has qualified as required by law.

9. 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.

10. 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.

11. Where several persons claim to be entitled to the same office or franchise an information may be filed against all or any portion thereof in order to try their respective rights thereto.

12. If the defendant be found guilty of unlawfully holding or exer-

cising any office franchise or privilege or if a corporation be found to have violated the law by which it holds its existence or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges judgment shall be rendered that such defendant be ousted and altogether excluded from such office franchise or privilege and also that he pay the costs of the proceeding.

13. 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.

rights and privileges. 14. Where an information is upon the relation of a private individual it shall be so stated in the petition and proceedings and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution and the payment of costs shall be regulated by the same rule.

15. In case judgment is rendered against a pretended but not real corporation the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

16. 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.

17. Said trustees shall enter into bonds in such a penalty and with such security as the court approves conditioned for the faithful discharge of their trust.

.13. 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.

19. 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.

20. The court shall upon an application for that purpose order any officer of such corporation or any other person having possession of any of the effects, books or papers of the corporation in any wise necessary for the settlement of its affairs to deliver up the same to the trustees.

21. 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.

22. They shall sue for and recover the debts and property of the corporation and shall be responsible to the creditors and stockholders respectively to the extent of the effects which come to their hands in the same manner as though they were the executors of a deceased person.

23. Where judgment of ouster 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.

24. Any person who without good reason refuses to obey any order of the court as herein provided shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding five thousand dollars and in-prisoned in the county jail until he shall comply with said order and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

25. A proceeding of this kind may be instituted in the manner above contemplated for the purpose of annulling or vacating any letters patent granted by the proper authorities of this state when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact or when the patentee or those claiming under him have done or omitted an act in violation of the terms and conditions on which the letters were granted or have by any other means forfeited the interest acquired under the same.

at a specified time and place why he has not done so and that hather and there return the write site of the returns of the second of the second second

The peremptory with the protocols in quite also defends and to show codes why he is 10 CHAPTER 10. CHAPTER 10. In the second defended of the second of the mode of obtaining the war the second second second SCIRE | FACIAS, mode of order the second second second the second sec

SECTION 1. Where a scire facias is allowed by law it shall be commenced by petition and notice filed and served as in other civil actions. 2. The petition must be accompanied by an affidavit of the plaintiff in the proceeding his agent or attorney stating that the judgment has not been satisfied to his knowledge, information or belief and must specify the amount due thereon. 3. The answer of the defendant must also be under oath and the issue joined if any shall be tried in the usual manner.

WRIT OF MANDAMUS.

SECTION 1. The writ of mandamus issues from the district court to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

2. Where a discretion is left to an inferior tribunal the writ of mandamus can only compel it to act. It cannot control the discretion of the inferior tribunal.

3. The writ may also be issued by the supreme court to any district court if necessary and also in any other case where it is found necessary to enable it to exercise its legitimate power.

4. It ought not to be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

5. It is issued on the information under oath of the party beneficially interested and is either alternative or peremptory.

6. The alternative writ commands the defendant to do the act required to be performed or show cause before the court forthwith or at a specified time and place why he has not done so and that he then and there return the writ.

7. The peremptory writ omits the words which require the defendant to show cause why he has not done as commanded.

8. The mode of obtaining the writ the service and proof thereof the return and enforcement of obedience thereto must be in the same manner as in case of the writ of certiorari.

On the return day of the alternative writ or such further day as the court may allow the party on whom the writ has been served may show cause by a sworn answer made in the same manner as an answer to a petition in a civil action and issue may be made thereon and tried accordingly.
 10. If the defendant make default or judgment after answer be rendered against him, a peremptory mandamus issues forthwith.

The subject of cost is regulated upon the same principles as in ordinary civil actions.

8. Trada the filing of the bond as required the blerk must issue the

CHAPTER 12.

OF INJUNCTIONS AND ORDERS.

SECTION 1. An injunction may be granted as an independent means of relief or as auxiliary to other proceedings in accordance with the rules heretofore observed except as herein modified.

2. When it is a mere auxiliary measure resorted to during the trial of the principal cause the terms on which it is allowed as well as the kind of notice given to the opposite party shall be such as the court prescribes.

When applied for as an independent means of relief the petition must be sworn to and presented to the district court if in session in the county for an allowance of the injunction. If not in session application for that purpose may be made to any judge of the supreme or district court or to the judge of the county court of the proper county.
 If the order of allowance is made by the court in session the clerk shall make an entry thereof in the court record and issue the writ accordingly. If made in vacation the judge must endorse the

said order upon the petition. To obtain and public berroadoo selling line

5. In both the cases contemplated in the last section the order of allowance must direct the writ to issue only after the filing of a bond in the office of the clerk of the district court in a penalty to be therein fixed with sureties to be approved by said clerk (unless the court or judge granting the said order has previously approved said sureties) and conditioned for the payment of all the damages which may be adjudged against the petitioner by reason of such injunction.

6. When proceedings in a civil action are sought to be enjoined the suit must be brought in the county wherein such proceedings are pending. The bond must also in that case be further conditioned to pay any judgment that may be ultimately recovered against the party who seeks the injunction for the cause of action on which the suit sought to be enjoined is founded.

REVISED CODE.-36

7. 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.

8. Upon the filing of the bond as required the clerk must issue the writ of injunction as directed by the order of allowance.

9. 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.

10. If the writ is granted without allowing the defendant to show cause he may at any time before the next term of the court apply to the judge who made the order to vacate or modify the same.

11. 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 upon affidavits on the part of the defendant. In the latter case the plaintiff may fortify his application by counter affidavits and have reasonable time therefor.

12. The judge may thereupon decide the matter at once unless some good cause for delay be shown. But the vacation of the order shall not prevent the cause from proceeding if any thing be left to proceed upon.

13. Any judge of the supreme or district court being furnished with an authenticated copy of the writ of injunction and also with satisfactory proof that such injunction has been violated shall issue his precept to the sheriff of the county where the violation of the injunction occurred or to any other sheriff (naming him) more convenient to all parties concerned directing him to attach said defendant and bring him forthwith before the same or some other judge at a place to be stated in said precept.

14. 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.

15. 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.

16. 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.

sought to be enjoined is founded, submerser a mid sentage

17. If the security is given the court at the next term shall act upon the case and punish the contempt in the usual mode.

18. The defendant may move to dissolve the injunction either before or after the filing of the answer.

19. Issue may be joined on the defendant's answer and a trial had as in other cases.

20. When practicable the whole matter connected with the injunction shall be disposed of on such trial and complete justice administered to all parties.21. If the injunction be dissolved in whole or in part damages may

21. If the injunction be dissolved in whole or in part damages may be awarded against the obligors of the bond which shall be assessed by a jury when required by either party.

22. 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.

23. 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.

24. The judge granting it may require the filing of a bond as in case of an injunction unless from the nature of the case such requirement would be clearly unnecessary and improper.

CHAPTER 13.

same unless n sufficient reason be stated in the petition for not make

SECTION 1. The petition for the writ of habeas corpus must be sworn to and must state,

HABEAS CORPUS.

FIRST—That the person in whose behalf it is sought is restrained of his liberty—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.

SECOND—The cause or pretence of such restraint according to the best information of the applicant. If by virtue of any legal process a copy thereof must be annexed or a satisfactory reason given for its absence.

THIRD—It must state the restraint is illegal and wherein. FOURTH—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.

FIFTH—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 ease with the reasons for the refusal thereto appended must be produced or satisfactory reasons given for the failure to do so.

2. This petition must be sworn to by the person confined or by some one in his behalf and presented to some court or officer authorized to allow the writ.

3. The writ of habeas corpus may be allowed by the supreme or district courts or by any judge of either of those courts. In such cases it may be served in any part of the state.

4. It may also be allowed by any county court except where the commitment was made by order of one of the courts or officers mentioned in the last section but when allowed by the county court it is only valid within the limits of the county where issued.

5. Application for this writ when made to the supreme or district courts or to either of the judges thereof must be made to the court or judge most convenient in point of distance to the applicant and the more remote court or judge if applied to for the writ may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient supreme or district court or a judge thereof.

6. 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.

7. But if the petition shows 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 alledged—before the court (or before me or before E. F. judge &c., as the case may be) at &c. on &c. (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.

8. When the writ is allowed by a court, it is to be issued by the

clerk, but when allowed by a judge he must issue the writ himself subscribing his name thereto without any seal.

9. 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.

10. Any judge whether acting individually or as a member of a court who wrongfully and wilfully refuses such allowance of the writ when properly applied for shall forfeit to the party aggrieved the sum of one thousand dollars.

11. Whenever any court or judge authorised to grant this writ has evidence from a judicial proceeding before them that any person within the jurisdiction of such court or officer is illegally imprisoned or restrained of his liberty it is the duty of such court or judge to issue or cause to be issued the writ as aforesaid though no application be made therefor.

12. The writ may be served by the sheriff or by any other person appointed for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff he possesses the same power and is liable to the same penalty for a non-performance of his duty as though he were the sheriff.

13. 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.

14. 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.

15. If the defendant conceals himself or refuses admittance to the person attempting to serve the writ or if he attempts 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 authorised to arrest the definition bring him together with the plaintiff forthwith before the officer or court before whom the writ is made returnable.

16. 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.

17. If the plaintiff can be found and if no one appears to have the charge or custody of him the person having the writ may take him in

custody and make return accordingly. And to get possession of the plaintiff's person in such cases he possesses the same power as is given by the last section for the arrest of the defendant.

18. The court or judge to whom the application for the writ is made if satisfied that the plaintiff would suffer any irrepairable injury before he could be relieved by the proceedings as above authorised 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.

19. When the evidence aforesaid is further sufficient to justify the arrest of the defendant for a criminal offence committed in connexion with the illegal detention of the plaintiff the precept must also contain an order for the arrest of the defendant.

20. 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.

21. The defendant may also be examined and committed or bailed or discharged according to the nature of the case.

22. The writ of habeas corpus must not be disobeyed for any defect of form or mis-description of the plaintiff or defendant provided enough is stated to show the meaning and intent of the writ.

23. 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.

24. Service being made in any of the modes hereinbefore provided the defendant must appear at the proper time and answer the said petition.

25. He must also bring up the body of the plaintiff or show good cause for not doing so.

26. A wilful failure to comply with the above requisitions renders the defendant liable to be attached for a contempt and to be imprisoned till a compliance is obtained and also subjects him to the forfeiture of one thousand dollars to the party thereby aggrieved.

27. Such attachment may be served by the sheriff or any other person thereto authorised 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 is above conferred in similar cases. 28. The court or officer allowing the writ must cause the prosecuting attorney of the proper county to be informed of the issuing of the writ and of the time and place when and where it is made returnable.

29. The defendant in his answer must state plainly and unequivocably whether he then has or at any time has had the plaintiff under his control and restraint and if so the cause thereof.

30. If he has transferred him to another person he must state that fact and to whom—the time thereof—as well as the reason or authority therefor.

31. If he holds him by virtue of a legal process or written authority a copy thereof must be annexed.

32. The plaintiff may demur or reply to the defendant's answer and all issues joined thereon shall be tried by the judge or court.

33. Such replication except when the hearing is before the judge of the county court may deny the sufficiency of the testimony to justify the action of the committing magistrate on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge in connection with any other testimony which may then be produced.

34. But it is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment or of the pettit jury in the trial of a cause nor of a court or judge when acting within their legitimate province and in a lawful manner.

35. If no sufficient legal cause of detention is shown the plaintiff must be discharged.

36. 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 offence charged or any other the order may be made accordingly.

37. The plaintiff may also in any case be committed, let to bail, or his bail be mitigated or increased as justice may require.

38. 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.

39. 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.

, 40. Disobedience to any order of discharge subjects the defendant to attachment for a contempt and also to the forfeiture of one thou-

sand dollars to the party aggrieved besides all damages sustained by him in consequence of such disobedience.

41. If the defendant attempts to elude the service of the writ of habeas corpus or to avoid the effect thereof by transferring the plaintiff to another or by concealing him he shall on conviction be imprisoned in the penitentiary or county jail not more than one year and fined not exceeding one thousand dollars: and any person knowingly aiding or abetting in any such act shall be subject to the like punishment.

42. Any officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody to any person who demands such copy and tenders the fees thereof shall forfeiture two hundred dollars to the person so detained.

43. Where 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.

dence before the court are judged in connection with any other teeff.

CHAPTER 14. OF CHANGING NAMES.

SECTION 1. The district court has power to change the names of persons in the following manner:

2. The applicant for such change must file his petition verified by his oath stating that he is a resident of the county and has for one year then last past been a bona fide resident of the state. It must also in a general way give a description of his person, stating his age, height, the color of his hair and eyes, the place of his birth and who were his parents.

3. 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.

4. 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.

5. 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. TITLE IV. Of justices of the peace and their courts.

SECTION 1. The jurisdiction of justices of the peace when not specially restricted is geographically co-extensive with their respective counties.

2. Within the prescribed limit, it extends to all civil cases (except cases in chancery and cases where the question of title to any real estate may arise) where the amount in controversy does not exceed one hundred dollars and by consent of parties may be extended to any amount not exceeding five hundred dollars.

TENTR-The giving a transcript for filing in clarks office of for set-

Where suits may be brought. (apply a one h) to be been redtody but about motion lie to oten A-array and 3. Suits may in all cases be brought in the township where the defendant or one of several defendants resides.

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.
 Actions of replevin or suits commenced by attachment may be commenced in any county and township wherein any portion of the property is found.
 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.
 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.
 If there is no justice in the proper township qualified or able to BEVISED CODE—37

289

try the suit it may be commenced in any adjoining township in the same county. Of the justice's docket.

9. 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,

FIRST-The title to each cause.

SECOND—A brief statement of the nature and amount of the plaintiffs demand and defendants set-off (if any) giving date to each where dates exists.

THIRD—The issuing of the process and return thereof.

FIFTH—Every adjournment—stating at whose instance and for what time.

SIXTH—The trial and whether by the justice or by a jury. SEVENTH—The verdict and judgment. EIGHTH—The execution—to whom delivered—the renewals if any and the amount of debt, damages and costs endorsed thereon.

NINTH—The taking and allowance of an appeal (if any.)

TENTH—The giving a transcript for filing in clerks office or for setoff (if one is given.)

ELEVENTH-A note of all motions made and whether refused or granted. I do not all different add a sease the structure study of the sease the structure study of the sease the sea

same same service on one or more of the detendants is made in

10. The parties to the action may be the same as in the district court and all the proceedings prescribed for that court so far as the same are applicable and not herein changed shall be pursued in justice's courts. The powers of the court are only as herein enumerated. 11. Ordinary actions in justice's court's are commenced by voluntary appearance or by notice.

12. Where by notice no petition need be filed as in the district court except where the petition must be sworn to, but the notice must state the cause of action in general terms sufficient to apprise the defendant of the nature of the claim against him. 13 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. 14. 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.

15. The time thus fixed in the notice must be not more than fifteen days from the date and the notice must be served not less than five days previous to the trial.

16. The service and return thereto must be made in the same manner as in the district court except that no service shall be made by publication other than is herein provided nor shall any return made by another than the sheriff or a constable of the county be valid unless sworn to.
17. 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.

Of the appearance of parties:

18. 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.

19. 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.

20. 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.

21. 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

22. In case of absent witnessess either party at his own costs may obtain an adjournment not exceeding sixty days by filing an affidavit like that required to obtain a continuance in the district court for the like cause.
23. Either party applying for an adjournment must if required by the

adverse party consent that the testimony of any witness who is in attendance be then taken to be used on the trial of the cause.

24. The pleadings must be substantially the same as in the district court. They may be written or oral. If oral they must in substance be written down by the justice in his docket and sworn to where such verification is necessary.

25. Cross demands or set offs must be made if at all at the time the answer is put in.

26. The original or a copy of all written instruments upon which a cause of action or set off is found must be filed with the claim founded thereon or a sufficient reason given for not doing so.
27. If in a suit for trespass on real property, the defendant justifies by pleading title it must be in writing. The justice shall thereupon make an entry thereof in his docket and return the original papers

and a transcript of all the enteries in his docket to the district court in the same manner and within the same time as is required in cases of appeals.

28. When from the plaintiff's own showing on the trial it appears that the determination of the action will necessarily involve the decision of a question of title to real property the justice must dismiss the action stating in his docket the reason therefor.
29. But where a case is thus transferred or dismissed on account of the title to lands being involved if there are other causes of action not necessarily connected they may be severed and the latter tried before the justice.

20. Upon the return day if *laint adT* e be actually engaged in other which a business he may postphic proceedings in the case until such

30. 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. 31. If the plaintiff fails to appear by himself his agent or attorney on the return day or at any other time fixed for trial the justice shall render a judgment of non-suit against him with costs except in the case provided in the next section.

32. Where 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.

33. In the case provided for in the last section if the defendant does not appear judgment shall be rendered against him for amount of the plaintiff's claim.

34. But if where the plaintiff's claim is not founded on such written instrument the defendant does not appear the justice shall proceed to hear the allegations and proofs of the plaintiff and shall render judgment thereon for the amount to which he shows himself entitled not exceeding the amount stated in the notice hereinbefore required.

35. In the cases contemplated in the two last sections if the defendant has previously filed a set off, founded on a written instrument purporting to have been signed by the plaintiff calling for a sum certain the justice shall allow such set off in the same manner as though the defendant had appeared and shall render judgment accordingly.

36. Judgment of non-suit or by default may be set aside by the justice at any time within six days after being rendered if the party applying therefor can show a satisfactory excuse for his default.

37. In such case a new day shall be fixed for trial and notice there-of given to the other party or his agent.
38. Such order shall be made in relation to the additional costs thereby created as the justice shall think equitable.
39. Any execution which may in the mean time have been issued shall be re-called in the same manner as in cases of appeals.
40. Before either party is entitled to a jury he must deposit three dollars with the justice as jury fees which shall be included in the judgment as part of the costs in case the party thus calling the jury recover judgment.

41. The justice shall thereupon issue his precept to some constable of the township directing him to summon the requisite number of jurors possessing the same qualifications as is required in the district court.

42. The jury shall consist of six jurors unless a smaller number be agreed upon between the parties. Each party is entitled to three peremptory challenges. Any deficiency in their number arising from any cause may be supplied by summoning others in the manner above directed.
43. The justice may discharge the jury when satisfied 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. 44. No motion in arrest of judgment or to set aside a verdict can be entertained by a justice of the peace.

45. 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. Of judgments and proceedings incident thereto.

46. In cases of nonsuit, confession or on the verdict of a jury the judgment shall be rendered and entered upon the docket forthwith. In all other cases the same shall be done within three days after the cause is submitted to the justice for final action.

47. 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 afterwards sue for the amount so remitted.

48. Instead of so remitting the excess the party obtaining such verdict may elect to have judgment of nonsuit entered against the plaintiff in which case the plaintiff shall pay the costs.

49. Mutual judgments between the same parties rendered by the same or different justices may be set off against each other.
50. Where rendered by the same court the same course shall be pursued as is prescribed in the district court.
51. 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 set off in that case.

52. Such transcript shall not be given until the time for taking an appeal has elapsed.

53. The justice so giving transcript shall make an entry of the fact in his docket and all other proceedings in his court shall be thenceforth stayed.

54. 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. 55. 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.

56. Such officer shall treat the lesser execution as so much cash collected on the larger and proceed to collect the balance accordingly.

57. The above rules as to set off, are subject to the same prohibition as to setting off costs where the effect will be to leave an insufficient amount of money actually collected to satisfy the costs of both judgments as is contained in the rules of proceeding in the district court.

58. Where the judgment of another justice is thus allowed to be set off, the transcript thereof shall be filed among the papers of the case in which it is so used and the proper entry made in the justice's docket.

59. If the justice refuses the judgment as a set off he shall so certify on the transcript and return it to the party who offered it. When filed in the office of the justice who gave it proceedings may be had by him in the same manner as though no such transcript had been certified by him.

on The appeal must be taken and perfected within twenty days Filing transcripts in the district court clerk's office. 70. If within the twenty days the appellant is prepared to take his 60. The party obtaining judgment in the justice's court for more than ten dollars may cause a transcript thereof to be certified to the office of the clerk of the district court of the county. 61. 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 enforcements as a judgment rendered in the district court as of that date. It had eved bloow epitant at as pers of the justice to be delivered to him for which purpose he may iso Executions and proceedings thereon. out and file the transcript. After this he shall return to the office of 62. Executions for the enforcement of judgments in a justice's court, except when docketed in the office of the clerk of the district courtmay be issued by the justice before whom the judgment was rendered on the application of the party entitled thereto at any time within

five years from the entry of the judgment but not afterwards. I guides

297

63. Such execution shall be against the goods and chattels of the defendant therein and shall be directed to any constable of the councer who has the other execution. ty. 64. It must be dated as on the day on which it is issued and made

returnable within thirty days thereafter. I bus regul out no beteelloe 65. 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. dw shoo ho suites of sa nort 66. Such endorsement must state the amount paid on such execution (if any) and shall continue the execution in full force for thirty days from the date of renewal.

67. Property levied on before such renewal may be retained by the officer and sold after renewal. case in which it is so used and the proper entry made in the justice's Of appeals.

... 59. If the justice refuses the judgment as a set off he shall so corti-68. Any person aggrieved by the final judgment of a justice when the value of the matter or thing in controversy is ten dollars or upwards exclusive of costs may appeal therefrom to the district court of the county. certified by him.

69. The appeal must be taken and perfected within twenty days after the rendition of the judgment. all as algorization public

70. If within the twenty days the appellant is prepared to take his appeal and is only prevented by the absence or death of the justice or his inability to act he may apply to the clerk of the district court of the county for the allowance of his appeal. ib add to shale and to saillo 71. Such application shall be founded on an affidavit stating the amount and nature of the judgment-the time of the rendition thereof as nearly as practicable and the reason why he thus applies. ai 72. 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. 73. The appeal in no case shall be allowed until a recognisance of the following form or its equivalent shall be taken and filed in the office of the justice the sureties being approved by him (or by the clerk acting for him as above 'authorised) and the same therein inserted being sufficient to secure the judgment as well as the costs of the apcause is returnable (provided there be ten days intervening) or the lasq on the motion of the appellee shall be continued at the teast of the ap-Form. .Jusliag

set. Buch notice may be deved like the original notice and iff he an

the sum of-dollars upon the following conditions. Whereashas appealed from the judgment of-a justice of the peace in an action between-----as plaintiff and-----defendant.

Now if the said appe a t pays whatever amount is legally adjudged against him in the further progress of this cause then this recognisance to be void otherwise in force. The tax and because the same

Attest E. F. Justice. A. B. principal. satisfies of the appendix of the appendix of the street, de

74. Upon the appeal being taken in accordance with the foregoing provisions all further proceedings in the cause by him shall be susfer to pay a certain amount with costs and if the final amount bebneq

75. 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 further action and release any property that may have been taken in execution.

76. Upon the taking of any appeal the justice shall file in the office of the clerk of the district court all the original papers relating to the suit with a transcript of all the entries in his docket.

77. Upon the return of the justice being filed in the office of the clerk the cause will be deemed in the district court.

78. The district court by rule may compel the justice to allow an appeal or to make or amend his return according to law.

79. Where an omission or mistake has been made by the justice in his docket entries and that fact is made unquestionable the district court may correct the mistake or supply the omission or direct the justice to do so.

80. If an appeal is allowed ten days before the next term of the district 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. doe to go of a sold of a sold of a sold of the sold of th

81. If the appeal is not allowed on the day on which judgment is rendered written notice thereof must be served upon the appellee or REVISED CODE.-38

299

93. The district court may compel an amended return where the first is not full and complete.

94. The district court may render final judgment or it may remand the cause back 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.

95. If the district court render a final judgment reversing the judgment of the justice of the peace after such judgment has been collected in whole or in part it may award restitution with interest and issue execution accordingly or it may remand the cause to the justice for this purpose.

ai tuchen leb out of naving of Replevin. of on the state sould see 10

96. The proceedings to gain possession of personal property wrongfully withheld will be the same as are prescribed in such cases in the district court except modified in this chapter. Of Attachment.

97. Attachments are not allowable in justice's courts if the sum claimed is less than five dollars. And if more is claimed and less is recovered the plaintiff shall pay all the costs of the proceedings so far as they relate to the attachment.

98. The attachment can only issue at the commencement of the action and only where the action is founded on contract and the money due.

99. The constable has the same power to administer an oath to the garnishee and to take his answer as is given to the sheriff in cases of attachment in the district court.

100. Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action.

Summary remedy for forcible entry or detention of real property. 101. This proceeding is allowable: FIRST—Where the defendant has by force or intimidation or fraud 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 the motion of the appellee shall be continued at the cost of the appellant.

82. 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.

83. An appeal brings up a cause for trial on the merits and for no other purpose. All errors, irregularities, and illegalities are therefore to be disregarded under such circumstances if the cause might have been prosecuted in the district court.

84. No new demand or set off can be introduced into a case after it comes into the district court unless by mutual consent.

85. The appellant must pay the costs of the appeal unless he obtains a more favorable judgment than that from which he appealed.

86. If the judgment below was against the appellant—he may proffer to pay a certain amount with costs and if the final amount recovered be less favorable to the appellee than such proffer he shall pay the cost of appeal.

87. Any judgment in the district court against the appellant shall be entered up against him and his sureties jointly.

88. Any person aggrieved by an erroneous decision in matter of law or other illegality in the proceedings of a justice of the peace may remove the same or so much thereof as is necessary into the district

court for correction by writ of error. 89. The basis of the proceedings is an affidavit filed in the office of the district clerk setting forth the errors complained of.

90. The clerk shall thereupon issue the writ commanding the justice to certify the record and proceedings so far as they relate to the facts stated in the affi lavit.

91. A copy of the affidavit shall accompany the writ and be served upon the justice who shall with the least practicable delay make the return required.

92. All proceedings in the justice's court subsequent to judgment may be stayed by a recognisance entered into like that required in cases of appeals and on which recognisance judgment shall be en-

REVISED CODE .--- 38

stealth entered upon the prior actual possession of another in regard to real property and detains the same.

SECOND—Where a lessee holds over after the termination or contrary to the terms of his lease.

THIRD—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.

102. The mere 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.103. The legal representatives of the person who might have been

plaintiff if alive may bring this suit after his death.

104. Before suit can be brought in any except the first of the above classes three days notice to quit must be given to the defendant in writing.

105. The petition must be in writing and sworn to.

106. The proceedings may be had before the 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.

107. The time for appearance and pleading must be not less than two nor more than six days from the time the notice is served on the defendant.

108. No adjournment shall be made for more than ten days nor to any other place except by consent of parties.

109. If the defendant is found guilty judgment shall be entered that he be removed from the premises and that the plaintiff be put in possession thereof and a warrant of removal shall issue accordingly to which shall be added a clause commanding the officer to levy the costs as in ordinary cases.

110. 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.

111. Thirty days peaceable and uninterrupted possession with the knowledge of the plaintiff after the cause of action accrued is a bar to this proceeding.

112. An action of this kind cannot be brought in connection with any other nor can it be made the subject of set-off.113. The warrant for removal can only be executed in the day time.

114. An appeal taken in the usual way if the proper security is given suspends the execution for costs and may with the consent of the plaintiff prevent the warrant of removal from being executed but not otherwise.

115. The district court on the trial of the appeal may issue a warrant of removal or restitution as the case may require.

General provisions. 116. 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.

117. 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 clerk of the district court to be by him turned over to the successor of the justice when elected and qualified.

118. The justice with whom the docket of his predecessor is thus deposited may issue execution on any judgment there entered in the same manner and with like effect as the justice who rendered judgment might have done.

119. When two or more justices are equally entitled to be deemed the successor in office of any justice as aforesaid the judge of the county court shall determine by lot which is the successor and shall certify accordingly.

120. Such certificate shall be in duplicate one copy of which shall be filed in the clerk's office and the other given to the said successor.

121. In case of the sickness, other disability, or necessary absence of a justice at the time fixed for a trial of a cause or other proceeding any other justice of the township may at his request attend and transact the business for him without any transfer of the business to another office. The entries shall be made in the docket of the justice at whose office the business is transacted and the same effect shall

301

be given to the proceedings as though no such interchanging of offiany other not can it be made the sub cial service had taken place. 122. A justice may in writing specially depute any discreet person of suitable age to perform any particular duty properly devolving upon a constable. Such person has the powers of a constable for that particular purpose and is subject to the same obligation but can receive no fee for his service.

123. No process can issue from a justice's court into another courty except when specially authorised. do not be beintelb add .GII

124. The constable is the proper executive officer of a justice's court but the sheriff may perform any of the duties required of him. The powers and duties of the sheriff in relation to the business of the district court so far as the same are applicable and not modified by statute devolve upon the constable in relation to the justice's court.

125. The justice may be regarded as his own clerk and performs the duty of both judge and clerk. Doing close being all to seed 126. Where the term of office of a justice of the peace for any cause expires his successor may issue execution or renew an execution in the same manner and under the circumstances as the former justice might have done if his term of office had not expired.

TITLE V. William opital adl .811 escoules on any judgment there entered in the Of miscellaneous subjects.

CHAPTER 1. it is the encoresor and phall OF EVIDENCE.

ge who rendered indu-

SECTION 1. Every human being of sufficient capacity to understand the obligations of an oath is a competent witness in all cases both civil and criminal except as herein otherwise disclosed.

2. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility.

3. The general moral character of a witness may be proved for the purpose of testing his credibility.

4. The real party in interest is not a competent witness, unless

called on for that purpose by the opposite party as hereinafter proters on the same subject between the same parties may be gibbbiy

5. The husband can in no case be a witness against the wife nor the wife against the husband except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

5. Neither husband or 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. 6. No practising attorney, counsellor, physician, surgeon, minister of the gospel, or priest of any denomination shall be allowed in giving testimony to disclose any confidential communication properly intrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

7. The prohibitions in the preceding sections do not apply to cases where the party in whose favor the respective provisions are enacted waives the right thereby conferred.

8. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

9. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. 10. But where 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.

11. On the trial of any criminal prosecution the prosecuting attorney may require any witness to disclose facts which would tend to subject him to punishment for offences technically termed mata prohibita but in such cases the fact shall in case the witness desires it be entered of record and shall be a final bar to any prosecution against the witness for the offence disclosed in whole or in part by him on such examination.

12. 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. y a was here of original entries 13. 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.

14. When an instrument consists partly of written and partly of printed form the former controls the latter when the two are inconsistent.

15. 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.

16. 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.

17. 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.

18. Evidence respecting hand writing may be given by a comparison made by experts or by the jury with writings of the same person which are proved to be genuine.

19. 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 where made in a professional capacity or in the ordinary course of professional conduct: or where made in the performance of a duty specially enjoined by law.

20. 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.

First—The books must show a conntinuous dealing with persons generally, or several items of charges at different times against the other party in the same book or set of books. Second—It must be shown by the parties oath or otherwise that they are his books of original entries. Tarka—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.

FOURTH—The charges must also be verified by the party or the clerk who made the entries to the effect that they believe them just and true or a sufficient reason given why such verification is not made.

21. 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 further proof.

22. The judge of the court is a competent witness for either party and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended and to take place before another judge.

23. Except when otherwise specially provided no evidence of any of the contracts enumerated in the next succeeding section is competent unless it be in writing and signed by the party charged or by his lawfully authorised agent.

24. Such contracts embrace,

FIRST—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.

SECOND-Those made in consideration of marriage but not including promises to marry.

THER.—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. FOURTH—Those for the creation or transfer of any interest in lands except leases for a term not exceeding one year.

Firm—Those that are not to be performed in one year from the making thereof. 25. The provisions of the first subdivision of the preceding section does not apply where the article of the personal property sold is not at the time of the contract owned by the vendor and ready for delivery—but where labor, skill or money are necessarily expended in producing or procuring the same: nor do those of the fourth subdivision of said section apply when the purchase money or any portion thereof has been received by the vendor or where the vendee with the aetual or implied consent of the vendor has taken and held possession thereof under and by virtue of the contract or where there is any other

circumstance which by the law heretofore in force would have taken a case out of the statute of frauds.

26. 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.

27. 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.

28. The usual protest by a notary public without proof of his signature or notarial seal is evidence of the dishonor and notice of a bill of exchange or promissory note.

How testimony is to be procured and taken. 29. A subpœna is the proper way of bringing a witness into court. It must require the witness to be present at a prescribed time and

place to give testimony in a case therein stated. It may also require him to bring with him any books, documents or other writings under his control and which he is not excused by law from producing in evidence.

30. Witnesses in civil cases cannot be compelled to attend the district court out of the state where they are served nor at a distance of more than seventy miles from the place of their residence or from that where they are served with a subpœna unless within the same county. No other subpœna but that from the district court can compel his attendance at a greater distance than thirty miles from his place of residence or of service if not in the same county.

31. Witnesses are entitled to receive (in advance if demanded) their travelling 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.

32. For a failure to obey a valid subpœna without a sufficient cause or excuse or for a refusal to testify after appearance the delinquent is guilty of a contempt of court. He is also liable to the party by

RE- more - - - That

whom he was subpoeneed for all the consequences of such delinquency together with fifty dollars additional damages.

33. Before a witness is thus liable for a contempt for not appearing he must be served personally with the proceess by reading it to him and by leaving a copy thereof with him if demanded, and it must be shown that the fees and travelling 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 travelling expenses above memtioned.

34. If a witness conceals himself or in any other manner attempts 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 admittance.

35. In addition to the above remedies if a party to a suit in his own right on being duly subpænaed fails 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 costs of the delinquent.

36. Or the party so calling his opponent may in such a case himself become a witness or if he shows by his own testimony or otherwise that he could not have a full personal knowledge of the transaction the court may order his pleading to be taken as true—such order is however subject to be reconsidered during the term of the court upon satisfactory reasons being shown for such delinquency.

37. The district court may by rule require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

38. 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.

39. On failure to obey the rule or show sufficient cause for such failure the same consequences shall ensue as if the party had failed

308

to appear and testify when subpoended by the party now calling for the books and papers. 40. 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. Of documentary evidence.

41. Publications required by law to be made in a newspaper, may be proved by the affidavit of any person having knowledge of the fact specifying the times when and the paper in which the publication was made. But such affidavit must for the purpose now contemplated be made within six months after the last day of publication.

42. The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness and attached to a copy of said notice or paper made within six months of the time of such posting up.

43. 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.

44. Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the elerk of the county court. And the original affidavit appended to the notice or paper if there be one and if not the affidavit by itself is presumptive evidence of the facts stated therein but does not preclude other modes of proof now held sufficient.

45. A copy of the field notes of any surveyor or a plat made by him 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.
46. Duly certified copies of all records—entries or papers belonging to any public office or by authority of law filed to be kept therein shall be evidence in all cases of equal credibility with the original record or paper so filed.
47. 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. 48. The certificates 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.

49. 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.
50. In the cases contemplated in the three last sections the signature of the officer shall be presumed to be genuine until the contrary is shown.

51. 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.

52. That of a sister state may be proved by the attestation of the clerk and the seal of the court annexed if there be a seal together with the certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law.

53. 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.

54. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

FIRST—By the official attestation of the clerk or officer in whose custody such records are legally kept and SECOND—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

THIRD-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. 55. Acts of the Executive of the United States or of this or any oth-

er 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. 56. The proceedings of the legislature of this or any other state of the Union or of the United States or of any foreign government are proved by the journals of those bodies respectively or of either branch thereof and either by copies officially certified by the clerk of the house in which the proceeding was had or by a copy purporting to

have been printed by their order. 57. 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.

58. The public seal of the state or county affixed to a copy of a written law or other public writing is also admissible as evidence of such law or writing.
59. The unwritten laws of any other state or government may be proved as facts by parol evidence and also by the books of reports of cases adjudged in their courts.
Of depositions.

69. After the commencement of a civil action or after an issue is joined in any 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 testinony may whenever he judges it expedient, take his deposition in writing before any person having authority to administer oaths.

61. Reasonable notice of the time and place when and where the same will be taken must be given to the opposite party.

62. Under the state of pleadings above mentioned if the case is in the district court the deposition of a witness residing out of the county whether within or without the state may be taken before one or more commissioners on written interrogatories.

63. The party wishing to take such deposition may select any of the officers mentioned in the next section as such commissioner or the parties may agree upon or the court appoint any other individuals for that purpose.

64. The clerk or any judge of any court of record any notary pubtic, or any commissioner appointed by the Governor of this State to take acknowledgements of deeds in another state may be appointed such commissioner by his name of office or otherwise but the name of the court of which such commissioner is clerk or judge and the state and county in which such notary or commissioner of deeds resides must be stated in the commission.

65. None of the above named officers is permitted to take the depositions aforesaid by virtue of a commission directed to him merely as such officer unless taken within the geographical limits to which his official jurisdiction extends.

66. Reasonable notice must be given to the opposite party of the time when a commission will be sued out of the office of the clerk of the district court for taking the deposition of the witness (naming him) which notice must be accompanied with a copy of the interrogatories to be asked him.

67. At or before the time thus fixed the opposite party may file cross interrogatories.

68. The reasonable notice hereinbefore mentioned is at least five days, and where depositions are to be taken in pursuance of the first of the above methods one day in addition must he allowed for every thirty miles travel from the place where the notice is served to the place where the depositions are to be taken.

69. Subject to the regulations herein contained the court may establish further rules for taking depositions and all other acts connected therewith.
70. The commission issues in the name of the court and under its seal. It must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner—a statement of the cause in which the testimony is to be asked and a copy of the interrogatories on each side appended.

71. The person before whom any of the depositions above contemplated are taken must cause the interrogatories prepounded (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.

72. 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.

73. 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 (where any such were issued) must then be scaled up and returned to the clerk of the proper county by mail unless some other mode be agreed upon between the parties.

74. 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.

75. The depositions when returned by mail must be directed to the clerk of the court. They should state on the outside of the envelope the title of the cause in which they are to be used and the clerk is not required to take them from the office until the postage is paid by the party wishing to use them.

76. 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.

77. When 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 of record under his seal of office verifying the fact that the person who took the deposition is really such officer.

78. 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 a deposition legal and no such deposition shall be read on the trial if at that time the witness himself is produced in court 79. All motions to exclude depositions must be made before the

commencement of the trial or objection to their introduction will be deemed waived.

80. In cases in a justice's court where the deposition of a witness is to be taken out of the state the commission shall issue from the clerk of the district court under his seal of office. The appointment of the commissioner shall be in point of form made as from the district court but the commission shall state in what court it is to be used.

81. Depositions taken to be used in a justice's court shall be transferred to the district court if the case be appealed and may be used on the trial there in the same manner as if taken regularly after the case was in the district court.

ple signature of such as have no seal are presumptive of the genu ineness of such sign. **YROMITEST DATAUTESTER OF O** ial capacity of the officer except as herein otherwise declared.

82. Any person apprehensive of becoming a party to a civil action or proceeding may cause the evidence of any fact to be perpetuated so as to be used on the trial in case the oral testimony of the witness would be then admissible and cannot by the exercise of due dilligence be then procured.

83. Such testimony must be taken before the judge or clerk of the supreme, district or county court.

84. The same notice must be given to all persons interested of the subject matter of the testimony and the time and place when and where the same will be taken a is hereinbefore provided for taking depositions on mere notice in cases of suits already pending.

85. If any of the parties are minors or otherwise incapable of managing their own affairs the notice must be given to their guardians or persons otherwise authorised to act for them.

86. The testimony when thus taken is receivable only as against those persons who have been thus served with notice and those claiming under them.

87. In order to render such testimony receivable against all persons the notice above prescribed must be published for four successive weeks prior to the time therein fixed in some newspaper printed REVISED CODE.-40 b as conveniently as practicable to the place where the trial may be reasonably expected to take place.
88. The officer before whom such depositions are taken must direct in what clerk's office they shall be filed for preservation.

89. 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.

90. Affidavits taken out of the state before any judge or clerk of a court of record or before a notary public or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken are of the same credibility as if taken within this state.

91. The signature and seal of such of the officers as are herein authorised to take depositions or affidavits as have a seal and the simple signature of such as have no seal are presumptive of the genuineness of such signature as well as of the official capacity of the officer except as herein otherwise declared.

92. Where 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 authorised 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.

93. Subpœnas issued by them are valid to the same geographical extent as those emanating from a justices court and may be served and returned in the same manner.

94. Any sheriff or constable when called upon for that purpose shall serve such subpœnas and make return thereto.

95. Where a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully he may apply to any officer competent to take depositions as herein declared by petition stating the object for which he desires the affidavit.

96. 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 he 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.

97. 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.
98. The court or officer to whom any exparte 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.

99. The ordinary rules of evidence not incompatible with those herein prescribed are not intended to be hereby changed.

SECTION 1. Judgments in the supreme or district court of this state or in the district or circuit courts of the United States if rendered within this state are liens upon the real estate owned by the defendant at the time of such rendition and also upon all he may subsequently acquire before the expiration of the lien as hereinafter provided.

2. Where the lands lie in the county wherein the judgment was rendered the lien shall attach from the date of such rendition.

3. 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.

4. 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.

5. The liens above authorised only continue in force for the term of ten years from the date of the judgment. osition by question and snake **BETTAPA**IC in the translatery which deposition only afterwards be used instead of an ordinary affidivity 92. The officer thins app. **SETEOPED FO** m his discretion require notice of the taking of such affidivit of deposition to be given to my other

SECTION 1. When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or property capable of delivery which is in any degree the subject of litigation and which is held by him as trustee for another party or which belongs or is due to another party the court may order the same to be deposited in the office of the clerk or delivered to such party with or without security subject to the further discretion of the court.

Whenever in the exercise of its authority a court has ordered the deposit or delivery of money or other property and the order is disobeyed the court besides punishing the disobedience may make an order requiring the sheriff to take the money or property and deposit and deliver it in conformity with the directions of the court.
 The sheriff has the same power in such cases as when acting by authority of a writ of replevin.

CHAPTER 4. Of notices and how papers are to be served.

SECTION 1. Where not otherwise provided all notices required by law must be in writing and served as hereinafter provided. 2. All papers requiring to be served upon a party to an action or other proceeding must be served as follows where no other mode is particularly pointed out.

3. The service may be upon the party or upon his agent or attorney.

4. The service may be personal or it may be left at the usual place of residence of either of the persons aforesaid in the same manner as is provided for the service of the original notice in civil actions; or it may be served upon the attorney by being left at his office with any person having the charge thereof and if there is no person in the office by leaving it in a conspicuous place therein during day light. 5. Where the party making the service and he on whom it is to be made reside in different places between which there is a regular communication by mail service may be made by directing the paper properly through the post office and paying the postage thereon. The paper shall in that case be deemed served at the time at which the next regular mail would reach the place of residence of the party on whom it is to be served.

6. If a party resides out of the state and has an agent or attorney within the state service must be made upon the latter.

7. The return or proof of service must show particularly the manner in which it was made.

CHAPTER 5. GENERAL PROVISIONS. SECTION 1. The right of civil remedy is not merged in a public of-

fence but may in all cases be enforced independently of and in addition to the punishment of the latter.

2. Where a wrongful act produces death the perpetrator is civily liable for the injury. The parties to the action shall be the same as though brought for a claim founded on contract against the wrong doer and in favor of the estate of the deceased. And the sum recovered shall be disposed of in the same manner except that when the deceased left wife child or parent surviving him it shall not be liable for the payment of debts.

3. Unless from the necessity of the case no cause of action cx dtlicto dies with either or both the parties but the prosecution thereof may be commenced or continued by or against their respective representatives.

4. The rule that laws in derogation of the common law are to be strictly construed has no application to this statute but shall receive a liberal construction in order to carry out its general purposes and objects.

5. 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 are

.

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.

6. When security is required by law to be given and no particular mode is prescribed it shall be by bond.

7. 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 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.

8. Where investments of money are directed to be made and no mode of investment pointed out by statute they must be made in the stocks of this state or in those of the United States or upon bond and mortgage of real property of the clear unincumbered value of at least twice the investment.

9. Where 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.

10. The clerk or other person appointed in such cases to make the investment must receive all monies as they become due thereon and apply or re-invest the same under the direction of the court unless the court appoint some other person to do such acts.

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

12. 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.

13. The future proceedings of all officers and of all courts of limited and inferior jurisdiction within this state shall like those of general and superior jurisdiction be presumed regular except in regard to matters required to be entered of record and except where otherwise expressly declared.

14. The mode of computing time is by excluding the first day and including the last and should the last day fall on Sunday the length of time prescribed shall be extended one day so as to include the whole of the following Monday unless otherwise expressed.

15. Proceedings already commenced for the enforcement of remedies may be continued in accordance with the rules herein prescribed as far as they are compatible with the proceedings which have already taken place.

16. In other cases rights of action secured by previous existing laws may be prosecuted in the manner herein provided. Should a case arise in which an adequate remedy cannot thus be had the practice heretofore in use may be adopted so far as is necessary to prevent a failure of justice. But the judge of the court shall in such caser forthwith report the fact to the Governor who shall lay the same as soon as practicable before the general assembly.

17. The rules of proceeding prescribed for civil actions proper in the district court shall be followed in all proceedings of a special character whether before the district court or other tribunals so far as they are applicable and not otherwise regulated.

18. No corporation is subject to the jurisdiction of a court of this state unless it appears in the court or has been created by or under the laws of this state or has an agency established herein for the transaction of some portion of its business or has property herein and in the last case only to the extent of such property.

tion with powers and duties as hereinatter preseribed.
9. The causes of action of which they have cognizance are, libel, alander, breach of promise of marriage, malicious presecution, false imprisonment, and all other injuries to the person.
3. Each of the county judges shall hold at least one regular term for this purpose monthly at some place at the county seat to be fixed by him and shall post up previous motions thereof in the clerks of the which shall not be changed offener than ones in each year.

county as the palee may think expedient. 6. Any person claimany to have a proper cruce of action of the character above mentioned against another may serve irm personally with a written notice to appear in relation thereto before the court of conclinated of the county where the same might be brought proce the legal tritanal 5. The time episotned must not be less than five days from the time

of service with one day additional for every twenty miles navel

of time preseribed shall be extended one day so as to include the whole of the following Menday unless otherwise expressed To. Proceedings already commenced for the enforcement of remedica may be command in **X** I **G N G P P**. Alies herein prescribed as far as they are compatible with the proceedings which have already taken places 16. In other ease weights of weight events in provided. Should a laws may be prosecuted in the memory herein provided. Should a

The adoption of the following chapters was deemed by some of the committee of doubtful propriety. At the same time they were deemed of sufficient importance to merit the consideration of the general assembly.

They were therefore so drawn that either or all may be omitted or adopted without disturbing the unity or harmony of the remaining portions and are accordingly respectfully submitted.

as they are applicable and not otherwise regulated you an original of 9. No corporation is subject to the jurisdiction of a court of the state unless it appears in the court or has been erbated by dranded the laws of this state courter of its courter or has property herein for transmission of some position of its courties of has property herein and

SECTION 1. Each of the county judges may hold courts of conciliation with powers and duties as hereinafter prescribed.

2. The causes of action of which they have cognizance are—libel, slander, breach of promise of marriage, malicious prosecution, false imprisonment, and all other injuries to the person.

3. Each of the county judges shall hold at least one regular term for this purpose monthly at some place at the county seat to be fixed by him and shall post up previous notices thereof in the clerks office which shall not be changed oftener than once in each year.

4. Courts shall also be held at such other times or places within the county as the judge may think expedient.

5. Any person claiming to have a proper cause of action of the character above mentioned against another may serve kim personally with a written notice to appear in relation thereto before the court of conciliation of the county where the suit might be brought before the legal tribunal.

6. The time specified must not be less than five days from the time of service with one day additional for every twenty miles travel. 7. The notice must clearly set forth the nature of the plaintiff 's claim and must be served and returned like the original notice in a justice's court.

Parties may voluntarily appear before the court without notice.
 At the time for appearance or at such other time as the hearing may be adjourned to by the court the parties must be received by the judge apart from all persons except as herein otherwise provided and thereupon he shall hear the allegations and explanations of the parties and inform them of their respective rights and endeavor to reconcile their differences.
 The judge shall keep a book of records for cases of this nature in which shall be stated the nature of each controversy or alleged cause of action—whether or not either or both of the parties appeared. If a reconciliation be effected the fact shall be stated but not the terms unless by mutual consent of parties unless such terms embrace acts to be afterwards performed, in which case those acts must be stated if desired by either party.

11. Where a reconciliation is effected it is a final determination of the matter in controversy.

12. If the parties agree to a judgment in favor of one against the other an entry to that effect shall be made in the book of reco ds.— A transcript of such entry being presented to the clerk of the district court of that county or to any justice of the peace who might have entertained jurisdiction of the subject matter by consent of parties the case shall be entered in the court docket of such clerk or justice of the peace stating the circumstances and judgment shall be entered acordingly, which shall have the same force and effect as a judgment by confession and be treated accordingly.

13. Nothing herein contained shall prevent a different course from being pursued if all the parties interested consent.
14. If instead of a reconciliation by the agreement of parties themselves they voluntarily submit their matters in difference to the court and agree to abide its judgment such agreement being entered on the book of records and signed by the parties the court shall proceed to try the cause and the judgment rendered thereupon shall be treated in all respects as a judgment by consent of parties above provided for.
15. If after the service of the notice above prescribed either party fail to appear or if after appearing the parties be not reconciled as above contemplated and do not enter into the submission mentioned REVISED CODE-41

in the last section the judge shall make an entry in his book of records stating briefly the nature of the charge, the service and return of the notice and the failure of the parties or either of them to appear or their appearance and failure to be reconciled.

16. The entries in such book of records or a certified transcript thereof signed by the judge are evidence of the facts therein stated and it is the duty of the judge to give such a transcript of the entries in any case to either party on request.

17. In any action hereafter brought for the recovery of damages for a cause of action which might be submitted to a court of conciliation as hereinbefore provided the plaintiff cannot recover costs unless he produce at the trial the certified transcript mentioned in the last section showing that the notice was duly served that he appeared pursuant thereto, or that the parties voluntarily appeared as hereinbefore contemplated.

18. The defendant cannot recover costs in such action when it appears that after service of the notice he failed to appear pursuant thereto.

19. Where either party is prohibited from recovering costs as above declared he shall also pay all the costs of proceeding unless in a case where the other party is also prohibited from recovering costs in which case each party shall pay all his own costs and the plaintiff shall pay the other costs of the officers of the court.

20. Where however the plaintiff makes the affidavit necessary to enable him to sue out an attachment or where for any other cause there appears sufficient reason for a more expeditious service of process than could be obtained by following the course above prescribed the service of the attachment or other process may precede the proceedings above contemplated but no further steps shall be taken in the suit at law than the circumstances of the case absolutely require until after the proceedings above prescribed except at the costs of the plaintiff.

21. Where a minor or a woman is a party to a proceeding before a court of conciliation such woman or minor may be attended by the husband or guardian of such party or if there be none then by some friend approved by the court.

22. It is the duty of the judge of the court of conciliation so far as is compatible with his duty as judge to give to every person who may ask it advice respecting his differences with another.

23. No party to any admission or declaration made before a court of conciliation is bound thereby or responsible therefor in any other judicial proceeding whatever further than is above provided.

24. No fee can be received by any judge for any services rendered in a court of conciliation.

25. Each court of conciliation must keep an index of all the causes brought before it which must refer to the page containing the record thereof and must be so arranged as to show what proportion of such causes was finally settled in that court.

onebroose ni stoo to tosidue all otregor of troo all eldene liw as offers of compromise. Note solo all offers di diw

SECTION 1. At any time before the commencement of the trial in any civil action the defendant may serve the plaintiff or his attorney with an offer of compromise signed by himself or his attorney which shall be in the manner and have the effect hereinafter stated.

2. If the plaintiff accept the offer it may be filed with the written acceptation thereof and judgment may be entered accordingly either in term time or vacation.

3. If the action be for any other object than the recovery of money the offer must be to allow judgment to be entered to the effect therein specified.

4. If it be not accepted and the plaintiff fail to recover a more favorable judgment all the proceedings from the time of the making of the offer shall be at the costs of the plaintiff.

5. If the action be for the recovery of money only the offer must be to allow judgment to be entered against him for a certain amount.

6. If the plaintiff do not accept the same he may in return serve the defendant with an offer in writing of the lowest amount for which he is willing to take judgment.

7. Either party may modify these offers at any time before they are accepted by the opposite party up to the time when the cause is called on for trial.

8. If any of the offers thus made are accepted the offer and acceptance being filed judgment may be rendered thereon accordingly.

9. If none of such offers are accepted and judgment is afterwards obtained the payment of costs shall be regulated as follows:

First-If the plaintiff fail to recover more than the defendant's offer exclusive of the costs subsequently made he shall pay all the costs of the suit which accrued after such offer. SECOND-If he recover as much as his own offer exclusively of the costs made subsequently the defendant shall pay all the costs of the 25. Each court of conciliation must keep an index of all the capting THIRD-If any intermediate amount be recovered each party shall pay one half the costs subsequently made.

10. Where several causes of action are joined the offers aforesaid may be made to the different causes of action respectively and the jury must be directed so to shape their verdict and to find such facts as will enable the court to regulate the subject of costs in accordance with the principles above stated.

11. If the plaintiff fail to make any offer at all in reply to that of the defendant his original claim will be deemed his offer and treated accordingly. To initial of every your the busies of notice livin yes

12. Copies of each and all the offers aforesaid with the returns of service endorsed thereon must be filed with the clerk of the court or justice of the peace by whom they shall be sealed up and retained until the termination of the suit. No proof of either of them shall be given to the jury.

13. The provisions of this chapter do not apply to cases where the plaintiff is suing not in his own right or where for any cause he could not legitimately assent to the said offers of the defendant.

4. If it be not accepted and the plaintiff fail to recover a more favorable judgment, all the proceedings from the time of the making of

d taum real of ABOLITION OF ACTIONS IN CERTAIN CASES.

Section 1. No action founded on contract express or implied for the recovery of money or personal property can be sustained in any of the courts of this state after the fourth day of July, 1852, when the amount in controversy is less than fifty dollars except as hereinafter accepted by the opposite party up to the time when the cau :babivorq

2. Although the sum claimed exceeds fifty dollars yet if that found due beless than that amount the suit shall forthwith be dismissed with costs unless where the claim has been diminished below fifty dollars 9. If none of such offers are accepted and judgment is allo jag yd

3. From and after the fourth day of July 1855 the same provisions

shall apply to actions of a like character where the amount of the claim is less than one hundred dollars; and from and after the fourth day of July 1860 the same provisions shall apply to actions of a like character where the amount of the claim is less than five hundred dollars; and from and after the fourth day of July 1865-said provisions. shall extend to actions of a like character whatever the amount.

4. None of the provisions of this chapter apply to contracts made previous to the taking effect of this act nor to those entered into out of this state unless the laws of the country where the same was made contain provisions similar to those herein contained. In this latter case the laws of the place of the contract within the limits hereinbefore fixed shall control the action of the court on this subject.

5. The contract shall be presumed to have been made subsequently to the taking effect of this act and within this state unless the contrary appears affirmatively. and goingare out if or dryfin bus both

6. The law of the foreign country will be presumed to authorize the enforcement of all contracts until the contrary is shown. 7. The above provisions shall not operate upon suits commenced previous to the time when they respectively take effect upon the sub-3. In the cases contemplated in the last stills of such suits. 8. Nor do they apply to proceedings instituted for the purpose of cancelling or enforcing a specific performance of a contract in cases where such proceedings have been heretofore allowed; nor to the 4. In all cases except those above named, segaration fo envolve of 9. Nor shall the provisions of this chapter prevent actions for the recovery of money or other property held in a fiduciary capacity nor

where such property belongs to any civil corporation or where it is 5. The change of punishment made in this raciflo cilduq a vd blad

10. If any person obtains money or other property by pretending that he has certain specific means of payment and by promising that he will pay therewith-if it afterwards appears that he has made a wilful and substantial mis-statement in regard to his means, or if having such means he wilfully and with evident intent to violate his engagement fails to appropriate those means in the manner promised he will be guilty of a misdemeanor and shall be punished accordingly.

11. Where any person gratuitously becomes surety for another by means whereof he is afterwards obliged by law or by a sense of honor to pay any amount as such surety, or where as a mere favor to an-

325

other and not in the ordinary course of business he loans him money or other property without a promise of reward for such favor—if the person for whom the surety was thus given or to whom the loan was thus made wilfully fail to hold the surety harmless or to restore the money or property thus loaned to him he is guilty of a misdemeanor.

ABOLITION OF CAPITAL PUNISHMENT.

SECTION 1. From and after the fourth day of July in the year one thousand eight hundred and fifty-three the penalty of death shall cease to be inflicted as a punishment for crime except as provided in the two following sections.

2. In all cases where crimes punishable with death are committed before the said fourth day of July in the year one thousand eight hundred and fifty-three if the execution has not then take place the punishment shall be as hereafter provided in this chapter. And if sentence of death has at that time been pronounced upon the convict but not carried into execution the punishment is hereby commutted into imprisonment for life and shall be carried into effect accordingly.

3. In the cases contemplated in the last section if the crime was committed before this statute takes effect the punishment of death shall still be inflicted on the convict unless he consents to the punishment by imprisonment as herein provided for.

4. In all cases except those above named crimes which by this statute are punishable with death shall after the day above fixed in this chapter be punished by confinement at hard labor in the penitentiary for a period not less than five years.

5. The change of punishment made in this chapter shall not affect any other law or regulation except from the necessity of the case but all such other laws and regulations shall as far as practicable remain the same as though the punishments herein modified still remained capital punishments. The independent of the interval of the same data in the same as though the punishment shall be and the same as the same data is an interval of the same data is a same data in the same data is a same dat whether he will state of the peritertiary for life or for a term of not less that ten years. We defined the trial of an indiatment for more the inertiary in they find whether he be willy. I **JITIT FOUR TRAP** is verified ascentation whether he be white of instate of the terms of terms of the terms of terms of the terms of terms

trans definition be considered CHAPTER 1. Chapter of Judit deb double

OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

SECTION 1. Whoever is guilty of treason, by levying war against the state, adhering to its enemies, giving them aid and comfort, shall be punished with death.

2. 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 offence to the governor or some judge within the state, he is guilty of misprision of treason and shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding three years nor less than one year.

3. No person can be convicted of the crime of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

courage, or promote the same, although no duel engue, shall be pun-

TITLE I. CHAPTER 2. OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SECTION 1. Whoever kills any human being, with malice aforethought, either express or implied is guilty of murder.

 All murder which is perpetrated by means of poison or laying 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 with death.
 Whoever commits murder otherwise than is set forth in the preceding section is guilty of murder of the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term of not less than ten years.

4. Upon the trial of an indictment for murder, the jury if they find the defendant guilty, must enquire, 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.

5. 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.

6. Any person who fights a duel with deadly weapons, or is present at the fighting of such duel, as aid, second, or surgeon, or may advise, encourage, or promote 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.

7. Any person who accepts such challenge or who consents to act as a second, aid, or surgeon, on such acceptance, or who advise, encourage, or promote the same, although no duel ensue, shall be punished as prescribed in the preceding section.

8. If any person posts another, or in writing or print, use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred dollars, nor less than one hundred dollars, and shall be imprisoned in the county jail for not more than six months, nor less than two months.

9. Any person guilty of the crime of manslaughter, shall be punished by imprisonment in the penitentiary not more than eight years, nor less than one year, and fined not exceeding one thousand dollars, nor less than one hundred dollars. 10. If any person with intent to maim or disfigure, cut or maim the tongue, put out or destroy an eye, cut, slit, or tear off an ear; cut, slit, bite, or mutilate the nose, or lip, or 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, nor less than one year, and fined not exceeding one thousand dollars, nor less than one hundred dollars.

11. If any person shall 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 offence, as is provided in the two following sections.

12. If such offender, at the time of such robbery, is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed he wound, or strike the person robbed, or if he have any confederates aiding and abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the penitentiary for a time not exceeding twenty years, nor less than ten years.

13. If such offender commit such robbery, otherwise than is mentioned in the preceeding section, he shall be punished by imprisonment in the penitentiary, not exceeding ten years, nor less than two years.
14. 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.
15. 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 be defiled; he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding ten years.

16. If any person, unlawfully have carnal knowledge of any female, by administering to her any substance, or by any other means produce such stupor, or such imbecility of mind, or weakness of body, as to prevent effectual resistance, he shall upon conviction be punished as provided in section 14 of this chapter.

17. 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, either for the purpose of prostitution, or marriage, he shall upon conviction be punished by imprisonment in the penitentiary, for REVISED CODE.-42 not more than three years, or fined not more than one thousand dollars, and imprisoned in the county jail not more than one year.

18. If any person, maliciously, forcibly, or fraudulently lead, take, or 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.

19. If any person seduce and debauch any unmarried woman of previous chaste character, he shall be punished by imprisonment in the penitentiary, not more than five years, or by fine not exceeding one thousand, and imprisonment in the county jail not exceeding one year.

20. If before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offence.

21. If any person wilfully, and without lawful authority forcibly, or secretly confine or imprison any other person within this state against his will, or forcibly carry or send such person out of the state, or forcibly seize and confine, or inveigle or kidnap any other person, with the intent either to cause such person to be secretly confined or imprisoned in this state against his will, or to cause such person to be sent out of the state against his will, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars, or by both fine and imprisonment at the discretion of the court.

22. If the father or mother of any child, under the age of six years, or any person to whom such child has been entrusted or confided, expose such child in any highway, street, field, house, or outhouse, or in any other place, with intent wholly to abandon it, he, or she, upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding five years.

23. If any person either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offence, or do any injury to the person or property of another, with intent thereby to extort any money or pecuniary advantage whatever, or 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 fined not exceeding five hundred dollars.

24. If any person assault another with intent to commit murder, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

25. 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.

26. 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 fined not exceeding one thousand dollars, or by both fine and imprisonment, at the discretion of the court.

27. 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 fined not exceeding five hundred dollars. 28. If any person assault another with intent to commit any felony or crime punishable with 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 imprisoned in the county jail not more than one year.

29. 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 fined not exceeding one thousand dollars.

30. Whoever is convicted of an assault, or an assault and battery, where no other punishment is prescribed, shall be punished by imprisonment in the county jail not exceeding six months, or fined not exceeding two hundred dollars, or both such fine and imprisonment at the discretion of the court.

5. If any person wilfully and malificantly burn either in the night or day time, any warehouse, store, manufactory, mill, milread depot, burn, stable, shop, office, out-house, or other building whatsoever of mother, other than is mentioned in the preceding section of this chapter, or any bridge, lock, dam or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years. TITLE I. contract the provident of the p

SECTION 1. If any person wilfully and maliciously burn in the night time, the inhabited building, boat, or vessel of another, or wilfully and maliciously set fire to any other building, boat, or vessel owned by himself or another, by the burning whereof, such inhabited building, boat, or vessel is burnt in the night time, he shall be punished by imprisonment in the penitentiary for life, or any term of years.

2. If any person wilfully and maliciously burn in the day time, the inhabited building, boat, or vessel of another, or any building, boat, or vessel adjoining thereto, or wilfully and maliciously set fire to any building, boat, or vessel, owned by himself or another, by the burning whereof such inhabited building, boat, or vessel is burnt in the day time; 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. 3. 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.

4. 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.

5. It 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 other building whatsoever of another, other than is mentioned in the preceding section of this chapter, or any bridge, lock, dam or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years. 6. 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.

If any person wilfully and maliciously burn, or otherwise destroy or injure any pile or parcel of wood, boards, timber, or other lumber, or any fence bars, or gate, or any stack of grain, hay, or other vegetable product severed from the soil and not stacked; or standing trees, grain, grass, or other standing product of the soil of another, he shall be punished by imprisonment in the penitentiary not more than five years, or fined not exceeding five hundred dollars, and imprisoned in the county jail not exceeding one year.
 The preceding sections of this chapter, severally extend to a married woman, who commits either of the offences therein described.

though the property burnt or set fire to, may belong partly or wholly to her husband.9. If any person wilfully burn any building, goods, wares, mer-

9. If any person wilfully burn any building, goods, wares, merchandise, 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 in the penitentiary not exceeding ten years.

10. 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.

11. If any person break and enter any dwelling house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, break any such dwelling house in the night time, any person being then lawfully therein, such offender shall be punished according to the aggravation of the offence, as is provided in the two following sections.

12. If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so arm himself after having en-

ered such dwelling house, or actually assault any person being lawfully therein, or have any confederate present, aiding and abetting in such burglary, he shall be punished by imprisonment in the penitentiary for life or any term of years.

13. 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.

14. If any person, with intent to commit a felony, in the day time, break and enter, or in the night time, enter without breaking, any dwelling house, or at any time, break and enter any office, shop, store, warehouse, boat or vessel; or any building in which any goods, merchandize, or valuable things are kept for use, sale, or deposit, any person being lawfully therein, he shall be punished by imprisonment in the penitentiary not more than ten years; or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

(9. If any parson wilfully barn any building goods, wares, merichandise, or other chattels wh. I **3JTIT** died against less of damage by fire; or wilfully cause or procure the same to be burned, with intent to injure the insurer, wi. **P 33TTAHD** person be the owner of such property or not, he shall be punished in the penitentiary pot exceed

to her husband, in his sector sector and the sector build and an at

LARCENY AND THE RECEIVING OF STOLEN GOODS.

SECTION 1. 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 bonds, 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 where the value of the property stolen, does not exceed the sum of twenty dollars, by fine not exceeding one hundred dollars, and imprisonment in the county jail, not exceeding one year. 2. 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, where the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and where 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.

3. 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 where 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.

4. If any person commit the crime of larceny, by stealing from any building that is on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another he shall be punished by imprisonment in the penitentiary not exceeding fifteen years, nor less than one year.

5. If any person falsely personate or represent another, and in such assumed character, receive any money or property intended to be delivered to the party so personated, with intent to convert the same to his own use, he is guilty of larceny, and shall be punished accordingly.

6. If any person come by finding, to the possession of any personal property of which he knows the owner, and unlawfully appropriate the same or any part thereof to his use, he is guilty of larceny, and shall be punished accordingly.

7. If any officer within this state, charged with the collection, safe keeping, transfer or disbursement of public money, unlawfully convert to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law, any portion of the public money entrusted to him for collection, safe keeping, transfer, or disbursement, every such act is an embezzlement of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof, he shall be imprisoned in the penitentiary not exceeding five years, and fined in a sum equal to the amount of money embezzled, and moreover is forever afterwards disqualified from holding any office under the laws or constitution of this state.

8. If any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent or servant of a copartnership, or of any person over the age of sixteen years, embezzle and fraudulently convert to his own use, or take and secrete with intent to convert to his own use, without the consent of his employer or master, any money or property of another, which has come to his possession, or is under his care by virtue of such employment, he is guilty of larceny, and shall be punished accordingly. The suit was sold of normal was all the

9. If any carrier or other person, to whom any money, goods, or other property, which may be the subject of larceny, has been delivered to be carried for hire, or if any other person, intrusted with such property, embezzle, or fraudulently convert to his own use, any such money, goods, or other property, either in the mass, as the same were delivered or otherwise, and before the same were delivered at the place, or to the person, where and to whom, they were to be delivered, he is guilty of larceny, and shall be punished accordingly.

10. If any person buy, receive, or aid in concealing any stolen money, goods, or any property the stealing of which is declared to be larceny; or property obtained by robbery, or burglary, knowing the same was so obtained, he shall be punished by imprisonment in the penitentiary, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

11. If any person, having been before convicted of larceny, afterwards commit another larceny, and be thereof convicted, or if any person at the same term of court, is convicted as principal, or as accessary after the fact, in three distinct larcenies, he is deemed a common and notorious thief, and shall be punished by imprisonment in the penitentiary, for not less than five years. 12. If any person after having been convicted of the offence 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 offence; 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. nel out robut could out milled moil bailleupsib sbraw

13. In any prosecution for the offence of buying, receiving, or aid-

ing 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 prove on the trial thereof that the person who stole, robbed, or took the property has been convicted.

14. If any person fraudulently or feloniously, steal the property of another, in any other state or country, and bring the same within this state, he may be convicted and punished in the same manner as if such larceny has been committed in this state, and in every such case, such larceny may be charged to have been committed in any county, in or through which such stolen property may have been ligation, or, any right or interest, in or to any property whatey. theyord

15. Any person prosecuted under the last section, may plead a former conviction or acquittal for the same offence, in another state or country, and if such plea be admitted or established, it is a bar to any further or other proceedings against such person, for the offence committed in this state. management and to the to line beah at addition

16. If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or reccipt, or any evidence of debt whatever, or any public security, or any instrument whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon, or secured thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or effected, as the case may be, shall be adjudged the value of the thing stolen. transfer the right or interest of any holder of such public security, he shall be purished by imprisonment in the peritentiary, for not more han twenty years, nor less than five years! hatofs od of guirogrup ro nd. If any person make, hiter, logITH ounterfeit any bank bill; promissory note, draft, or other evidence of debt issued or purporting to ound tell to be should a viu CHAPTER 5. noite to go y d bamesi ad nose by any state of the United States, or of any other government FORGERY AND COUNTERFEITING. inprisonment in the penitentiary, not more than ten years, or by fine SECTION 1. 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.

REVISED CODE.-43

337

in relation to any matter wherein such attestation or certificate is required by law, or may be received or be taken as legal proof, any charter, deed, will, testament, bond, writing obligatory, power 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 endorsement or essignment of any bill of exchange, promissory note or order, or of any debt or contract, or any other instrument in writing, being or purporting to be the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever is, or purports to be created, increased, transferred, conveyed, discharged, or diminished, he shall be punished by imprisonment in the penitentiary not more than ten years.

2. 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.

3. If any person with intent to defraud, falsely make, utter, forge, or counterfeit any note, certificate, state bond, warrant, or other instrument, being public security for money or other property, issued, or purporting to be issued by authority of this state, or any other of the United States, or any indorsement or other writing purporting to transfer the right or interest of any holder of such public security, he shall be punished by imprisonment in the penitentiary, for not more 'han twenty years, nor less than five years.

4. 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 authorised for that purpose by any state of the United States, or of any other government or country, with intent to injury or defraud, he shall be punished by inprisonment in the penitentiary, not more than ten years, or by fine not exceeding three hundred dollars, and imprisonment in the country jail not exceeding one year.

5. 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

REVISED CODE -13

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.

6. If any person utter, or pass, or tender in payment as true, any false, altered, forged or counterfeit note, certificate, state bond, warrant, or other instrument of public security, or any bank bill, promissory note, draft, or other evidence of debt, issued, or purporting to be issued, by any corporation or company duly authorised as heretofore mentioned, knowing the same to be false, altered, forged or counterfeit, with intent to injury 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.

7. If any person having been convicted of the offences described in the preceding section; afterwards be convicted of a like offence, or if any person at the same term of the court, is convicted of three such distinct offences, he shall be punished by imprisonment in the penitentiary, not less than two years, nor more than ten years.

8. 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 possesion 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. of any period bet convicted of cither of the set of the

9. If any person forge or counterfeit any gold or silver coin current by law or usage within this state; and any person who has in his possession, at the same time, five or more pieces of false money or coin,

30

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.

10. Every person who has in his possession any number of pieces less than five, of the counterfeit coin mentioned in the preceding section, knowing the same to be false or counterfeit, with intent to utter or pass the same as true, 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. 11. If any person, fraudulently connect together different parts of several genuine bank bills, notes, or other instruments in writing, so as to produce one instrument, or alter any note or instrument in writing, in a matter that is material with intent to defraud, the same shall be deemed forgery, in like manner as if such bill or note, or other instrument had been forged and counterfeited, and the offender shall be punished accordingly.

12. If any fictitious or pretended signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument of writing, purporting to be a note, draft, or other evidence of debt, issued by such corporation, with intent to utter or pass the same as true, it is forgery, though no such person may ever have been an officer, or agent of such corporation; nor such corporation have ever existed. Every person guilty of this offence shall be punished by imprisonment in the penitentiary not more than five years, or fined not exceeding three hundred dollars, and imprisoned in the county jail not more than one year.

13. The total or partial erasure or obliteration of any record, process, certificate, deed, will, or any other instrument in writing mentioned in this chapter, with intent to defraud, shall be deemed forgery; and the offender shall be punished by imprisonment in the penitentiary not exceeding five years, or fined not exceeding five hundred dollars, and imprisoned in the county jail not exceeding one year.

14. If any person having been convicted of either of the offences mentioned in the preceding section, be afterwards convicted of a like offence, or if any person at the same term of court, shall be convicted of three such distinct offences, he shall be punished by imprisonment in the penitentiary, not more than ten years, nor less than three years.

15. If any person cast, stamp, engrave, make or mend, or have in his possession any mould, die, press, or other instrument or tool, adapted and designed for the forging or counterfeiting of any coin before mentioned, with intent to use the same, or permit the same to be used for that purpose, he shall be punished by imprisonment in the penitentiary, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

16. 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.

17. Every person who is convicted of having forged, counterfeited, or falsely altered, the great seal of this state, or the seal of any public officer authorized by law, or the seal of any court, corporation, city or county, or who falsely make, forge, or counterfeit 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. ovit nadt more than presidenting adt mitnamnosing 18. 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 coun terfeit. No aid ai mid orolod schenord of to some where your daidw pacity, he shall be punished by imprisonment in the penitentiary not more than five years, or by five not more than one thousand dollars and imprisonment in the countrial not more than one waish base 5. If any executive or judicial efficer, or member of the general as sembly, accept any valuable consideration, gratuity, service or benefit whatever, or shy promise to make the same, or fo do any act been ficial to such officer or member under the agreement, or with the un

341

A STAT

TITLE I. transmission of the second of the s

SECTION 1. If any person on oath or affirmation lawfully administered, wilfully and corruptly swear or affirm falsely to any material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal, or officer created by law, or in any proceeding, or in regard to any matter or thing, in or respecting which, an oath or affirmation is, or may he required, or authorised by law; he is guilty of perjury; and shall be punished if the perjury was committed on the trial of a capital crime, by imprisonment in the penitentiary for life, or any term not less than ten years; and if committed in any other case, by imprisonment in the penitentiary not more than ten years, nor less than two years.

2. If any person procure another to commit perjury, he is guilty of subornation of perjury; and shall be punished as provided in the preor county, or who falsely make, forge, or counterfait.notizes gnibes 3. 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 fined not exceeding five hundred dollars, and imprisoned in the county jail not more than one year. 4. 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 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.

5. 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 by fine not more than two thousand dollars, and imprisonment in the county jail not more than one year.

6. Every person who is convicted under the two last preceding sections of this chapter, shall forever afterwards be disqualified from holding any office under the laws or constitution of this state.

7. 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.

8. 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.

9. 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, referee, or to any master in chancery, or appraiser of real or personal estate, or auditor, with intent to inflaence 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.
10. 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 con-

sideration or gratuity whatever to give his verdict, award or report in favor of any particular party, 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. 11. If any person attempt improperly to influence any juror, in any civil or criminal cause, or any one drawn, or summoned, or appointed, or sworn as such juror, or any arbitrator or referee, in relation to any cause or matter, pending in, or to be brought before the court, for which such juror has been drawn or summoned, appointed or sworn, or for the hearing and decision of which, such arbitrator or referee has been chosen or appointed he shall be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than six months. and the such other person to procure for

12. If any person drawn, summoned, or sworn as juror make any promise or agreement to give a verdict for or against any person, in any civil or criminal case, or corruptly receive any paper, evidence, or information from any one, in relation to any matter or cause, for the trial of which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be punished by a fine not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

13. 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.

14. 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 offence, 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 dollas, or by both fine and imprisonment at the discretion of the court.

15. 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 is allowed or provided for the same, or if any witness falsely and corruptly certify that as such, he has travelled more miles, or attended more days, than he has actually travelled or attended, he shall be punished by fine not exceeding one hundred dollars for each offence, or imprisoned in the county jail not exceeding six months.

16. If any person having knowledge of the commission of any offence, punishable with death, or imprisonment in the penitentiary for life, take any money or valuable consideration, or gratuity, or any promise therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, 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.

17. If any person having knowledge of the commission of any offence punishable by imprisonment in the penitentiary for a limited term of years, is guilty of the offence 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. 18. If any jailor or other officer voluntarily suffer any prisoner in his custody, upon charge or conviction of a capital felony, to escape, he shall be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

19. If any jailor or other officer voluntarily suffer any prisoner in his custody upon charge, or conviction of a felony, other than capital to escape, he shall be punished by imprisonment in the penitentiary not more than eight years, or fine not more than one thousand dollars.

20. If any jailor or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any public offence to escape, he shall be fined, not more than five hundred dollars, or imprisoned in the county jail, not exceeding one year, or by both fine and imprisonment.

21. 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 REVISED CODE.—44

escape be effected or not; or who forcibly rescues 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.

22. Every person, who by any means whatever, shall aid or assist any prisoner lawfully committed to any jail or place of confinement, charged with or convicted of any criminal offence, other than a felony, whether such escape be effected or not, or who convey into such jail or place of confinement, any disguise, instrument, arms, or other thing proper or useful to facilitate the escape of any prisoner so committed, whether such escape be 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 both such fine and imprisonment at the discretion of the court.

23. Every person who aids or assists any prisoner in escaping or attempting to escape from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer or person who has the lawful charge of such prisoner upon any criminal charge, shall be punished by fine not exceeding three hundred dollars, or imprisoned in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

24. If any person confined in the penitentiary, for any less period than for life, break such prison and escape from thence, he shall be punished by imprisonment in such prison, for a term not exceeding five years, to commence from and after the expiration of the original term of his imprisonment.

25. If any person confined in a county jail upon any conviction for a criminal offence, 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 his former sentence, and fined not exceeding three hundred dollars.

26. If any person knowingly and wilfully resist or oppose any officer of this state, or any person authorised by law, in serving or attempting to execute any legal writ, rule, order, or process whatsoever, he shall be punished, by imprisonment in the county jail not exceeding one year, or fined not exceeding one thousand dollars, nor less than fifty dollars, or by both fine and imprisonment, at the discretion of the court.

REVISED CODE.-44

27. 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 fined not more than one hundred dollars.

28. If any person falsely assume to be a judge, justice of the peace, magistrate, sheriff, deputy sheriff, coroner, or constable, and take upon himself to act as such, or to require any one to aid or assist him in any matter pertaining to the duty of any such officer, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars.

29. If any person take upon himself to exercise or officiate in any office or place of authority, in this state, without being legally authorised, or if any person by color of his office, wilfully and corruptly oppress any person, under pretence of acting in his official capacity, he shall be punished by fine, not exceeding one thousand dollars, or imprisoned in the county jail not more than one year, or by both fine and imprisonment.

30. If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney or councillor at law, encourage, excite, or stir up any suit, quarrel, or controversy between two or more persons, with intent to injury such person or persons, he shall be punished by fine not exceeding; Kve hundred dollars, and shall be answerable to the party injured in treble damages.

31. 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 mis-demeanor.

32. 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 mis-demeanor.

33. Every person who is convicted of a mis-demeanor 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.

34. If any public officer fraudulently make or give false entries or

10

false returns, or false certificates or receipts in cases where entries, returns, certificates or receipts are authorised by law, he shall be fined not exceeding five hundred dollars ; or imprisoned in the county jail not exceeding one year, or by both at the discretion of the court.

whon, who hy any means what we alriade berhand 10 28. dil any person falsely assume to be a judge justice of the peace. ungistrate sheriff, deputy sheriff, cononer, or constable, and take upon himself to out as such or I JITITE any one to aid or assist him in anyo matters pertaining to the duty of any such officer; he shall be pusished by imprisonne,? CHAPTER 7, jail not more than one vession by fine not exceeding three hundred dollars suffered MALICIOUS MISCHIEF AND TRESPASS ON PROPERTY.

Minorita Hannah danah

a flux states without being locally autho SECTION 1. 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.

2. If any person maliciously injure or destroy any dam, lock, canal trench, or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory, or maliciously draw off the water from any mill pond, reservoir, canal, or trench, or destroy, injure, or render useless any engine or the apparatus thereto belonging, prepared or kept for the extinguishment of fires, he shall be punished by imprisonment in the county jail not exceeding one year, and fined not exceeding five hundred dollars. estern' will ab neglect to p

3. 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 telegraphic 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.

4. 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 imprisoned 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.

5. If any person maliciously cut down, injure or destroy, any fruit or ornamental tree, or other tree, vine, or shrub of another, standing or growing for ornament or use, or maliciously break down, mar, deface, or injure, any fence, hedge, or ditch inclosing lands belonging to another, or throw down, or open any gate, or bars not his own or under his charge, and leave them open, whereby an injury is done to another; or maliciously injure, destroy or sever from the land of another, any produce thereof, or any thing attached thereto, he shall be punished by imprisonment in the county jail not more than one year. or by fine not exceeding one hundred dollars, or by both imprisonment and fine, at the discretion of the court.

6. If any person maliciously take down, injure, or remove any monument erected, or any tree marked as a boundary of any tract of land, city, town, or lot, or destroy, deface, or alter the marks of any such monument or tree made for the purpose of designating such boundary, or injure or deface any mile stone, post, or guide board, erected on any public way, or remove, deface, or injure any sign board, or break or remove any lamp or lamp post, or extinguish any lamp on any bridge, way, street, or passage, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

7. 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 imprisoned in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

8. 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 fifty dollars, or imprisonment in the county jail not more than thirty days.

9. 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 shalk 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.

10. If any person wilfully write, make marks, or draw characters on the walls, or any other part of any church, college, academy, school house, court house, or other public building, or wilfully injure, or deface the same, or any wall or fence inclosing the same, he shall be punished by fine not exceeding two hundred dollars, or imprisoned in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

11. 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, nor less than ten dollars, and may at the discretion of the court be imprisoned in the county jail not exceeding thirty days.

12. If any owner, master, clerk, or any other person, having charge, 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.

8. If any person willilly commit any trespass by entering upon the garden, orchard, or improved land of another, with intent to take,

351

ry to his inclination; or who frauchiently or deceitfully changes a ballot of any elector, by which such elector is deprived from voting for such enaldates or person as arrented, he shall be punished by imprisonment in the county jail not exceeding two years, and fined not

OFFENCES AGAINST THE RIGHT OF SUFFRAGE.

SECTION 1. 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 receive 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.

2. 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 punisbed by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

3. 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.

4. 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.

5. 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.

6. If any person procure, aid, or assist, counsel, or advise another to give his vote, knowing that such person is disqualified, he shall be punished by fine not exceeding five hundred dollars, nor less than fifty dollars, and be imprisoned in the county jail not exceeding one year.

7. 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 contra-

ry to his inclination; or who fraudulently or deceitfully changes a ballot of any elector, by which such elector is deprived from voting for such candidates or person as he intended, he shall be punished by imprisonment in the county jail not exceeding two years, and fined not exceeding one thousand dollars, nor less than one hundred dollars.

8. If any person unlawfully and by force, or threats of force, prevent or endeavor to prevent, any 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 fined not more than two hundred dollars.

9. 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.

10. 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 enforceing the payment of debts, or in 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.

11. If any judge or clerk of any election authorised 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.

12. 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.

13. 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.

14. If any judge, clerk or messenger after having been deputed by the judges of the election to carry the pollbooks of such election to the place where by law they are to be canvassed, wilfully or negl gently fail to deliver such poll books within the time prescribed by law, safe with the seal unbroken, he shall for every such offence be punished by fine not exceeding five hundred dollars nor less than fifty dollars.

man married or unmarried, are guilty of open and gross lewdnessed and designedly make any open and indecent, or obseens exposute of his or has present on of the parsent of another, every such parson shaller be published by interference of J **HTTF** unty jail not lexceeding six do months, or by find hbt lexceeding two fundred dollarshirt of a parson here of, **K** apy person heep a hole **SATCAHO** C. resorted to for the purposed

OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY. SECTION 1. Every person who commits the crime of adultery, shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding three hundred dollars, and imprisonment in the county jail not exceeding one year; and when the crime is committed between parties only one of whom is married, both are guilty of adultery and shall be punished accordingly. No prosecution for adultery can be commenced but on the complaint of the husband or wife.

2. 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 fol-REVISED CODE-45 lowing section, are guilty of bigamy and shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year. ing six months.

ob 3. 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 matrione thousand dollars, or imprisoned in the county (all not mor; ynom

4. Every unmarried person, who knowingly marries the husband or wife of another, when such husband or wife are 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. 5. If any man and woman not being married to each other, lewdly

and lasciviously associate and cohabit together, or if any man or woman married or unmarried, are 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..

6. 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 offence, again be convicted of the like offence, he shall be punished by imprisonment in the penitentiary not less than one year, nor more than three years. and point an boond for each ye to take

7. 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.

8. If any person let any house, knowing that the lessee intends to use it as a place of 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.

9. If any person inveigle or entice any female before reputed virtuous, to a house of ill fame, or shall knowingly conceal, or aid, or abet in concealing any 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. 10. 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 wilf ully 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.

11. If any person wilfully destroy or injure any tomb, grave stone, monument, or other thing placed or designated as a memorial of the dead, or any fence railing or other thing placed about the same, or any place inclosed for the burial of the dead; or wilfully destroy, injure or remove any tree, shrub or plant within such inclosure, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both fine and imprisonment.

12. If any person cruelly beat or torture any horse or ox, or other beast, whether belonging to himself or another, he shall be punished by fine not exceeding one hundred dollars.

13. If any person import, print, publish, sell, or distribute any book, pamphlet, ballad, or any printed paper containing obscene language, or obscene prints, pictures or descriptions manifestly tending to corrupt the morals of youth, or introduce into any family, school, or place of education, or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper, picture, or description, either for the purpose of loan, sale, exhibition, or circulation, or with intent to introduce the same, into any family, school, or place of education, he shall be punished by fine not exceeding two hundred dollars. the report of sound him of the dollars, and the dollars. 14. If any person wilfully disturb, or disquiet any assembly of perthan thirty days, or by fine, not exceeding fifty dollars. 15. If any person, within one mile from the place where any religious society are 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 articles of traffic, he shall be punished by fine not exceeding fifty dollars.

16. The preceding section does not apply to tavern or grocery keepers, exercising their calling or business in the places mentioned in their licenses, 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, by complying with the regulations of such religious assembly, and with the laws of this state.

17. 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 eards, dice, faro, roulette, equality, or other game for money or other thing, such offender shall be fined in a sum not less than fifty dellars, nor more than three hundred dollars and imprisoned in the county jail not exceeding one year or both fine and imprisonment. 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 thoreof.

18. 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. 19. If any person play at any game, for any sum of money, or other property of value, he shall be punished by fine, not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months.

20. 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.

TITLE I.

e sand dollars; and imprisoned in the county jail not extending one

CHAPTER 10.

OFFENCES AGAINST PUBLIC HEALTH.

SECTION 1. If any person knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding two hundred dollars, or by both fine and imprisonment. 2. 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.

3. 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 ex-

356

ceeding one year, or fined not exceeding five hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

4. If any apothecary, druggist, or other person, sell and deliver any arsenic, corrosive sublimate, prussic acid, or any poisonous liquid or substance, without having the word "poison," and the true name thereof written or printed upon a label attached to the vial, box, or parcel containing the same, he shall be punished by fine not exceeding one hundred dollars. nor less than twenty dollars.

5. If any person inoculate himself or any other person, or suffer himself to be inoculated with the small pox within this state, or come within the state with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the penitentiary not more than three years; or fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

TITLE I.

diversion of the offences AGAINST PUBLIC POLICY.

CHAPTER 11. If any person knowingly sell any kind of discased.

SECTION 1. If any person make or aid in making or establishing any lottery in this state, or advertise or make public any scheme for any such lottery, or advertise, or offer for sale, any ticket, or part of a ticket in any lottery, or sell, negotiate, or dispose of, or purchase, or receive the same, or have in his possession any ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same, on his own account or as the agent of another, he shall be punished by imprisonment in the county jail not more than one year; or by fine not exceeding one thousand dollars, or by both fine and imprisonment at the discretion of the court.

2. If any person subscribe to, or become a member, or be in any way interested in any association or company, formed for the purpose of issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank to circulate as money in this state, he shall be punished by imprisonment in the county jail, not exceeding one year, or fined not more than one thousand dollars.

3. No incorporated company shall employ its effects or any part thereof, or be in any way interested in any fund that is employed for the purpose of issuing notes or other evidences of debt, to be loaned or put in circulation as money; and any director, officer, or agent of any such company, who violates the provisions of this section, shall be imprisoned in the county jail, not exceeding one year, or fined not exceeding one thousand dollars. and emosfertane to vibris as at 4. All notes and other securities for the payment of any money, or the delivery of any property, made or given to any association, institution, or company that is formed for any such unlawful purpose, or made, or given to secure the payment of any money loaned or discounted by any company or its officers, contrary to the provisions of the preceding section, are void. Section to believe and other too. yas ob 5. No person, association, or incorporation shall issue any bills, drafts, or other evidences of debt, to be loaned or put in circulation as money, or to pass or be used as a currency or circulating medium; and every person, association, or corporation, and every member thereof who violates the provisions of this section, shall be punished by fine not exceeding one thousand dollars.

6. If any tavern keeper or other person give, sell, or dispose of any spirituous or intoxicating drink, to any Indian within this state, or to any person who is intoxicated, he shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

7. 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.

8. If any person carry on, or transact any business or occupation without license therefor, when such license is required by any law of this state, he shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months; or by both such fine and imprisonment, include and to be send anillow no visual bataliberroad visual states of the send of the send and exceeding to deserve to lood visual send and when a state of the send to be send and and the send to be send and the send of the send the send visual a grind to react a send and the only does not send the send visual and the send of the send of the only does not send the send visual and the send of the send of the only does not send the send of the send of the send of the send of the only does not send the send of the send of the send of the send of the only does not send of the only does not send of the only does not send of the only does not send of the only does not send of the send of

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.

TITLE I. CHAPTER 13. CHEATING BY FALSE PRETENCES, GROSS FRAUDS, AND CONSPIRACY.

SECTION 1. If any person, designedly and by false pretence, 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 panished 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.

2. If any person 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 being privy to, or knowing of such fraudulent conveyance, assignment or charge, who 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 vear.

3. 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.

4. If any person with intent to defraud, use a false balance, weight, BEVISED CODE.-46;

en S. No hicorporated con: 12 CHAPTER 12: not before it effects of any part

b thereof, or be in any way interested in any fund that is employed for

bothe county hold not exceeding HITITEs of fined not more thin one

OFFENCES AGAINST THE PUBLIC PEACE. SECTION 1. 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 three months, or by fine not exceeding fifty dollars.

2. When three or more persons, in a violent or tumultuous manner, assemble together to do an unlawful act, or when together, attempt to do any act whether lawful or unlawful, in an unlawful, violent or tumultuous manner, to the disturbance of others, they are guilty of an unlawful assembly, and every such offender shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars. 101, polleloosas , norsed views bus 3. 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. . 4. 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 are within initia which how on a new york it . V or

5. 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 lawrully assembled, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months.

6. 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 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 imprisoned in the county jail not more than six months, or by both fine and imprisonment at the discretion of the court.

362

5. The magistrate granting the warrant of arrest for this offence, 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.

6. 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 detraud, he shall be fined not more than five hundred dollars, and imprisoned in the county jail not exceeding one year.

7. 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.

8. If any person with intent to defraud, use any cask, package, box or bale, marked, branded, or stamped by another, for the sale of merchandize or produce, of an inferior quality, or less in quantity or weight than is denoted by such mark, stamp or brand, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, or by both fine and imprisonment at the discretion of the court.

9. Every person who is convicted of any gross fraud, or cheat at common law, shall be punished as provided in the preceding section. 10. If any person cast away, sink, or otherwise destroy any raft, boat, or vessel within any county of this state; with intent to injure or defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same, or of any part thereof, he shall be punished by imprisonment in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars, and imprisoned in the county jail not exceeding one year.

REVISED CODE.-46:

11. 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 of the same, he shall be punished by fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding one year.

12. If any owner of any boat or vessel, or 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 or exhibit, or cause to be made out and exhibited, any false estimates of any goods or property laden, or pretended to be laden on board of such boat or vessel, with intent to injure or defraud any insurer of such beat 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.

13. 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 fined not exceeding two thousand dollars, and imprisoned in the county jail not exceeding one year.

14. 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 offence of which he is innocent, whether such person be so impleaded, indicted, 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 imprisoned in the county jail not exceeding one year.

.

15. If any two or more persons, conspire or confederate together, with the fraudulent or malicious intent wrongfully to injure the person, character, business, or property of another, or to do any illegal act, injurious to the public trade, health, morals or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every such offender, and every person who is convicted of conspiracy at common law, shall be punished by imprisonment in the penitentiary, not more than three years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

TITLE I. THERE I. THE I.

SECTION 1. The erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals, or the public; the causing, or suffering any offal, filth, or noisome substance to be collected, or to remain in any place to the prejudice of others; the obstructing or impeding without legal authority, the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome, or impure, the water of any river, stream or pond; or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings, or otherwise, the public highways, private ways, streets; alleys, commons, landing places, or burying grounds, are nuisances.

2. 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.

3. Houses of ill fame kept for the purpose of prostitution and lewdness, gambling houses, or houses where drunkenness, quarrelling, fighting, or breaches of the peace are carried on or permitted, to the disturbance of others, are nuisances, and may be abated and punished as provided in this chapter. 4. 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.

365

5. When upon indictment, complaint, or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had, may, in addition to the fine imposed, if any, or to the judgment for damages and costs, for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and after inquiry into, and estimating as nearly as may be, the sum necessary to defray the expense of such abatement, the court may issue a warrant therefor.

-6. 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.

7. 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 security 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.

8. The expense of abating a nuisance by virture of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any building, fences, or other things, that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.

with or without such fine, may a **HITIT** h nuisance to be abated, and issue a warrant as hereinafter provided. 5. When upon indictment **21 TATANO** or action, any person is adjudged guilty of a naisance, the court before whom such conviction is

SECTION I. 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.

2. Every persons who makes, composes, dictates, or procures the same to be done, or who wilfully publishes or circulates such libel, or in any way knowingly and wilfully aids or assists in making, publishing, or circulating the same, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars.

3. 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 libellous, was true, and was published with good motives, and for justifiable ends, the defendant shall be acquitted.

4. No printing, writing, or other thing is libel, unless there has been a publication thereof.

5. The delivery, selling, reading, or otherwise communicating a libel, or eausing the same to be delivered, sold, read or otherwise communicated to one or more persons, or to the party libelled, is a publication thereof.
6. In all indictments or prosecution 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.

PART FOUR_TITLE II. CHAPTER 1.

THE PREVENTATION OF PUBLIC OFFENCES.

SECTION 1. Lawful resistance to the commission of a public offence may be made by the party about to be injured, or by others.

2. Resistance, sufficient to prevent the offence, may be made by the party about to be injured.

First-To prevent an offence against his person;

SECOND—To prevent an illegal attempt by force, to take or injure property in his lawful possession.

3. Any other person in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offence.

anination to writing, and called the same to be subscribed by the par-

TITLE 11. CHAPTER 2.

SECTION 1. Public offences may be prevented by the intervention. of the officers of justice. FIRST-By requiring security to keep the peace:

SECOND—By forming a police in cities and villages, and by requiring their attendance in exposed places;

THERD-By suppressing riots: 2. Whenever the officers of justice are authorised to act in the preventation of public offences, other persons who by their command, act in their aid are justified in so doing. TITLE H.

CHAPTER 3.

SURETY TO KEEP THE PEACE.

SECTION 1. The judges of the supreme, district, and county courts, mayors of cities, or towns, and justices of the peace, are magistrates, and have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, in the manner provided in this chapter.

2. Whenever complaint is made to a magistrate that any person has threatened to commit any offence against the person or property of another, it is the duty of the magistrate to examine such complainant, and any witnesses he may produce, on oath; to reduce such examination to writing, and cause the same to be subscribed by the partiles so examined.

3. If it appear from such examination that there is just cause to fear the commission of any public offence, such magistrate must issue a warrant under his hand, directed generally to the sheriff of the county, or any constable, marshall, or policeman of the city or town reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

4. 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.

5. If it appear that there is no just reason to fear the commission of the offence alleged, the person complained of must be discharged. 6. If there be just reason to fear the commission of the offence, the person complained of may be required to enter into an undertaking in such sum as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace towards the people of this state, and particularly towards the complainant.

7. If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

8. If the person complained of be committed for not giving an undertaking he may be discharged by a magistrate upon giving the same.

9. The undertaking, together with the complaint, depositions, and other papers in the cause, must be returned by the magistrate to the district court of the county on the first day of the next term thereof.

10. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault another, or to commit an offence against his person or property, may be ordered by the court or magistrate to give security, as provided in section six of this chapter.

11. A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the district court of the county; and if the complainant appear, and the defendant do not appear, the court may forfeit the undertaking, and order the same to be prosecuted.

12. If neither the complainant or defendant appear the court must discharge the undertaking on payment of costs by the defendant, but if both parties appear, the court may hear their proofs and allegations, and either discharge the undertaking or require a new one for a time not exceeding one year.

without lawful cause, relises or <u>neglects</u> to obey such command, is guilty of a miademeanor.

TITLE H. CHAPTER 4. CHAPTER 4. SECTION 1. The organization and regulation of the police in cities and towns shall be as regulated by law. 2. The mayor or other officer having the direction of the police in a city or village must order a force sufficient to keep the peace to attend any public meeting when he is satisfied that a breach of the peace is to be apprehended.

3. If there be no police in such eity or town he may order out such REVISED CODE.-47 number of able bodied citizens as he may deem necessary for the purpose of keeping the peace, as provided in the last section.

CHAPTER 14. RESISTANCE OF PROCESS AND SUPPRESSION OF RIOTS.

SECTION 1. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend that resistance will be made to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished by law.

2. 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.

3. Every person commanded by a public officer to assist him in the execution of process, as provided in section 1 of this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor.

4. 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.

5. 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 eity or town, the judges, sheriff and his deputies if they be present, the mayor, aldermen, marshal, constables, and justices of the peace of such eity 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.

6. If the persons assembled do not immediately disperse, the ma-

gistrates 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.

7. If any person commanded to aid the magistrate or officer, without good cause neglect to do so, he is guilty of a misdemeanor.

8. If a magistrate or officer having notice of an unlawful or riotous assembly, as provided in section 5 of this chapter, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the persons he is guilty of a misdemeanor.

9. 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.

10. 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 governrr, or by a judge of the supreme, district, or county court, sheriff or magistrate, as the case may be.

4. The jurisdiction of an indicated configure of the contract of the contract

SECTION 1. 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 offence committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

2. When the commission of a public offence 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 offence charged, provided ke consummated the offence through the intervention of an innocent or guilty agent within the state, or other means proceeding directly from himself; and in such case the jurisdiction is in the county in which the offence is consummated.

3. When an inhabitant or resident of this state, by previous appointment or engagement, fight a duel, or be concerned as second therein, without the jurisdiction of this state, and in such duel a wound is inflicted upon any person whereof he die within this state, the jurisdiction of the offence is in the county where the death may happen.

4. When a public offence is committed in part in one county and in part within another, or the acts or effects thereof, constituting or requisite to the consummation of the offence, occur in two or more counties, jurisdiction is in either county.

5. When a public offence is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

6. When an offence is committed within this state on board a boat or vessel navigating a river, lake, or canal, or laying therein in the prosecution of her voyage, the jurisdiction is in any county through which the boat or vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

7. The jurisdiction of an indictment for the crime of forcibly, and without lawful authority, seizing and confining another, or kidnapping him with intent against his will to cause him to be confined or imprisoned within the state, or to be sent out of the state, or of taking or enticing away a child under the age of twelve years, from the parents, guardian, or other person having the legal charge of her person, with the intent to detain or conceal such child, or of taking or enticing away an unmarried female of previous chaste character under the age of fifteen years, for the purpose of prostitution, or of taking any woman unlawfully and against her will, or by force, menace, or duress compelling her to marry against her will, or of seducing and debauching, any unmarried woman of previous chaste character. is in any county in which the offence is committed, or into or out of which the person upon whom the offence was committed, may in the prosecution of the offence 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 offence, or in abetting the parties concerned therein, and there and the source of 8. When the offence of bigamy is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

-CENERAL DEFENTIONS AND PROVISIONS AS TO CRIMES AND OFFENERS

TITLE II. CHAPTER 7. THE TIME OF COMMENCING CRIMINAL ACTIONS. Section 1. A prosecution for murder may be commenced at any

SECTION 1. A prosecution for murder may be commenced at any time after the death of the person killed.

2. An indictment or a prosecution for a public offence must be found or commenced within one year after the commission thereof, in the following cases, and not after:

FIRST-Taking or enticing away an unmarried female under the age of fifteen years, for the purpose of marriage or prostitution.

SECOND-Seducing and debauching an unmarried female of previous chaste character;

THIRD—For rape and adultery;

FOURTH—For an assault with an intent to commit a rape;
FIFTH—All misdemeanors triable before a justice of the peace.
3. In all other cases an indictment for a public offence must be found within three years after the commission thereof, and not afterwards.
4. If when the offence is committed the defendant be 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.
5. 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.

0. The warrant must be directed to, and executed by a peace of one out they be presented in any county of this size of 3. When the offence of big II JITIT mitted in one county, and the defendant is apprehended in another, the jurisdiction is in either .8 RETARNO

"GENERAL DEFINITIONS AND PROVISIONS AS TO CRIMES AND OFFENCES.

SECTION 1. Public offences are divided into felonies and misdemeanors.

2. A felony is an offence punishable with death, or by imprisonment in the penitentiary of this state.

3. Every other criminal offence is a misdemeanor. 4. No person can be punished for a public offence except upon legal conviction in a court having jurisdiction thereof.

5. All criminal prosecutions shall be commenced and carried on in the name of "the state of Iowa." 6. No person shall be subject to a second prosecution for a public offence for which he has once been prosecuted, and legally convicted

or acquitted.

Szcosza Sodacing and dobuicining an universit fomale of provi-ous cheste character; atomicant listic system at such when the 1. The prediction of an inTITLE Hibbs born over fore-doaffed domm-Toring used with an intent to commit a pract a CHAPTER 9. ORIGINAL CHAPTER 9. all and south other cases and indictment for a public officies must be INFORMATION AND MAGISTRATES. SECTION 1. The information is the allegation made to a magistrate that a person has been guilty of some designated public offence. 2. The following persons are magistrates: FIRST-The judges of the supreme court; SECOND-The judges of the district and county courts; THIRD-Justices of the peace; middly formed a method being being and FOURTH-Police and other special justices in cities, towns and villages.

FIFTH-The mayors of cities and towns,

375

TITLE II. Teace officers are elected. II SITIT ons alladaren saldatanos, end CHAPTER 10. CHAPTER 10. CHAPTER 10.

de sadiad des of while warrant of arrest. days edial to the bageat

SECTION 1. When an imformation is laid before a magistrate, of the commission of a public offence triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing and cause them to be subscribed by the party making them.

2. The affidavits must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commisson of the offence and the guilt of the defendant.

3. If the magistrate be satisfied from such testimony that the offence complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

4. The warrant may be substantially in the following form:

County of (here name the county,) The state of Iowa. To any sheriff, constable, or marshal of the state.

Information upon oath having been this day laid before me by A. B. (here state the name) that the crime of (designating it by its name) has been committed, and accusing C. D. (the name of the defendant if known) thereof.

You are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place) or in case of my absence or inability to act, the nearest or most accessable magistrate in this county.

Dated at_____this____day of____18

5. The warrant must specify the name of the defendant, or if it be unknown to the magistrate he may be designated therein by any name. It must also state an offence which authorizes the magistrate to issue the warrant, the time of issuing it, and the county, city, town, or village, where it was issued, and must be signed by the magistrate with his name of office. WARRANT, A SHOUL SHOLL WA YE TERRA

6. The warrant must be directed to, and executed by a peace officer, and may be executed in any county of this state.

be held to answer for a public offence.

7. Peace officers are sheriffs of counties, constables, marshalls, and policemen of cities, towns, and villages respectively.

8. If the offence charged on the warrant be a felony, the officermaking the arrest must take the defendant before the magistrate who issued it, or in the event of his absence or inability to act, before the nearest or most accessable magistrate in the county where the warrant was issued.

9. If the offence charged in the warrant be a misdemeanor, and the defendant be arrested in another connty, the officer must upon being required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.
10. On admitting the defendant to bail the magistrate must certify on the warrant the fact of the bail being taken, and deliver the same, together with the undertaking of bail, to the officer having charge of the defendant, who shall forthwith discharge him from arrest, and without delay deliver the warrant and the undertaking to the clerk of the court at which the defendant is required to appear.

If bail be not forthwith given to such magistrate, the officer shall take the defendant before the magistrate who issued the warrant or if he be absent, or unable to act, before the nearest or most accessable magistrate of the county where the warrant was issued.
 A 12. In all cases where the defendant has been arrested he must be taken before the magistrate without unnecessary delay.
 B. If the defendant be brought for examination before a magistrate of the county other than the one who issued the warrant the affidavits on which the same was issued must be sent to such magistrate, or if they cannot be procured the prosecutor and his witnesses must be summoned to give their testimony anew.

od ti i to imbresto of to anon of Viceos familiary of the yes of memory between the TITLE II! of the second of the offer of the second of the charter of the control of the offer of the second of the offer of the second of the second of the second of the arrest by an officer under a WARRANT, and without a WARRANT. Mo coord a of between of between of the second of the Section 1. Arrest is the taking a person into custody, that he may, be held to answer for a public offence.

Dated at ______this neighbor of a second state of the second state

2. An arrest is made by an actual restrain of the person of the defendant, or by his submission to the custody of the officer.

The officer must inform the defendant that he acts under the authority of a warrant, and must also show the warrant if required.
 A peace officer may without a warrant arrest a person.

4. A peace one of may without a warrant arrest a person, First—For a public offence committed or attempted in his presence. SECOND—Where a public offence has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

5. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of the offence, or when he is pursued immediately after an escape.

6. He may take before a magistrate any person who being engaged in the commission of a public offence is arrested by a bystander, and delivered to him.

7. To make an arrest the officer may break open any outer or inner door or window of a dwelling house, if after notice of his office and purpose he be refused admittance.

8. If after notice of intention to arrest the defendant, he either flee or foreibly resist, the officer may use all necessary means to effect the arrest.

9. When a public offence is committed in the presence of a magistrate, he may by verbal order, command any person to arrest the offender, and may thereupon proceed as if the defendant had been brought before him on a warrant.

may, after notice of his attention and refusal of admittance, breat open any other of huer door or window of a dwelling house W 01

TITLE II.

CHAPTER 12.

ARREST BY A PRIVATE PERSON.

SECTION 1. A private person may arrest another,

FIRST—For a public offence committed or attempted in his presence. REVISED CODE.—48. Internet at the busiced and the second seco SECOND—When a felony has been committed, and he has reasonable cause for believing the person arrested to have committed it. 2. He must, before making the arrest, inform the person to be ar-

rested of the cause thereof, and require him to submit, except when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.

If the person to be arrested has committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling house for the purpose of making the arrest.
 A private person who has arrested another for the commission of a public offence, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

an idea of which the defend TITLE II. and to apply to bravilab har

CHAPTER 13.

together with the undertaking of buil, to hypothese builts relations

ing Herney state before and a state and planta when being anger it

ARREST AND RETAKING AFTER ESCAPE.

SECTION 1. An arrest may be made on any day, and at any time of the day or night.

2. If a person arrested escape, or be rescued, the person from whose custody he made escape or was rescued, may immediately pursue and retake him at any time, and within any place in the state.

3. To retake the person escaping or rescued, the person pursuing may, after notice of his attention and refusal of admittance, break open any outer or inner door or window of a dwelling house.

TTLE IN

TITLE II.

CHAPTER 14.

EXAMINATION BY A MAGISTRATE. SECTION 1. When the defendant is brought before a magistrate upon arrest either with or without warrant, on a charge of having committed a public offence, the magistrate must immediately inform him of the offence with which he is charged, and of his right to the aid of counsel in every stage of the proceedings.

2. The magistrate must allow the defendant a reasonable time to send for counsel, and if necessary, adjourn the examination for that purpose.

3. 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.

4. The examination must be terminated at one session, unless the magistrate, for good cause shown, adjourn it.

5. No examination can be adjourned for a longer period than thirty days.

6. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, or require him to give ample surety for his appearance at the time and place to which the examination is adjourned.

7. If the defendant is charged with an offence punishable with death, he must be committed.

8. If there is no jail in the county the sheriff must retain the defendant in his custody until the time of examination.

6. At the examination the magistrate must, in the first plea, read to the defendant the depositions of the witnesses on the taking of the information, and if the defendant request it, must summons the witnesses so examined, if they be within the county. He shall also issue subpœnas for any additional witnesses required by the prosecution or the defendant.

10. When the examination of the witnesses on the part of the state is closed, the magistrate must inform the defendant that it is his right to make a statement explaining the charge made against him, or that he may waive the same, and such waiver cannot be used against him on the examination before the magistrate, or on the trial.

11. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing without oath, and shall put to the defendant the following questions only:

What is your name and age? dollo adding a text real to be decreased

Where were you born ?! weiled of each a main line on al month tent

Where do you reside, and how long have you resided there ?

What is your business or profession ?
Give any explanation you think proper of the circumstances appearing in the testimony against you, and state any facts which you think may tend to your exculpation.
12. The answer of the defendant to each of the questions must be read to him as it is taken down, and he may thereupon correct or add to the same, until it is made conformable to what he declares is the truth:

13. Such answer or statement of the defendant shall be signed by him, or if he refuse to sign it his reasons for such refusal shall be stated by the magistrate.

14. After the waiver of the defendant to make a statement, or after he has made it, his witnesses if he produce any, may be sworn and examined.

15. The witnesses on the part of the defendant must not be present at the time he makes his statement.
16. 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.

17. The testimony given on the part of the state and the defendant must be reduced to writing by the magistrate, or under his direction, and must set forth the age and place of residence of the witnesses, and be certified by him.

18. After the examination is closed, the magistrate must make out and annex to the depositions and statement his certificate, which must set forth in substance,

First—The time and place of the examination; has been and the supersolution of the second states of the supersolution of the supersolut

SECOND—That the defendant made and signed the annexed statement, or if after making a statement he refused to sign it, the reasons of making such refusal must be set forth;

THERE—That the witnesses named in the depositions were duly sworn, and subscribed the same in the presence of the magistrate;

19. Such certificate must be signed by the magistrate with his official name.

20. If after hearing the testimony and statement it appear to the magistrate either that a public offence has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, he must order the defendant to be discharged, and such order must be endorsed on the depositions and signed by the magistrate to the following effect. "There being no sufficient cause to believe the within named defendant guilty of the offence herein mentioned. I have ordered him to be discharged."

381

21. If it appear from the examination that a public offence has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner endorse on the depositions an order signed by him to the following effect. "It appearing to me by the within depositions and statement (if any) that the offence therein mentioned (or any other offence according to the fact) has been committed, and that there is sufficient cause to believe the within named defendant guilty thereof I order that he be held to answer the same."

22. If the offence is not bailable, the following words, or words to the same effect, must be added to the endorsement, "and that he be committed to the jail of the county of _____."

23. If the offence is bailable, and bail be taken by the magistrate, the following words in substance must be added to the endorsement mentioned in section twenty-one of this chapter, "and I have admitted him to bail to answer to the undertaking hereto annexed." If the defendant does not give bail, then the magistrate must add to the endorsement in substance as follows, "and that he be admitted to bail in the sum of (state the amount) and be committed to the jail of (name the county) until he gives such bail."

24. 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.

reaching to be been of the sheriff of the county source to the

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 offence) 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 within and day of barry of 1 A. D. 18 25. 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 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.

26. Whenever the magistrate is satisfied by oath or otherwise that there is reason to believe that any such witness will not fulfil his undertaking to appear and testify unless surety be required, he may order the witnesses to enter into a written undertaking with sureties, and in such sum as he may deem proper for his appearance.

27. Infants and married woman 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.

28. 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.

29. When a magistrate has discharged a defendant, or held him to answer, he must return to the next district court of the county, at or before its opening on the first day of the term, the warrant and statement, if any, and the depositions, and all undertakings of bail, for the appearance of the defendant and witnesses taken by him.

CHAPTER 15. CHAPTER 15. EMPANNELING GRAND JURY. SECTION 1. On the first day of the term of the court for which 3grand jury has been summoned, they must be called, and if fifteen

do not appear, or if the number appearing be reduced to less than fifteen, the court may order the sheriff of the county to summons a sufficient number of qualified persons to complete the pannel. Persons thus summoned can only serve during the term.

2. A defendant held to answer for a public offence may challenge the pannel of the grand jury, or any individual juror.

3. A challenge to the pannel can only be interposed for the reason

that they were not appointed, drawn, or summaned as prescribed by law. 4. A challenge to an individual juror may be made for one or more of the following causes only: FIRST—That he is a minor, insane, or not competent by law to serve as such juror; SECOND—That he is the prosecutor upon a charge against the defendant;

THERD—That he has formed or expressed an unqualified opinion that the defendant is guilty of the offence for which he is held to answer.

5. Challenges to the pannel must be in writing specifically stating the grounds thereof; but challenges to individual jurors may be oral.

6. Challenges to the pannel, or to an individual juror, must be decided by the court.

7. If a challenge to the panel be allowed the grand jury are prohibited from enquiring into the charge against the defendant by whomit was interposed. If they do so, and find an indictment, the courtmust set it aside.

8. 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.

9. The grand jury must inform the court of a violation of the last section, that it may be punished as a contempt.

10. Where several persons are held to answer for one and the same offence, no challenge to the panel can be made unless they all join in such challenge, nor can any objection be interposed by a defendant to the grand jury, or to an individual jaror, for any cause of challenge after they are sworn.

11. From the persons summoned to serve as grand jurors the court must appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged or excused before the grand jury are dismissed.

12. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury; shall diligently enquire, and true presentment make, of all public offences 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 illwill, nor leave any unpresented through

tear, 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 your God."

13. The following oath must thereupon be administered to the other grand jurors present. "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help your God."

14. The grand jury being empannelled 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 offences returned to the court or likely to come before the grand jury.

15. The grand jury must appoint one of their number as clerk, who must preserve minutes of the proceedings, and of the evidence given before them, except the votes of the individual members on indictments.
16. The grand jury, on the completion of their business shall be discharged by the court, but whether their business be completed or not, they are discharged by the final adjournment thereof.

present at, or take any part in the consideration of the charge against the defendant.

20. The grand jury must isform the court of a violation of the last section, that it may be punishin a gravempt.

0. Where several persons are blad on an even of one and the same of one of the several persons of the several persons they all join in the several terms of the several several several several several several to the grand int. Powers and DUTY OF GRAND JORY.

SECTION 1. The grand jury has power, and it is made their duty, to enquire into all indictable offences committed, or which may be tried within the county, and present them to the court by indictment.

2. Upon such inquiry they may, where the defendant has been held to answer for a public offence, find an indictment upon the testimony taken before a magistrate.

In all other cases the indictment must be found upon such evidence as is given by witnesses produced and sworn before them, or furnished by legal documentary proof.
 The grand jury are not bound to hear evidence for the defendance.

dant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge they may order such evidence to be produced.

5. If a member of the grand jury knows, or has reason to believe, that a public offence 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.

6. It is made the special duty of the grand jury to enquire, know

FIRST-Into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted.

SECOND—Into the condition and management of the public prisons within the county.

THIRD—Into the wilful and corrupt misconduct in office of all county officers.

FOURTH-Into the obstruction of roads and highways.

7. The clerk of the court must, whenever required by the foreman of the grand jury, or prosecuting attorney, issue subpœnas for witnesses to appear before the grand jury.

8. They are 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.

9. Whenever required by the grand jury it is the duty of the prosecuting attorney to attend before them for the purpose of examining witnesses, and of giving them legal advice.

10. 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 them but no such attorney or any other officer or person except the grand jury, must be present when the question is taken upon the finding of an indictment. 11. Every member of the grand jury must keep secret the preceedings 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.

12. A member of the grand jury may be required by the court to REVISED CODE.-49 disclose the testimony of a witness examined before them, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any witness upon a charge against him for perjury.

13. No grand juror shall be questioned for any thing he may say, or any vote he may give in the grand jury, relative to a matter pending before them, except for perjury of which he may have been guilty in making an accusation, or in giving testimony before to his fellow. jurors.

county on a criminal charge, and not indicted, and most your

FINDING AND PRESENTMENT OF INDICTMENTS.

SECTION 1. 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.

2. If twelve grand jurors do not concur in finding an indictment, the testimony and statement taken before the magistrate must be returned to the court with an endorsement thereon signed by the foreman to the effect that the charge is dismissed!

Such dismissal shall not prevent the same charge from being again submitted to the grand jury as often as the court may so direct.
 When an indictment is found, the names of the material witnesses for the state examined before the grand jury, or whose depositions have been read before them; must in all cases be endorsed thereon before it is presented to the court.

5. An indictment when found by the grand jury, and endorsed as prescribed by this chapter, must be presented by their foreman in their presence to the court, and filed by the clerk.

the same in court, or issuing or executing process thereon, until such person has been an ested. A violation of this section is a misdemeanor. 12. A member of the grand jury may be required by the court to 387

FORMS AND REQUISITES OF INDICIMENTS.

SECTION 1. An indictment is an averment in writing made by a grand jury legally convoked and sworn, that a person therein named or described has done some act, or been guilty of some omission which by law is a public offence.

2. No indictment shall be quashed, or judgment thereon arrested or deemed invalid if it can be understood,

FIRST—That the same was presented to some court having jurisdiction of the offence charged in the indictment, although the name of the court may not be accurately set forth.

SECOND-That it was found by a grand jury of the county in which the court was held.

THERD—That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with the statement that his real name is unknown.

FOURTH—That the offence was committed at some place within the jurisdiction of the court, except where otherwise provided the act where done without the local jurisdiction of the county is triable therein.

FIFTH—That the offence was committed at some time prior to the time of finding the indictment.

Sixra—That the act or omission charged be so clearly and distinctly set forth as to enable the accused to plead the judgment on such indictment in bar of any future prosecution for the same offence. SEVENTE—That where material, the name of the person injured be set forth when known by the grand jury, and if not known it may be so stated in the indictment.

EIGHTH-That the indictment be endorsed by the foreman as "a true bill," and marked filed by the clerk.

3. An indictment must present but one public offence, but such offence may be therein changed in different forms to meet the evidence in the case.

4. On an indictment for a public offence admitting of different

degrees, the defendant may be convicted of such offence on any degree lower than that charged in form in such indictment.

5. Words used in a statute to define a public offence need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

6. No indictment is insufficient, nor shall the trial, judgment, or other proceeding thereon be effected by reason of any defect or imperfection in matters of form which do not tend to the prejudice of the defendant.

7. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

8. In pleading a judgment or other determination of, or proceedings before a court or officer of special jurisdiction, the facts confering 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 in the trial.

9. 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.

10. 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 on 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.

11. When an instrument which is the subject of an indictment has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

12. 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 offence 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.

13. In any case where an intent to defraud is required to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud, without naming the particular person or body corporate intended to be defrauded, and on the trial of such indictment it is sufficient if there appear to be an intent to defraud the United States, or any state, county, city, or township, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

14. The distinction between an accessory before the fact and a principal, is abrogated, and all persons concerned in the commission of a public offence, whether they directly commit the act constituting the offence, or aid and abet in its commission, though not present, must hereafter be indicted, tried, and punished as principals.
15. An accessory after the fact to the commission of a public offence, may be indicted, tried, and punished though the principal be neither tried nor convicted.

16. A person may be indicted for having, with the knowledge of the commission of a public offence, 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 offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof though the person guilty of the original offence has not been indicted or tried.

CHAPTER 19.

SECTION 1. When the indictment is filed, the defendant must be arraigned thereon before the court in which the trial is to be had.

2. 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.

3. If the defendant has been discharged on bail, or has deposited

TITLE II.

391

CHAPTER 20.

SETTING ASIDE THE INDICTMENT.

SECTION 1. The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

FIRST—Where it is not endorsed by the foreman of the grand jury as a true bill;

SECOND-Where it has not been marked filed by the clerk;

THERD—Where the names of the witnesses examined before the grand jury, or whose depositions have been used before them, are not endorsed on the indictment.

2. If the motion to set aside the indictment be not made before demurring or pleading, the defendant is precluded from afterwards taking the objections mentioned in the last section.

3. The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time.

4. If the motion be denied, the defendant must immediately answer the indictment either by demuring a pleading thereto.
5. 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.

6. 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.

7. An order to set aside the indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offence.

money instead thereof, and does not appear for arraignment when his personal attendance is necessary, the court, in addition to the forfeiture of his undertaking of bail, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

4. The clerk on the application of the prosecuting attorney, may accordingly at any time after the order, whether the court be in session or not, issue a bench warrant into one or more counties of this state for the arrest of the defendant.
5. A bench warrant may be served in any county in this state, and directed to any sheriff, constable, marshal, or policeman thereof.

6. If the defendant appears for arraignmennt without counsel, he shall be informed by the court that it is his right to have counsel if he so desires.
7. The arraignment must be made by the court, or by the clerk or prosecuting attorney, under its direction, and consists in reading the indictment to the defendant, and in asking him whether he plead guilty or not guilty.

8. When the defendant is arraigned he must be informed that if the name by which he is indicted be not his true name, he must then deelare the same, or be proceeded against by the name in the indictment.
9. If he give no other name, or his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named.
10. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

11. If on the arraignment the defendant require it he may be allowed until the next day, or such further time may be given him, as the court may deem reasonable, to answer the indictment.

12. If the defendant require time, as provided in the last section, then on the next day, or at such further day as the court may have allowed him, he may in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

TITLE II.

CHAPTER 22.

PLEAS TO INDICTMENT.

SECTION 1. There are three kinds of pleas to an indictment which may be pleaded by the defendant, FIRST—Guilty; SECOND—Not guilty;

THERD—A former judgment of conviction or acquittal of the offence charged in the indictment, and which last plea may be pleaded either with or without the plea of not guilty. 2. Every plea must be in writing, signed by the defendant or his counsel, and filed with the clerk.

Upon the filing of the plea of not guilty, or of a former judgment of conviction or acquittal, the parties are at issue without any other or further pleading.
 The plea of not guilty is a denial of every material allegation in the indictment.
 The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted by the defendant.

6. Where the defendant has been convicted or acquitted, upon an indictment for an offence consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for any lower degree of that offence, or for an offence necessarily included therein.

7. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered by the court, and the trial shall proceed as if the same had been filed by the defendant in writing. REALSED CODE. -50

1

TITLE II.

CHAPTER 21,

DEMURRER.

SECTION 1. The only pleading on the part of the defendant is either a demurrer or plea.

a demurrer or plea. 2. Both the demurrer and plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

3. The defendant may demur to the indictment when it appear upon its face either, FIRST—That the grand jury had no legal authority to enquire into the offence charged.

SECOND—That the facts stated do not constitute a public offence.

TERRD—That the indictment contains any matter which if true would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

4. The demurrer must be in writing, signed either by the defendant or his counsel, and filed with the clerk. It must distinctly specify the grounds of demurrer to the indictment, or it shall be disregarded.

5. Upon the demurrer being filed the objections thereby presented must be heard immediately, or at such time as the court may appoint.

6. If the demurrer be disallowed, the court shall permit the defendant, at his election to plead, which he must do forthwith, or at such time as the court may prescribe.

7. Objections which appear upon the face of the indictment can only be taken by demurrer; except objections to the jurisdiction of the court, or that the facts stated do not constitute a public offence, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

TITLE H.

CHAPTER .23.

FORMATION OF TRIAL, JUBY.

SECTION 1. 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.

2. 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.

3. 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.

4. 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 are discharged.

5. After the jury are 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.

6. 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. 7. If by reason of their being one or more jurors empanneled, or for any other reason there should not remain any ballots undrawn; or 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 or interested in the cause, some other person, to summons jurors from the by-standers or other persons, who shall be returned for the trial of the indictment.

8. The jury consists of twelve men, accepted and sworn to try the issue.

ting attorney has the right III HITTE peremptorily, one half as many as the defendant is entitled to II t challenge for eacher 24 RATACH either by the state, or by the defendant

895

SECTION 1. A challenge is an objection made to the trial jurors, and its of two kinds:

First-To the panel.

SECOND-To an individual juror. Total of a tot not for any A-read

When several defendants are tried together, they are not allowed to sever their challenges, but must join therein.
 A challenge to the panel, can only be founded on a material departure from the forms prescribed by statute, in respect to the drawing and return of the jury.

4. 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.

5. 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.

6. 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 impanelled.

7. A challenge to an individual juror, is either peremptory, or for cause.

8. It must be taken when the juror appears, and before he is sworn; but the court may for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

9. A peremptory challenge is an objection to a juror, for which no reason need be given, but upon which the court must exclude him.

10. The defendant on his trial, if indicted for a capital crime, or an offence punishable with imprisonment in the penitentiary for life, may challenge peremptorily twelve jurors and no more; if indicted for any other felony, he may challenge only six in the same manner, and it for an offence less than felony, only four. In each case, the prosecu-

394

ting attorney has the right to challenge peremptorily, one half as many as the defendant is entitled to.

11. A challenge for cause may be taken either by the state, or by the defendant.

12. It is an objection to a particular juror, and is either,

First-General, that the juror is disqualified from serving in any case; or in the distribution of the dist

SECOND-Particular, that he is disqualified in the case on trial.

13. General causes of challenge are, and see and of mention

FIRST—A conviction for a felony. SECOND—A want of any of the qualifications prescribed by statute, to render a person a competent juror.

THERD—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.

14. Particular causes of challenge are of two kinds : malledo A.A.

FIRST—For such a bias, as when the existence of the fact is ascertained, in judgment of law disqualified the juror, and which is known in this chapter as implied bias;

SECOND—For the existence of a state of mind on the part of the juror, in reference to the case, which in the exercise of a sound discretion leads to the inference, that he will not act with entire impartiality, and which is actual bias.

15. A challenge for implied bias, may be taken for all or any of the following causes, and for no other:

FIRST—Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the offence charged, or on whose complaint prosecution was instituted, or to the defendant;

SECOND—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 offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

THERD—Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal presecution; FOURTH—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. FIFTH—Having served on a trial jury, which has tried another defendant, for the offence charged in the indictment. SIXTH—Having been one of a jury formerly sworn to try the same

indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

SEVENTH-Having served as a juror, in a civil action brought against the defendant, for the act charged as an offence.

EIGHTH-Having formed or expressed an unqualified opinion or belief, that the prisoner is guilty or not guilty of the offence charged.

NINTH-If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

16. An exemption from service on a jury, is not a cause of challenge, but the privilege of the person exempted.

17. 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 therein.

18. 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.
19. In all challenges, the court shall determine the law and the fact, and must either allow or disallow the challenge.

offence, or the circumstances thoract

alam à baintainn na vier a guille ta guille a bhin e do la C. TITLE II. CHAPTER 25. CHAPTER 25. The optimizer of the solution of the solut

SECTION 1. The jury having been empanneled and sworn, the trial shall proceed in such order as the court may direct. 2. 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. 3. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defence, on the application of the prosecuting attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the state.

4. When two or more persons are included in the same indictment, and the court is of opinion, that in regard to a particular defendant, there is not sufficient evidence to put him on his defence, an order may be made, that he be discharged from the indictment, before the evidence is closed, that he may be a witness for his co-defendant.

5. The order mentioned in the last two sections, shall be deemed an acquittal of the defendant, and shall be a bar to another prosecution for the same offence.

6. Upon a trial for a conspiracy, in a case where an overt act is required by law to constitute the offence, 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.

7. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape.

8. 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 offence; and the corroboration is not sufficient, if it merely shew the commission of the offence, or the circumstances thereof.

9. Upon a trial for enticing or taking away an unmarried female of previous chaste character, for the purpose of prostitution, or aiding or assisting therein, or for seducing and debauching any unmarried woman of previous chaste character; the defendant 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 offence.

10. If it appear by the testimony, that the facts proved, constitute an offence of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and the 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 offence. 14. If the indictment for the higher offence be dismissed by the grand jury, or be not found or the next term, the court must proceed to try the defendant on the original indictment.

12. The court may also discharge the jury, when it appears that it has not jurisdiction of the offence, or that the facts as charged in the indictment, do not constitute an offence punishable by law.
13. If the jury be discharged because the court has not jurisdiction

of the offence charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged:

14. If the offence 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 offence 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 sconer 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.

15. In the case provided for in the last section, the clerk shall forthwith transmit a certified copy of the indictment, and all the papers in the action, filed with him, to the prosecuting attorney of the proper county.

16. If the defendant be not arrested on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the undertaking must be discharged.

17. 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.

18. If the jury be discharged, because the facts set forth do not constitute an offence 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. 19. Whenever, in the opinion of the court, it is proper that the jury should view the place in which the offence is charged to have been committed, or in which any other material fact occured, 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.

20. 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 time, 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.

21. The jurors sworn to try an indictment, may at any time before, the submission of the cause to them, in the discretion of the court, be permitted to separate, or be kept in charge of a proper officer.

22. The jury shall also, at each adjournment of the court, whether they be permitted to separate, or be kept in charge of officers be admonished by the court, that it is their duty not to converse among themselves, on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them. 23. 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, 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 impanelled.

24. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

25. On the trial of an indictment for a libel, the jury have the right to determine the law and the fact.
26. On the trial of an indictment or any other offence 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 by the 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.
27. In charging the jury, the court shall state to them all such mat-

ters of law, as it shall think necessary for their information in giving their verdict.

28. The charge of the court to the jury, must be reduced to writing signed and filed with the clerk, when required by either party.

29. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, without meat or drink, unless otherwise ordered by the court; and not to permit any person to speak to them, nor speak with them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

30. Where 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.

time as to other fusiness; but it shall nevertheless be deemed onen

for every purpose connected with the cause submitted to the jury une

TITLE II. CHAPTER 26.

CONDUCT OF JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION 1. Upon retiring for deliberation the jury may take with them all papers which have been received as evidence on 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.

2. 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.

3. 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 pres-REVISED CODE. $\rightarrow 51$ ence of, or after notice to the prosecuting attorney and the defendant or his counsel.

4. 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.

5. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them, until they have agreed upon their verdict, and rendered it in open court unless by the consent of both parties entered upon the record, or unless at the expiration of such time as the court may deem proper it satisfactorily appear that there is no reasonable probability that the jury can agree

6. In all cases where a jury are discharged or prevented from giving a verdict by reason of any accident or other cause, except wherethe defendant is discharged from the indictment, during the progress of the trial, or after the cause is submitted to them, the cause may beagain tried at the same or another term of the court.

7. While the jury are absent the court may adjourn from time to time as to other business; but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict be rendered or the jury are discharged.

8. A final adjournment of the court discharges the jury.

TITLE II.

CHAPTER 27. aved dollar around the model

SECTION 1. When the jury have agreed upon the verdict they must' be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear the rest must be discharged without giving a verdict. In such case the cause may be egain tried at the same or another term.

CO. ST OU OF THE VERDICT. OD TO SO TA LICENDOD BLAY

2. 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. 403

3. When the jury have answered to their names, the court, or the clerk, shall ask them whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must on being required declare the same.

4. 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.

5. 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 offence it is either "for the state" or "for the defendant."

6. A special verdict is that by which the jury find 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. 7. 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. 8.7 The special verdict need not to be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury. 9. The court must give judgment upon the special verdict, as follows:

First—If the plea be not guilty, and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence 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 offence charged, or of any offence of which he could be so convicted under the indictment; judgment of acquittal must be rendered.

SECOND—If the plea be a former conviction or acquittal of the same offence, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

10. 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 conclu-

1000

sions of fact from the evidence as established to their satisfaction, the court may order them to retire for further deliberation. 11. In all other cases the defendant may be found guilty of any offence the commission of which is necessarily included in that with which he is charge in the indictment.

12. 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, 13. If the jury render a verdict which is neither a general or special verdict, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form, from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

14. 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.
15. 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.

16. If the defence be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict. The court may thereupon, if the defendant be in custody, and his discharge is deemed dangerous to the public peace or safety, order him to be committed or retained in custody, until he becomes sane.

17. 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.

mont on if firey find, the evidence of facts merely, and not the conclu-

TITLE II. diamagnetic for the bost of the second of the se

BILL OF EXCEPTIONS ON TRIAL.

SECTION 1. On the trial of an indictment exceptions may be taken by the defendant or prosecuting attorney, to a decision of the court upon matters of law in any of the following cases:

First—In disallowing a challenge to the panel of the jury, or to an individual juror for a general disqualification, or for actual or implied bias;

SECOND—In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

2. A bill of exceptions must be settled and signed by the judge who tried the cause, and filed with the clerk.

3. The bill of exceptions must be settled at the trial, unless the court otherwise direct. If no such direction be given, the point of exception must be particularly stated, in writing, and delivered to the court, and shall immediately be corrected or added to until it is made conformable to the truth.

4. The bill of exceptions must contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken.

2. For the purpose of judges at all the confidence he forts

Section 1. A motion in an I of Till ment is, on application

the part of the defendant takes on TEANT the best of the part of t

former conviction or acquittal, and way be granted by the court for

SECTION 1. A new trial is a re-examination of the issue, in the same court, before another jury, after a verdict has been given.

2. 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 406

anew, and the former verdict cannot be used or referred to, either in evidence or in argument.

3. The court may grant a new trial for the following causes, or any of them:

FIRST—When the trial has been had in the absence of the defendant, if the indictment be for a felony;

SECOND—When the jury has received any evidence, paper, or document out of court not authorized by the court;

THERD—When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;

Fourn-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;

FIFTH-Where the court has mis-directed the jury in a material matter of law;

SIXTH—Where the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

4. The application for a new trial must be made before judgment by the defendant.

exceptionsivero taken and Line of the wind and the burger of the burger of the burger of the burger of the upon which the creek of the upon which the charge of the upon which the charge of the upon of the burger of the upon of the burger of the upon of the burger of the upon of the

ARREST OF JUDGMENT.

SECTION 1. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal, and may be granted by the court for any of the following causes:

FIRST—That the grand jury who found the indictment had no legal authority to inquire into the offence charged, by reason of its not being within the jurisdiction of the county.

SECOND-That the facts stated do not constitute a public offence.

2. The court may also, on its view of any of these defects, arrest the judgment without motion.

3. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

4. If by the evidence on the trial a fatal variance appear between such evidence and the offence charged in the indictment, and there is reasonable ground to believe that the defendant can be convicted of such offence if properly charged, the court may at any time before such cause is submitted to the jury, arrest the trial, discharge the jury, and may order the defendant to be recommitted to the officer of the proper county, or admitted to trial anew to answer a new indictment.

10. After a plea or verdict of guilty in any case where a discretion is conferred upon the court of to the extent of the public ment the

gravation, in pronouncing th.H. HITIT about the definidants eviteder.

CHAPTER 31. CHAPTER 31.

-uppers no top depodile soft of upgment. No the blod of 1-cacead

SECTION 1. After a verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must pronounce judgment.

2. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

3. When the defendant is convicted of a felony, if he be in custoily, the court may direct the officer in whose custody he is, to bring him before it for judgment.

4. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear for judgment when his personal attendance is necessary, the court may order the clerk to issue a bench warrant for his arrest.

5. The clerk, on the application of the prosecuting attorney, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties for his arrest.

6. The bench warrant may be served in any county of this state, in the same manner as a warrant of arrest.
7. 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.

8. 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.
9. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.
10. After a plea or verdict of guilty, in any case where a discretion is conferred upon the court as to the extent of the punishment, thefollowing are to be considered by the court as circumstances of aggravation, in pronouncing the sentence upon the defendant;

FIRST—If the person committing the offence was, by the duties of his office, or by his condition, obliged to prevent the particular offence committed, or to bring offenders committing it to justice.

SECOND—If he hold any other public office, although not one requiring the suppression of the particular offence.

THERD—Although holding no office, if his education, fortune, profession, or reputation, placed him in a situation in which his example would probably influence the conduct of others.

FOURTH-When the offence was committed with premeditation, in consequence of a plan formed with others.

FIFTH-When the defendant attempted to induce others to join in committing the offence. SIXTH-When the condition of the offender created a trust, which was broken by the offence, or when it afforded him easier means of committing the offence. SEVENTH-When in the commission of the offence, any other injury was offered, than that necessarily suffered by the offence itself; such as wanton cruelty, or humiliating language, in case of personal injury.

EIGHTH—When the offence was attended with the breach of any other moral duty than that necessarily broken in committing it; such as personal injury accompanied by ingratitude. NINTH---When the injury was offered to one, whose age, sex, office, conduct, or condition, entitled him to respect from the offender. TENTH---When the injury was offered to one whose age, sex, or infirmity rendered him incapable of resistance.

ELEVENTH—When the general character of the defendant is marked by those passions or vices, which generally lead to the commission of the offence of which he has been convicted.

11. The following circumstances are to be considered in alleviation of the punishment:

FIRST—The minority of the offender; if so young as to justify a supposition that he was ignorant of the law, or that he acted under the influence of another;

SECOND—If the offender was so old as to render it probable that the faculties of his mind were weakened;

THERD—Those conditions, which suppose the party to have been influenced in committing the offence by another, standing in a correlative superior situation to him;

FOURTH—The order of a superior officer, is no justification for committing a public offence, but under circumstances of misapprehension of the duty of obedience, may be shewn in extenuation of the offence.

FIFTH-When the offence has been caused by great provocation, or other cause sufficient to excite in men of ordinary tempers, such passions, as require unusual strength of mind to restrain.

12. All matters in aggravation, which form no part of the charge in the act of accusation, and matters of extenuation which do not amount to a legal defence, and which have not necessarily or incidentally appeared to the court on the trial, may be produced, either by the examination of witnesses in open court, or by their affidavits, as the court may deem most conducive to justice in each particular case; but the opposite party must in all cases have an opportunity of cross-examining the witnesses, if he require it, and of producing counter proof.
13. If the defendant has been convicted of two or more offences, before judgment on either, the judgment may be, that the imprisonment upon any one, may commence at the expiration of the imprise

onment upon any other of the offences. 14. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine and costs be satisfied. 15. When judgment is rendered, the clerk must enter the same up-BEVISED CODE.-52 on the records of the court, and if such judgment or any part thereof be for a fine, or fine and costs, it is a lien upon the real estate of the defendant when entered, as in civil cases.

multipy readered has incapable of resistance, does not as thanked and a not a standard and a set a standard and a set a standard and a set a standard a standard a standard a set a standard a stand

ed by these passions of viscal which generally lead to the commission

adu lo Tha fullowing stream and are to be considered in allovin

CHAPTER 32.

and a standard of the advection of coder off on young as to fundify a sur-

THE EXECUTION.

a When the dolend beter TITLE I Link of Ability become line of the

SECTION 1. When a judgment has been pronounced, a certified copy of the entry thereof must be forthwith furnished to the efficer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require the execution thereof.

2. 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. 3. When the judgment is imprisonment in a county jail, or a fine and that the defendant be imprisoned until it be satisfied, the judgment must be executed by the sheriff of the county.

4. If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment, together with the body of the defendant to the keeper of the prison, in which the defendant is to be imprisoned.

5. 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 in retaking him if he escape, as if the sheriff were in his own county; and every person who shall neglect or refuse to assist the sheriff, when so required, shall be punishable as if the sheriff were in his own county.

6. When judgment of death is rendered, the judge of the court shall sign and deliver to the sheriff of the county, a warrant stating the conviction and judgment, and appoint a time on which the judgment shall be executed, which shall not be less than thirty days from the time of judgment. 7. If for any reason a judgment of death has not been executed, - and the same remains in force, the district court on the application of the prosecuting attorney of the county where the conviction was had, must order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued by that court.

8. Upon the defendant being brought before the court, it shall inquire into the facts, and if no legal objection exist, must make an order that the sheriff execute the judgment, and may fix the time and place of execution.

9. The punishment of death must be inflicted, by hanging the defendant by the neck until he is dead.

10. The court in issuing its warrant for the execution of the sentence of death against a defendant, must direct in such warrant whether the execution be public or private.

11. If private, the sheriff must notify the judge of the county court, clerk of the district court, and prosecuting attorney, together with two physicians, and twelve respectable citizens, to be present as witnesses of such execution. And the sheriff, at the request of the defendant may permit any minister of the gospel whom the defendant shall name, and any of his relatives, to attend the execution; and also such magistrates, peace officers, and guards as the sheriff shall deem proper. But no other person than those mentioned in this section must be present at the execution.

.12. If the sheriff from sickness or otherwise is nuable to act, the warrant mentioned in the preceding section must be executed by his deputy.

13. Whenever a sheriff inflicts the punishment of death upon a defendant, in obedience to a warrant, he must make return thereof under his hand with his doings thereon, to the clerk of the court from whence it issued, and the clerk shall place the same on file with the indictment, and subjoin to the record of the sentence, a brief abstract of the sheriffs return on the warrant.

14. Executions may be issued by the clerk of the court for the collection of fines and costs, and be executed and returned in the same manner as in civil cases.

being served with the certificate thereof, must ccase all further proceedings in execution of the sentence, but must retain the defendant in cu-rody, or hall him in accordance with the order of the judge to him directed.

9. The wit of error authorized by this chapter, shall be directed to

and the same remains in forcini galTHT is court on the polication of the presecuting attorney of the courty where the convirtion was in had, must order the defend. SS STAND the before it, or of he beint of large, a warrant for his apprehension may be issued by that court.

WRITS OF ERROR WHEN ALLOWED, AND HOW TAKEN.

SECTION 1. The only mode of reviewing a judgment or order in a eriminal action, is by a writ of error as prescribed in this chapter.

2. Such writ of error may be sued out by the defendant, at any time within one year after the rendition of judgment but not afterwards. Notice of the sueing out thereof must within five days thereafter, be given to the prosecuting attorney of the proper county, except in capital cases.

3. No writ of error can be sued out in a criminal action until final judgment has been rendered, nor in a capital case, except upon the allowance of a judge of the supreme court, and after ten days notice to the prosecuting attorney of the time and place of making the application.

4. In cases not capital, writs of error shall issue as a matter of course; but cannot operate to stay proceedings on the execution of the judgment, unless allowed in the manner provided in the preceding section.

5. Applications for such allowance must in all cases be formed upon a transcript of the indictment and bill of exceptions, or other record upon which error is alleged, under the certificate of the clerk and seal of the court, where the trial was had.

6. Where several defendants are tried jointly, any one or more of them may bring a writ of error. But those of their co-defendants who do not join in sueing out such writ, shall reap no benefit therefrom.7. When a stay of proceedings shall be ordered as provided in this

chapter, the judge may at the same time make such order as the case may require, for the custody of the defendant, or for letting him to bail.

8. If a stay of proceedings be allowed by the judge, the sheriff upon being served with the certificate thereof, must cease all further proceedings in execution of the sentence, but must retain the defendant in custody, or bail him in accordance with the order of the judge to him directed.

9. The writ of error authorised by this chapter, shall be directed to

the clerk of the court where the trial was had, and thereupon without delay he must make out a full and complete transcript of the proceedings in the cause, and return them with the writ to the clerk of the supreme court of the proper district.

TITLE II. a latera

CHAPTER 34.

JUDGMENTS UPON WRITS OF ERROR.

VODURATIO OTON WHITS OF ERROR

SECTION 1. The supreme court must give judgment without regard to technical errors, or defects which do not affect the substantial rights of the parties.

2. The supreme court may reverse, affirm, or modify the judgment of the district court, and may if necessary or proper, order a new trial.

3. If judgment be reversed, without ordering a new trial the supreme court shall direct, if the defendant be in custody, that he be discharged, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to him.

4. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the supreme court shall direct.

5. When the judgment of the supreme court is rendered, it must be entered on the judgment book, and a certified copy of the entry must be forthwith remitted to the clerk where the original judgment was rendered.

6. After the certificate of the judgment has been remitte l as provided in the preceding section, the supreme court has no further jurisdiction of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

dar must state the time when and the autority by which such libers otion took place, and if any person escape, it must state particularly the time and manner of such escape, can and the year as involved 4. At the opening of cash term of the district court within his court is, the sheriff must return a copy of such calendar under his hand to the slork of the court where the **EITITE** bal, and thereupon without delay he must make out a full **EITIT** complete transcript of the proceedings in the cause, and ¹⁷.52 RETCHAP with the writ to the elect of the supreme court of the proper centret

IMPRISONMENT FOR PUBLIC OFFENCES, AND THE DISCIPLINE OF PRISONS.

SECTION 1. 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 :

FIRST—For the detention of persons charged with offences and duly committed for trial or examination;

SECOND—For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause;

THERD—For the confinement of persons pursuant to sentence, upon conviction for any offence, and of all other persons duly committed for any cause authorised by law.

And the provisions of this section extend to persons detained or committed by authority of the courts of the United States, as well as the courts and magistrates of this state.

2. 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 must pay strict attention to the personal cleanliness of all the prisoners in his custody as far as may be. Each prisoner must be furnisheddaily 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.

3. 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 to 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.

4. 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.

5. Whenever any person is confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof be confinement at hard labor, the sheriff must furnish such convict suitable tools and materials to work with, either in the jail or yard thereof, and the expenses of said tools and materials must be defrayed by the county in which said convict is confined, and such county is entitled to his earnings.

6. 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.

7. 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.

8. In each county of this state, the judge of the county court and prosecuting attorney, are inspectors of the jails respectively; and have power from time to time to visit and inspect the same, and inquire into all matters connected with the government, discipline; and police of such prisons.

9. 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.

10. Such report must state the number of persons confined in such prisons, and for what causes respectively, the number of persons usually confined in one room, the distinction, if any, usually observed in the treatment of prisoners, the evils if any found to exist in such prisons; and particularly, whether any of the provisions of this chapter have been violated, or neglected, and the causes of such violation or neglect.

11. It is the duty of the keepers of such prisons to admit the said inspectors, or any of them, into every part of such prisons, to exhibit , to them on demand, all the books, papers, documents, and accounts, pertaining to the prison, or to the prisoners confied therein, and to render them every other facility in their power, to enable them to discharge the duties above prescribed.

12. For the purpose of obtaining the necessary information to enable them to make such report as is required by the tenth section of 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.

13. If any person confined in any jail upon a conviction or charge of any offence is refractory or disorderly, or 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 offence; and during such solitary confinement, he must be fed with bread and water only, unless other food is necessary for the preservation of his health.

14. All charges and expenses of safe keeping and maintaining convicts, and persons charged with public offences, and committed for examination or trial, to the county jail, shall be paid from the county treasury, the accounts therefor being first settled and allowed by the county court, except prisoners committed or detained by the authority of the courts of the United States; in which cases the United States must pay such expenses to the county.

and its is the daty of such inspectate to visit and inspect anch assess

thrice their year, and at the next district obtic which is there are a

THE PENITENTIARY OF THE STATE AND THE GOVERNMENT AND DESCIPLINE

THEREOF. SECTION 1. The penitentiary at Fort Madison, in the county of Lee, shall continue to be maintained as the penitentiary of this state, in which convicts sentenced for life, or any term of time, shall be confined, employed, and governed, as hereinafter provided. 2. All punishment in the penitentiary by imprisonment, must be by confinement to hard labor, and not by solitary imprisonment; but solitary imprisonment may be used as a prison discipline for the government and good order of the convicts as hereinafter mentioned.

3. 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 State, and there kept in pursuance of their sentences.

4. The penitentiary shall be under the government and direction of three inspectors, one warden, one deputy warden, one person to perform the duties of clerk and commissary, and such number of overseers not exceeding ten, as the inspectors may determine to be necessary.

5. The inspectors and warden shall be appointed by the governor, by and with the consent of the senate, and be commissioned to hold their offices during the pleasure of the executive, but not more than

" years under one appointment; one of the inspectors shall in his commission be designated as chairman. The inspectors and warden before entering on the discharge of their respective duties, must take and subscribe the oaths of office; and the warden must also give bond to the state in the sum of ten thousand dollars, with sufficient sureties, to be approved by the governor, conditioned that he shall account for all moneys that come into his hands as treasurer of the penitentiary; that he will not be concerned in the business of the trade or commerce, during his continuance in office, and that he will faithfully perform all the duties incumbent on him as warden of such prison, which bond must be filed in the office of the secretary of state.

6. The other officers, with the exception of the clerk before mentioned, whenever the number of prisoners, and business of the prison require it, must be appointed by the warden, under his hand, subject to the approval or disapproval of the inspectors, and hold their offices during the pleasure of the inspectors and warden; the clerk shall be appointed hy the inspectors, and hold his office during their pleasure, but the inspectors without the concurrence of the warden, may remove the deputy warden, or overseers, for negligence or unfaithfulness in the discharge of their duties, and appoint others in their places; and if the warden should think any subordinate officer ought to be removed, and the inspectors will not consent thereto, the warden may appeal to the governor, who after reasonable notice to the inspectors may make such removal, and appoint such other person as here may make such removal, and appoint such other person as here may make such removal.

deem proper. Such subordinate officers must take and subscribe the oaths of office, and the deputy warden and clerk must also give bond to the state, with sufficient sureties; the former in the sum of five hundred dollars, and the latter in the sum of one thousand dollars, to be approved of by the inspectors, conditioned for the faithful performance of their respective duties, which bonds shall be filed in the office of the secretary of state.

7. It is the duty of the inspectors to meet together at stated times, at the penitentiary, once at least in every three months, and oftener if necessary, to attend to, and inspect the concerns of the prison, the manner of keeping the books and accounts, and the register of punishments kept by the warden; and from time to time carefully to examine the same, and to keep a record of their doings; one of them at least must visit the prison, as often as once in each month, to examine into all the concerns thereof, and to see that the laws and regulations thereof are duly observed, and the duties of the several officers are faithfully performed, and to advise with the warden of the prison on the concerns thereof, whenever thereto requested, and each of them shall at all times, have free access to all parts of the prison, and be allowed to inspect and examine all the books, accounts, writings, pertaining to the prison, or the business, management, and government thereof. And the inspectors as soon as may be, after each stated meeting, or oftener if necessary, shall transmit to the governor a transcript of the record of their doings, and such other information relative to the concerns of the prison, as they may deem proper.

8. It is the duty of the inspectors on the first Monday of November annually, to audit, correct, and settle the accounts of the warden with the prison and the state, for the year ending on the last day of September preceding, and make report thereof in the same month, to the governor; which report must exhibit an account of the stock on hand of different kinds, as well at the begining as at the close of the year; the several sums expended for materials, provisions, fuel, clothing, bedding, lights, tools and other articles; the amount of manufactures of each kind, and all other articles sold from the prison; the profits or loss upon each branch of business; and all other particulars, necessary to give the governor a full understanding of the fiscal and other concerns of the prison, and must at the same time, furnish an estimate of the probable income and expense of the prison for the ensuing year.

9. It is the duty of the inspectors, to inquire into any improper conduct which may be alleged to have been committed by the warden, or any subordinate officer of the prison in relation to the concerns thereof; and for that purpose may issue subpœnas for witnesses to compel their attendance, and the production of papers and writings; and may examine witnesses under oath, to be administered by the chairman; and may adjudicate on such alleged improper conduct, in like manner, and with like effect as in case of arbitration.

10. The inspectors must examine into all disorderly conduct among the prisoners, and when it appears to them that such conduct is disorderly, refractory, or disobedient, they may order such punishment as they may deem necessary, to enforce obedience, and as shall not be inconsistent with humanity, and may be authorised by the rules and regulations established for the government of the prison.

11. The inspectors must from time to time, establish such rules and regulations, consistent with the laws of the state, as they may deem necessary and expedient for the direction of the officers, agents, and servants of the prison, in the discharge of their respective duties; or for their respective compensation not established by law; for the government, instruction and discipline of the convicts, and for their clothing, and subsistence; and for the custody, preservation and management of the public property; and so soon as may be, after the establishment of the same by the inspectors, they shall cause a copy thereof to be laid before the governor, who may approve, or modify the same, and make and establish such other rules, and regulations, consistent with the laws of the state, as to him may seem fit; and the governor must communicate all such rules and regulations as shall be thus approved or established, to the next legislature after the same have been so approved and established, and the inspectors must cause a copy of such rules and regulations to be certified by the clerk, and delivered to the warden.

12. The warden must not carry on, or 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 have the care and custody of the prison, and of the convicts therein, in conformity to their respective sentences; and of the lands, buildings, machines, tools, stock, provisions, and of every other kind of property, belonging to, or within the precincts of the same. He is the treasurer of the prison, and must receive, pay out, and be accountable for all moneys. granted for maintaining the same, or derived from the manufactures or other concerns thereof; and shall make or cause to be made, in the books of the prison, regular entries, of all pecuniary and other concerns of the prison, and must render to the inspectors whenever required, a fair account of all the expenses and disbursements, receipts and profits of the prison, with sufficient vouchers for the same, and a statement of its general affairs for the year then passed, including the number of convicts received and discharged during the year, and the number remaining; and a similar account and statement, examined and approved by the inspectors the warden shall also render under oath to the legislature, at the commencement of every regular session thereof.

13. It is the duty of the warden, to inspect and oversee the conduct of the convicts, and cause all the rules and regulations of the prison to be strictly and promptly enforced; must give immediate information of any officer, who neglects or refuses to enforce the discipline established to the inspectors who must forthwith remove any officer who is guilty of such neglect of duty. He has authority to punish any convict for disobedience, disorderly behavior, or indolence, in such manner as may be directed by the inspectors, or prescribed in the rules and regulations, and must keep a register of all such punishments, and the cause for which they were inflicted.

14. The warden or his deputy, shall serve, execute and return all process within the precincts of the prison, and such process may be directed to him or his deputy accordingly; and for the doings of his deputy, the warden as well as his deputy are answerable. The warden shall have the command of all the force for guarding the prison, and of all officers and persons employed under him.

15. 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.

16. The inspectors must meet at the prison, within five days next after the first day of October of each year, and having first estimated the lowest price at which each article advertised for, can be procured, shall open and examine the proposals ; and the lowest offer for furnishing any article, not being above the market price, shall be accepted, if good security be given to the warden for the faithful performance of the contract.
17. If no such offer be made below the estimated market price, or if any article should not be included in such advertisement, or if the inspectors should deem it expedient to decline any or all of such proposals, the warden may procure such articles as may be necessary for the prison, by advertising anew, or in such manner as may be prescribed by the inspectors.

18. The warden must take bills of the quantity and price of the supplies furnished for the prison, at the time of delivery, and must exhibit the same to the clerk who must compare the same with the articles delivered; if the bills are found correct, he must enter them with the date, in a book to be kept for that purpose ; in like manner bills shall be taken and entered, of all services rendered for the prison; if any such bill be found incorrect, the clerk shall omit to enter it, and immediately give notice to the warden that the error may be corrected. 19. No contract can be accepted by the warden, unless the contractor give satisfactory security for the purformance of it, and no officer of the prison shall be directly or indirectly interested in any such contract, an moving oil to one add to be be beind stilling the lin to throop 20. 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 defence 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 contracts, or any debts due to, or from the prison, that his predecessor would have been, if no change had taken place.

21. 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.

22. If the office of warden become vacant, before a new one is appointed, and the deputy warden enter upon the duties of the office, the inspectors may require such deputy to give bond to the state in the sum of five thousand dollars with good security conditioned for the faithful discharge of the duties incumbent on him as deputy warden and treasurer, which bond must be approved by the inspectors; and from the time such bond is approved, the deputy may receive the salary and emoluments of the warden, in lieu of his former pay, so long as he performs the duty of the office; if the deputy warden do not give such bond when required, the inspectors may remove him from office, and appoint a warden for the time being, who must give bond similar to the one required of the deputy warden, and shall have the power and authority, and perform the duties, and receive the salary and emoluments of the warden, until a warden is duly appointed, and enter upon the discharge of the duties of his office. 23. It is the duty of the clerk and commissary to keep an exact account of all supplies purchased for the use of the prison, as provided in section eighteen of this chapter, and of all the articles sold, and delivered from the same, and to assist in effecting sales and purchases in such manner as the warden may direct; he must attend the meetings of the inspectors when they require him so to do, and keep a record of their proceedings, and perform such other services pertaining to his employment and the superintending of the prison, as may be directed by the inspectors or warden. Ilede noiton doue on bas : pai 24. 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 the 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.

25. If any subordinate officer of the prison is guilty of negligence or unfaithfulness in the discharge of his duties, or of a violation of any of the laws, or rules and regulations for the government of the prison, the warden with the approbation of the inspectors, may deduct from the pay of such officer, a sum not exceeding his pay for one month.

26. The inspectors must appoint some suitable person to be a physician and surgeon to the penitentiary, whose duty it is to visit the prison, whenever requested by the warden, prescribe for the convicts, who may be sick, see that the proper attention be paid to the clothing, regimen and cleanliness of such as may be in the hospital, and advise, when the illness of any convict may require his removal to the same; and upon such advice he must be forthwith removed to the hospital, and there to receive such care and attention, and be furnished with such medicines and diet, as his situation may require, until the physician determine, that he may leave it, without injury to his health.

27. In case of any pestilence, or contagious sickness, breaking out among the convicts in the prison, the inspectors and warden may cause the convicts confined therein, or any of them, to be removed to some suitable place of security, where such of them as are sick shall receive all necessary care and medical assistance. Such convicts must be returned as soon as may be to the penitentiary to be confined according to their respective sentences, if the same be unexpired.
28. If any officer or other person employed in the prison or its precincts, negligently suffer any convict confined therein to be at large, without the precincts of the prison, or out of the cell or apartment assigned to him, or to be conversed with, relieved, or comforted contrary to law, or the rules and regulations of the prison, he shall be punished by fine, not exceeding five hundred dollars.
29. 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. 30. It is the duty of all the officers, and other citizens of this state, by every means in their power, to suppress any insurrection among the convicts, sentenced to the penitentiary; and to prevent the escape or rescue of any such convicts therefrom, or for 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.

31. When any convict escape from the penitentiary, it is the duty of the warden, to take all proper measures for his apprehension; and for that purpose he may offer a reward not exceeding fifty dollars, to be paid by the state, for the apprehension and delivery of such convict.
32. 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.

33. It is the duty of the warden to receive and take care of any property, that a convict may have with him at the time of his entering the penitentiary, and when it may be convenient, to place the same at interest for the benefit of such convict, of which property the warden must keep an account and pay the same to such convict, on his discharge, or, in case of his death, to his representatives, unless the same have been otherwise legally taken and disposed of.

34. When any convict is discharged from the penitentiary, who has conducted well during his imprisonment, the warden at his discretion may give to such convict from the funds of the prison, a sum not exceeding five dollars, and if he desire it, a certificate of such good conduct, and must take care that every convict on his discharge from the penitentiary, is provided with decent clothing.

35. The warden has authority to demand and receive of each person, not exempt by law, who visit the prison for the purpose of viewing the interior or precincts, such sum not exceeding twenty-five cents, and under such regulations, as the inspectors may prescribe, of which the warden must keep an account, and which money shall be applied for the purchase of books for the use of the prison under the direction of the inspectors.

36. The following persons are authorised to visit the penitentiary at pleasure; the governor, secretary, auditor, and treasurer of state, members of the legislative assembly, judges of the supreme, district and county courts, prosecuting attorneys of any of the counties of this state, and all regular officiating ministers of the gospel; and no other person shall be permitted to go within the walls of the prison where convicts are confined, except by special permission of the warden, or under such regulations as the inspectors shall prescribe.

37. It is the duty of the inspectors and warden, to see that rigid economy is practiced in all matters pertaining to the prison, and the employment of the convicts; and that duplicate receipts be taken for all expenditures made on account of the prison, one copy of which must be forwarded to the auditor of state monthly.

38. The inspectors shall be allowed for their services respectively, the sum of three dollars for each and every day actually and necessarily occupied in inspecting the prison, and inquiring into the management thereof; not to exceed twenty days each in any year. The warden shall be allowed the yearly salary of five hundred dollars, to be paid quarterly; and the subordinate officers, and other persons employed in managing, guarding, and superintending the prison, shall at stated times receive such compensation as shall be established in the rules and regulations of the prison, or allowed by the inspectors and warden, with the approbation of the governor.

39. The warden shall not receive any perquisites or emoluments, for his services other than the compensation allowed by law; except that he shall keep his office and reside with his family in the penitentiary, and shall be furnished with fuel and lights from the stock provided for the use of the prison.

and the second of the second

REVISED CODE. 34 immediately be given to the seconder who shall therefore choose a material and second as an an an another shall be determined and SECTION 1. Any civil officer of this state except county or township officers may be impeached for corruption or other mal-conduct in office as well as for high crimes and misdemeanors.

2. A majority of all the members of the house of representatives elected must concur in an impeachment.

3. The impeachment must specify the offences charged with the same precision as is requisite in an indictment and the accused must be allowed counsel as in cases of other prosecutions.

4. When possessed of an impeachment the senate must forthwith cause the person accused to be brought before them.
5. 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 authorised by the senate or its president.

6. 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.

7. 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.

8. The person impeached shall be declared acquitted unless two thirds of the members present assent to his conviction.

9. Upon conviction the judgment shall be removal from office. It may also attach a disqualification to hold any office of honor, trust, or profit under the laws of this state.

10. Every officer impeached shall be suspended from the exercise of his official duties until his acquittal.

11. Conviction on an impeachment does not exempt the offender from a private action or public prosecution for the same act or offence.

12. If the president of the senate be impeached notice thereof must immediately be given to the senate who shall thereupon choose another president to hold his office until the result of the trial is determined.

TITLE III. CHAPTER 1. COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 1. A magistrate before whom an information is laid, may issue subpœnas, subscribed by him for witnesses within the state, either on behalf of the state, or the defendant.

2. The prosecuting attorney of the county may issue subpœnas subscribed by him, for witnesses within the county, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury, upon any investigation pending before them.

3. The clerk of the court at which an indictmeni is to be tried, must at all times, upon the application of the defendant, and without charge issue as many blank subpænas under the seal of the court, and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant, he must also issue subpænas on the part o the state when required.

4. A peace officer must serve, within his town, or county, as the case may be, any subpœna delivered to him for service, either on the part of the state or defendant; and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. A subpœna may however be served by any other person.

5. The service of a subpœna, must be by delivering a copy, and showing the orignal to the witness personally.

6. No person is obliged to attend as a witness before any court or magistrate, out of the county where he resides, or is served with the subpœna, unless a judge of the supreme, district, or county court, upon an affidavit of the prosecuting attorney, or of the defendant or his attorney, stating that he believes that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

7. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate, as for a contempt.

8. A witness willfully disobeying a subpœna issued on the part of the state or defendant, without good cause shall also forfeit the sum of fifty dollars to the party injured; which may be recovered in a civil action.

9. 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.

22. The proceeding attorney of the county may have addpoint subscribed by him, for a threases .III [JJTIT curty, in support of the proscounter or for anther witnesses .as the grand jury may direct, to appear before the grand jury? **SJTTAHO** vestigation pending before them.

EXAMINATION OF WITNESSES CONDITIONALLY. SECTION 1. When a defendant has been held to answer a charge for a public offence, he may either before or after indictment, have witnesses examined conditionally on his behalf, as prescribed in this chapter, and not otherwise.

2. When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

3. The application must be made upon affidavit showing:

FIRST-The nature of the offence charged;

SECOND-The state of the proceedings in the action;

THIRD—The name and residence of the witness, and that his testimony is material to the defence of the action; and

FOURTH—That the witness is about to leave the state, or is so sick or infirm, as to afford reasonable ground for believing that he will be unable to attend the trial. 4. The application if made during the term, must be made to the court.

5. If not made during the term, the application must be made as follows:

FIRST-When the indictment or proceedings are pending in the district court, to a judge of the district, supreme, or county court;

SECOND—When the proceedings are pending before a justice of the peace for the trial of a misdemeanor, to the justice.

6. If the court or officer to whom application is made, be satisfied that the examination of the witness is necessary to the attainment of justice, an order may be made that the witness be examined conditionally at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the prosecuting attorney, within a specified time before that fixed for the examination.

7. The order for the examination of the witness must direct before whom the same shall take place.

8. On proof being made to the officer or person before whom the examination is appointed, of the service of a copy of the order, and of the affidavit on which it was granted on the prosecuting attorney; or if he cannot be found, by leaving a copy thereof at his office or dwelling house, if no counsel appear on the part of the state, the examination may proceed.

9. If the prosecuting attorney or other counsel appear on the part of the state, and it be shewn to the satisfaction of the court, or person authorised to take the testimony, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not so sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination shall not take place; and all costs of such application shall be paid by the defendant.

10. The testimony of the witness must be reduced to writing, and sworn to and subscribed by him, and be authenticated by the person taking the same as follows:

FIRST-The certificate must state that the deposition was sworn to and subscribed by the witness;

SECOND—The time and place of taking the same. 11. The deposition must be returned by the person taking it, to the clerk of the court or magistrate where the action is pending without delay.

12. The deposition may be read in evidence by either party on the

trial, upon its being satisfactorily proved that the witness is unable to attend the trial, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state, so that his attendance could not be compelled by subpœna or attachment.

13. The deposition however cannot be read, if it be satisfactorily shown, that the copy of the order and the affidavit on which it was founded, was not served on the prosecuting attorney as directed, or that the examination was not conducted as prescribed in this chapter. 14. Upon the reading of the deposition in evidence, the same objections may be taken to any question, or answer contained therein as if the witness had been examined orally in court.

15. The attendance of the witness may be compelled by the officer or person appointed to take the deposition, by a subpœna issued and subscribed by him.

16. Disobedience to the subpœna, or a refusal to be sworn as a witness, or to answer after being sworn, may be punished as a contempt by the court or magistrate where the action is pending.

amiantion may proceed. III **JITIT**

CHAPTER 3. Main addition of the CHAPTER 3.

EXAMINATION OF WITNESSES ON COMMISSION. SECTION 1. When any indictment or information appealed, is pending before a district court, the defendant may have any material witness residing out of the state, examined in his behalf as prescribed in this chapter, and not otherwise.

2. The application must be made upon affidavit showing:

FIRST-The nature of the offence charged:

SECOND—The state of the proceedings in the action, and that issue of fact has been joined thereon:

THIRD—The name of the witness and what is expected to be proved by him.

FOURTH—That the same facts cannot be established by any other witness within the jurisdiction of the court, to the knowledge of the defendant. FIFTH—That the witness resides out of the state, and his place of residence.

3. The application if made during the term, must be made to the court; if not made during the term, the application may be made to the judge of the court, or to a judge of the supreme, or county court.

4. If the application be made to the court, it may be without notice to the prosecuting attorney, unless the court direct notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section, the application must be made upon five days notice to the prosecuting attorney, with a copy of the affidavit upon which it is founded.

5. If the court or officer, to whom the application is made be satisfied that the witness resides out of the state, and that his examination is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

6. When the commission is ordered, the defendant must serve upon the prosecuting attorney, without delay a copy of the interrogatories to be annexed thereto, with notice of two days of their settlement, before the court or judge ordering the commission.

7. The prosecuting attorney may, in like manner, serve upon the defendant or his counsel, cross-interrogatories to be annexed to the commission with the like notice of the settlement thereof.

8. In the interrogatories, either party may insert any question pertinent to the issue.

9. Upon the settlement of the interrogatories, the judge must expunge any question not legal or pertinent to the issue, and must modify the questions, so as to conform them to the rules of evidence, and when settled shall endorse upon them his allowance, and annex them to the commission.

10. The commission must be issued under the seal of the court, and the signature of the clerk, directed to one or more persons designated as commissioners, authorising them to examine the witnesses upon oath, on the interrogatories annexed thereto, to take and certify the deposition of the witnesses, and to return it together with the commission, interrogatories, and exhibits, according to the directions given with the commission.

11. The commissioners or any one of them, unless otherwise specially directed, must execute the commission as follows:

FIRST-They must publicly administer an oath to the witness, that

his answers given to the interrogatories, shall be the truth, the whole truth, and nothing but the truth;

SECOND-They must cause the examination of the witness to be re-

THIRD-They shall write the answers of the witness, as near as possible, in the language in which he gives them, and must read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth;

FOURTH-If the witness declines answering a question, that fact with the reason for which he declines answering it, must be stated;

FIFTH-If any papers or documents are produced before them and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners.

SIXTH-The commissioners must subscribe their names to each sheet of the deposition, and annex the same with the documents proved by the witness, to the commission, and must close up under seal, and address the same as directed on the commission.

SEVENTH-If there be a direction on the commission to return it by mail, the commissioners must immediately deposit it in the nearest post office. If any other direction be made by the written consent of the parties, or by the officer on the commission, as to its return, they must comply with the direction.

12. A copy of the last section must be annexed to the commission.

13. The clerk or judge receiving and opening the commission and return, must immediately file it in the clerk's office of the court where the indictment is pending.

14. The commission and return shall be open to the inspection of the parties.

15. The depositions taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to any question in the interrogatories, or to any answer in the depositions, as if the witness had been examined orally in court.

16. Such depositions shall not be read at the trial, if it be made satisfactorily to appear that such witness is within the jurisdiction of the court, and his personal attendance can be procured.

given with the commission.

all 1 . The comparisioners of any one of them, unless otherwise specially directed, must execute the commission on follows: in the commission Fusr-They must publicly administer an oath to the witness that

to answer the indictment, in iii GITIT which it is found, or to which it is may be sent or removed for trial. 7. After conviction and u. PartAnd of crior when there is a stay of execution, the defendent may be admitted to to buil as follower: h

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION 1. Admission to bail is the order of a competent court or magistrate, that the defendant be discharged from actual custody upon the taking of bail.

2. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the state a specified sum.

3. The defendant cannot be admitted to bail where he is charged : First-With an offence punishable with death ; or,

SECOND-With the infliction of a personal injury upon another, likely to produce death, and under such circumstances as that, if death ensue, the offence would be murder.

4. If the charge be for any other offence, he may be admitted to bail, before conviction as follows :

FIRST-As a matter of right in cases of misdemeanor.

Second—As a matter of discretion in all other cases.

5. After the conviction of an offence not punishable with death, a defendant who has sued out a writ of error to take his case from the district to the supreme court of the state, and where there is a stay of proceedings, but not otherwise, may be admitted to bail :

FIRST-As a matter of right where the writ of error is from a judgment imposing a fine only. g the sum in which ball must be take SECOND—As a matter of discretion in other cases.

6. Before conviction, a defendant may be admitted to bail, First-For his appearance, before the magistrate, on the examination of the charge, before being held to answer.

SECOND-To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer, after examination.

THIRD-After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail

REVISED CODE .--- 55 : Errollot at and ho anothendileup od T

to answer the indictment, in the court in which it is found, or to which it may be sent or removed for trial.

434

7. After conviction and upon a writ of error when there is a stay of execution, the defendant may be admitted to to bail as follows :

First-If the writ of error be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the supreme court may direct, if the judgment, be affirmed or modified, or the writ of error be dismissed.

SECOND-If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the writ of error being dismissed.

pearance of the defendant according to the terms of the undertaking or that the bail will pay to the state a specified sum. The bail will 3. The defendant cannot be admitted to bail where he is charged : Fast-With an offence pull IIIII death; or, and the least Sucosu-With the infliction of a personal injury upon another. likely to produce death, and sarqaHOch direumstances as that it death ensue, the offence would be muchler, BAIL UPON BEING HELD TO ANSWER, BEFORE INDICTMENT.

bail, before conviction as follows : which have SECTION 1. When the defendant has been held to answer for any bailable public offence, the admission to bail may be by the magistrate who held him to answer; or by any judge of the supreme, district, or county courts, or by the court to which the depositions and statement are returned by the committing magistrate.

2. If the application for admission to bail be made to the court, an order must be made granting or denying it; and if it be granted, stating the sum in which bail must be taken. you got a prisoger them

3. If the application be made to a magistrate, he must certify in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate, the sum in which bail is to be taken, which certificate he shall cause to be forthwith filed with the clerk of the court, to which the depositions are required to be to return the depositions and statement, upon the defendant

sent. 4. Bail is put in by a written undertaking, executed by one or more sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate,) and acknowledged before the court or magistrate taking the same. ______ ind to taken edt guinte.

5. The qualifications of bail are is follows:

First-Such bail must be a resident, and householder or freeholder within the state;

SECOND-Such bail must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail, may allow more than one bail to justify severally, in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of one sufficient bail.

6. The bail must in all cases justify by affidavit, taken before the court or magistrate, as the case may be, and the affidavit must state that they each possess the qualifications prescribed in this chapter.

7. The prosecuting attorney, or the court, or magistrate, may thereupon further examine the bail upon oath concerning their sufficiency, in such manner as they may deem proper. In tradicion off gaitsone

8. The court or magistrate may also receive other testimony, either for or against the sufficiency of the bail. at tupbusteb odt and W .8

9. When the examination is closed, the court or magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same with the affidavits of justification, and the undertaking of bail, to be filed with the clerk of the court, to which the depositions and statements are to be sent.

10. Upon the allowance of the bail, and the execution of the undertaking, the court or magistrate must make an order signed by him, with his name of office, for the discharge of the defendant, to the following effect:

"The state of Iowa"

nelly rendered.

To the sheriff of

(A. B. the name of the defendant,) who is detained by you on commitment, to answer a charge for the offence of, (here designating it generally,) having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

to bail may be made, either by (bengist where the judgment beta 11. If the bail be disallowed, the defendant must be detained in

2: When the admission to bail is a matter of discretion, the court or officer by whem it may be ordered, may require such notice of the application therefor, as he may deem reasonable, to be given to the prosecuting attorney of the county, in which the judgment was origi-

Stemolt E. At sum time before the forfeiters of duty up brickers

CHAPTER 6.

SECTION 1. When the offence charged in the indictment is a misdemeanor, and the amount of bail has been fixed by the court, the officer serving the bench warrant, if therein required, must take the defendant before a magistrate, in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

2. If the offence charged in the indictment be a felony, the officer arresting the defendant, must deliver him into custody according to the command of the warrant.

3. When the defendant is so delivered into custody, if the felony charged be bailable, and the amount thereof be fixed by the court, bail may be taken by the court in which the indictment was found, or to which it has been removed, or by any magistrate in the county having authority to admit a defendant to bail.

 $_{10}$. Upon the allowance of M_{0} init, and the execution of the midertaking, the court or magnetic near make an order signed by him with the mane of office for the HH **HITT** of the defendant to the fetlowing effectively as the defendant to the fet-

CHAPTER 7.

BAIL ON WRIT OF ERROR. SECTION 1. In the cases in which the defendant may be admitted to

SECTION 1. In the cases in which the defendant may be admitted to bail upon a writ of error as before provided, the order admitting him to bail may be made, either by the court where the judgment was rendered, or the judge thereof, or by the supreme court, or by the judge of the county court.

2. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, may require such notice of the application therefor, as he may deem reasonable, to be given to the prosecuting attorney of the county, in which the judgment was originally rendered.

DEPOSIT OF MONEY INSTEAD OF BAIL.

SECTION 1. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the district court in which he is held to answer, the sum mentioned in the order; and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody.

2. If the defendant have given bail, he may at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking; and upon the deposit being made, the bail shall be exonerated.

3. If money be deposited as provided in the last section, bail may be given in the same manner, as if it had been orignally 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.

4. Where money has been deposited if it remain on deposit, at the time of a judgment, for the payment of a fine and costs; the clerk shall under the direction of the court apply the money in satisfaction thereof, and after paying the fine and costs, shall refund the surplus if any, to the defendant.

OHAPTER IG.

restore in the or one of TITLE IIL stranger and as meaning the

ordudgment, or upon any other oceasion where his presence in court

abui sai to notheste SURRENDER OF DEFENDANT. Desimper vibrivat ee

SECTION 1. 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:

FIRST—A certified copy of the undertaking of the 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:

SECOND—Upon the undertaking, and a certificate of the officer, the court in which the indictment or writ of error (as the case may be,) is pending, may upon reasonble notice to the prosecuting attorney of the county, with a copy of the undertaking and certificate, order the bail to be exonorated; and on filing the order and the papers used in the application, they shall be exonerated accordingly.

2. 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.

3. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner prescribed in this chapter, the court shall order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a reasonable notice to the prosecuting attorney with a copy of the certificate.

where of a jungment, for the payment or a inte and costs, the cierk shall under the direction of the court apply the money in satisfaction whereof, and after paying the fine and costs, shall refund the surplus if our to the defendant

TITLE III.

CHAPTER 10.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

SECTION 1. If the defendant do not appear for arraignment, or trial or judgment, or upon any other occasion where his presence in court be lawfully required, or to surrender himself in execution of the judgment, the court shall enter his default.

2. On such default, the prosecuting attorney must sue out a scire facias to be served on the bail, or in case of a money deposit, on the defendant; which shall be served as other civil process, requiring such bail or defendant as the case may be, to shew cause at the next term of the court, why such recognizance shall not be estreated, or money be forfeited.

3. If such bail, or defendant as the case may be, appear in pursuance of such scire facias, and shew good cause in excuse, for such default; the court may set aside the same on the payment of the costs of the default and scire facias.

4. If such bail or defendant do not appear, or do not shew good cause in excuse of such default, the court shall thereupon order the undertaking or money to be forfeited, and in case of an undertaking by bail, must enter judgment for the amount thereof and costs, against such bail.

TITLE III.

CHAPTER 11. CHAPTER 11.

RE-COMMITMENT OF THE DEFENDANT AFTER GIVING BAIL.

SECTION 1. The court to which the committing magistrate may return the depositions and statements, or in which an indictment or writ of error is pending, or in which a judgment is to be carried into effect, may order the arrest of the defendant, and his commitment to the officer, to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases; FIRST—When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or money deposited instead thereof; SECOND—When it satisfactorily appears to the court that his bail, or either of them are dead, or in sufficient, or have removed from the state;

THRD—When upon the finding of an indictment, the court deem the bail taken by the committing magistrate insufficient; 2. The order for the re-commitment of the defendant, must recite generally, the facts upon which it is founded, and must direct that the defendant be arrested, and committed to the custody of the sheriff of the county; where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.
3. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the state.

4. If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.
5. If the order be made for any other cause, and the offence be bail-

5. If the order be made for any other cause, and the offence 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.

TITLE III. CHAPTER 12.

DISMISSAL OF CRIMINAL ACTIONS, BEFORE AND AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION 1. When a person has been held to answer for a public offence, 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.
2. If a defendant indicted for a public offence, 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.

3. If the defendant be not indicted, or tried, as provided in the two last sections, and sufficient reason therefor being shown, the court may order the action to be continued from term to term, and in the mean time 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. 4. The court may, either of its own motion, or upon the application of the prosecuting attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record of the court.

5. The entry of a *nolle prosequi* is abolished, and no prosecuting attorney, or counsel for the state, shall hereafter discontinue or abandon a prosecution for a public offence, except as provided in the last section.

TITLE III. the custody of the shelf of

CHAPTER 13.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION 1. 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.

2. On satisfactory proof of title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the same, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in the preservation and keeping thereof, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

3. 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.

4. 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.

5. If property stolen or embezzled, be not claimed by the owner before the expiration of six months from the conviction of the person for stealing or embezzling it, the magistrate or other officer having it REVISED CODE.-56

441

in his custody, must on payment of the necessary expenses incurred for its preservation, deliver it to the clerk of the county court, to be applied under the direction of the judge thereof, for the benefit of the poor of the county.

6. When the money or other property is taken from the defendant, arrested upon a charge of a public offence, 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 must deliver to the defendant, and the other he must forthwith file with the clerk of the district court of the county where the depositions and statement are to be sent by the magistrate.

ATTER II

TITLE III.

CHAPTER 14. TO MERCEN

ENQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE TRIAL OR AFTER zles, comes into the custody norrorynos e officer, he must hold the same, subject to the order of the magistrate authorized by the next SECTION 1. An act done by a person in a state of insanity cannot be punished as a public offence; nor can a person be tried, adjudged, to punishment, or punished for a public offence, while he is insane. 2. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment; if a reasonable doubt arise as to the sanity of the defendant, the court must order a jury to be empannelled from the jurors summoned and returned for the term, or who may be summoned by the direction of the court, to enquire into 3. If the property stolen or embezzled, come into the cast toal oft 3. The trial of the indictment, or the pronouncing of the judgment, as the case may be, must be suspended until the question of insanity shall be determined by the verdict of the jury silling ad of nonevras 4. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may of his title, order its restoration,

5. If the jury find the defendant insane, the trial or judgment must be suspended, until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the mean time committed to the county jail, or state lunatic asylum (should there be one,) until he become sane.

6. The commitment of the defendant as mentioned in the last section, shall exonerate the bail he may have given.

7. After the defendant becomes sane, he must be brought to trial or judgment as the case may be, or be otherwise discharged by due course of law.

8. Upon application of any friend of such insane person, to a judge of the supreme, or district court, or county judge of the proper county, except in capital cases, any such judge may commit such insane person to the custody and safe keeping of such friend, he first undertaking in writing with sufficient sureties to the state, that he will safely keep such person, and deliver him into the custody of the sheriff of the county, upon the order of the court where the indictment or trial is pending, and pay all damages, which any person may sustain by reason of the acts of such insane person.

9. All expenses for the imprisonment or keeping of any insane defendant, must be paid out of his estate if he have any; if not, then by any relative, township, or county required by law to provide for and maintain him, and if he has no such means of support, then such expenses must be paid by the county.

3. Such court in the everc IHI SITIT ad discretion, may grant such change of venue, and if the same is mayed on the ground of objections to the judge, such e 5.4 ST T T A W arded to some convenient county of an adjoining district, or if such change is praved on the ground of cyclicher structure of an adjoining district, or if such change is praved on the ground of evenue to the praved on the county of an adjoining district, or or some convenient counts where such the average is a structure must be averaged to the nearest and ground convenient counts where such

SECTION 1. When any person convicted of a criminal offence, 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 kin' 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. I be commitment of the defendant as mentioned in the light

2. 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, to be has writtened to be af your sees of the treat has to course of huw, and showing below if and and and the first one and -c8. Upon application of any fit ad eff such insame person to a judge eccept in capital uncertainty surfaces any sill HITLE may commit such insume per son to the custody and sufe keeping of such friend, he first undertaking in writing with sufficien. 61 RATTAND the state, that he will safely keep such person, and deliver him into the custody of the sheriff of LETT TO INCOMPANY CHANGING VENUE IN CRIMINAL CASES, DOGU , HAUGO OCH is pending, and pay all damages, which any person may sustain by

SECTION 1. 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. 2. Such petitioner must set forth the nature of the prosecution, the court where the same is pending, and that such defendant cannot receive a fair and impartial trial, owing to the prejudice of the judge, or to excitement and prejudice against him in such county, and must be verified by his affidavit stating the same to be true, as he verily believes.

3. Such court in the exercise of a sound discretion, may grant such change of venue, and if the same is prayed on the ground of objections to the judge, such change must be awarded to some convenient county of an adjoining district, or if such change is prayed on the ground of excitement and prejudice in the county, such change must be awarded to the nearest and most convenient county, where such excitement and prejudice does not exist.

4. Upon the making of such order, the clerk must make out and certify a transcript of all the proceedings appearing upon the record of the court, which together with the indictment and all the papers in the cause, must be transmitted to the clerk of the court to which the venue has been changed. In more stars that out dous you of skillend

5. The sheriff of the county, if any defendant be in his custody, must on the order of the court, transfer and deliver such defendant to the sheriff of the county to which such change is allowed, and upon

such transfer and 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. The participance for such as all totals of the such as a such asuch as a such asuch as a such as a su

6. 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 impannelled in such court.

7. 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.

8. 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. from the executive authority of any foreign government; my fagitive from justice charged with treason or folony, and the accounts of the ments appointed for that purpose, must be midited by the auditor of state, and paid out of the staffit TITLE TITLE and mod mark and the state.

basiaditas of any chief CHAPTER 17, "its any case cathorised

by the constitution and laws of the linited States for the delivery of PARDONS AND COMMUTATIONS OF FINES AND FUNISHMENTS. person is not held in custody, or under bail to marker for any offense

SECTION 1. In all cases in which the governor is authorised by the constitution to grant pardons, he may grant them upon such conditions and with such restrictions and limitations, as he may think proper, and may issue his warrant to all proper officers to carry into effect such conditional pardon.

2. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant is directed after executing the same, must make return thereof with his doings thereon, to the secretary of state as soon as may be, and such officer must also file in the clerks office of the court in which the offender was convicted, a certified copy of the warrant and return, a brief abstract of which the clerk shall subjoin to the record of conviction. 3. Fines imposed as a punishment for a public offence, can only be

446

remitted by the governor of this state; those for contempts of court may be remitted by the court by which they were imposed. 4. In capital cases the governor may for good cause shown, grant a reprieve to any convict for a time not exceeding one year from the rendition of the judgment.

7. In all changes of venue.IIId **31THT** rovisions of this chapter; the county from which the change of venue was taken, shall pay the expenses and charges of romo.81 **93T**(AH) ing and keeping the defendant, and all other expenses necessory and consequent upon such change of venue, and the **30TRU** MORT RAVINGUART; which shall be audited and allowed by the court trying such case.

SECTION 1. The governor of this state may, in any case authorised 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.

2. Whevever a demand is made upon the governor of this state, by the executive of any other state or territory, in any case authorised 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 offence against the laws of the United States or of this state, he shall issue his warrant under the seal of the state, authorising the agent who make such demand, either forthwith, or at such time as may be designated in the warrant, to take and transport such person to the line of this state at the expense of such agent; and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

3. If any person be found in this state, charged with any crime committed in any other state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor thereof, any magistrate may upon complaint on oath, setting forth the offence, and such other matters as are ne-

3. Fines imposed as a punishment for a public offence, can only be

cessary to bring the case within the provisions of law, issue a warrant to arrest such person.

4. 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.

5. 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 offence charged had been committed within this state.

6. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking is a forfeiture thereof.

7. If such person appear before the magistrate upon the day ordered, he must be discharged, unless he is demanded by some person authorised by the warrant of the governor to receive him, unless the magistrate see good cause to commit him, or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor.

8. Whether the person so charged be bound to appear, committed, or discharged, any person authorised 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.

9. 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 the hearing of the cause, must require the complainant to give security for the payment of all such costs, or may require them in advance.

describing the property, and the place to be searched. 4. The magistrate must before issuing the warrant, examine on oath, the complainant, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them a. The depositions must set forth the facts lending to establish the grounds of the application, or probable cause for believing that the exist.

cessary to bring the case within the provisions of law, issue a warrant to arrest such person.

4. 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.

5. 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 offence charged had been committed within this state.

6. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking is a forfeiture thereof.

7. If such person appear before the magistrate upon the day ordered, he must be discharged, unless he is demanded by some person authorised by the warrant of the governor to receive him, unless the magistrate see good cause to commit him, or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor.

8. Whether the person so charged be bound to appear, committed, or discharged, any person authorised 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.

9. 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 the hearing of the cause, must require the complainant to give security for the payment of all such costs, or may require them in, advance.

describing the property, and the place to be scarehol. 4. The magistrate must before issuing the warrant, examine on oath, the complainant, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

a. The depositions must set forth the facts fending to establish the grounds of the application, or probable cause for believing that they exist.
 b. If the magistrate be thereupon satisfied of the existence of the set of the magistrate be thereupon satisfied of the existence of the set of the

remitted by the governor of this state; those for contempts of court may be remitted by the court by which they were imposed. 4: In capital cases the governor may for good cause shown, grant a reprieve to any convict for a time not exceeding one year from the rendition of the judgment.

7. In all changes of verme IIId **3.1717** rovisions of this chapter; the county from which the change of verme was taken, shall pay the expenses and charges of remosfit **7.174A** ing and keeping the defendent, and all other expenses necessary and consequent upon such change of verme, and the **3.17217** Mosf servirayant; which shall be audited and allowed by the court trying such case.

SECTION 1. The governor of this state may, in any case authorised 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.

2. Whevever a demand is made upon the governor of this state, by the executive of any other state or territory, in any case authorised 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 offence against the laws of the United States or of this state, he shall issue his warrant under the seal of the state, authorising the agent who make such demand, either forthwith, or at such time as may be designated in the warrant, to take and transport such person to the line of this state at the expense of such agent; and may also by such warrant require all peace officers to afford needful assistance in the execution thereof, the officer to whom the warran forest, in the commuted, the officer to whom the warrant 3. If any person be found in this state, charged with any crime committed in any other state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor thereof, any magistrate may upon complaint on oath, setting forth the offence, and such other matters as are ne-3. Fines imposed as a punishment for a public offence, can only be

scribed 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.

16. If the property taken by virtue of a search warrant, was stolen or embezzled, it must be restored to the complainant, upon his making satisfactory proof to the magistrate of his ownership thereof, or his right of possession thereto. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section second 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 offence is triable.

17. The magistrate must annex the depositions to the complaint, together with the return and inventory; and return them to the next district court of the county, at or before its opening, on the first day of the term.

18. Whoever maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.
19. When a person charged with a felony, is supposed by the ma^C

19. When a person charged with a blong, when the person a dangistrate before whom he is brought, to have upon his person a dangerous weapon, or any thing which may be used as evidence of the the commission of the offence, 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.

12. The magistrate if required must deliver a copy of the inventory to the person from whose constraint to the property was taken, and to the applicant for the warrant.

SECTION 1. The following persons are vagrants. All persons who tell fortunes, or where lost or stolen goods may be found; all common plostitutes, and all keepers of bawdy houses, or houses for the resort of prostitutes; all habitual drunkards, gamesters, or other disorderly persons; all persons wandering about, and having no visible calling or business to maintain themselves; all persons begging in public places, or from house to house, or procuring children to do so; all persons going about as collectors of alms or charitable institutions, under any false or fraudulent pretence; 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.

2. Upon complaint made on oath to any justice of the peace, against any person as being such vagrant; he shall issue his warrant for the arrest of such person to be brought before him for examination; and if it appear by the confession of such person, or by competent testimony that such person is a vagrant, the justice may require of such person an undertaking with sufficient sureties for good behavior for the term of one year thereafter.

3. The justice shall make up, sign, and file with the clerk of the district court a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge; and shall in default of such sureties being given, by warrant under his hand, commit such vagrant to the common jail of the county, there to remain until such sureties be found, or such vagrant be discharged according to law.

4. 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.

5. On a recovery upon any such undertaking, the court before which such recovery may be had, may in its discretion either require new sureties for good behavior, or may commit such vagrant to the common jail of the county, for any time not exceeding six months.

6. 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.

7. Any district court to which any return of such persons so convicted of being vagrants shall be made, shall inquire into the circumstances of each case, and hear any proofs that may be offered, and shall examine the record of conviction, which shall be deemed presumptive evidence of the facts therein contained until disproved.

8. The district court may revise such conviction, and discharge

such vagrant from the undertaking or confinement, absolutely, or upon sureties for good behavior in its discretion. Or such court may in its discretion authorise the judge of the county court of the county, to bind out such vagrants as shall be minors, in some lawful calling as servants or apprentices, or otherwise until they shall be of full age respectively, or to contract for the services of such vagrants as shall be of full age, with any suitable persons as laborers or servants, for any time not exceeding one year; which binding out and contracts, shall be as valid and effectual as the indenture of any apprentice with his own consent, and the consent of his parents; and shall subject the person so bound out, or contracted for, to the same control of their masters respectively, and of such court as if they were bound apprentices.

9. 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.

10. If there be no means provided in such jail, for employing offenders at hard labor, such court may direct the keeper thereof to furnish such employment as it shall specify, to such vagrant as may be committed thereto, either by a justice or any court, and for that purpose to purchase any necessary raw materials and implements, not exceeding such amount as the court shall prescribe, and to compel such persons to perform such work as shall be allotted to them. 11. The expenses incurred in pursuance of such order, shall be

audited by the judge of the county court, and paid out of the county treasury.

12. One half of the nett 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.

havior may be discharged by any magistrate, upon giving such such ties for good behavior as were originally required of such period is 7. Any district court to which any retarn of such personation of victed of being vagrants shall be made, shall inquire into the excert atances of each case, and hear any prosisting may be courted, and shall examine the record of conviction, which shall be decoded presumptive evidence of the facts therein contained until disproved. rea of gain have done buorint Eoint de some and the some

PROCEEDINGS AND TRIAL BEFORE JUSTICES OF THE PEACE FOR MISDEMEAN-ORS, AND PUBLIC OFFENCES WITHIN THEIR JURISDICTION.

SECTION 1. Justices of the peace in their respective counties, have jurisdiction of, and may hear, try, and determine all public offences, where the fine imposed by law does not exceed two hundred dollars, or imprisonment in the county jail, not more than six months, or where the punishment is by both such fine and imprisonment.

2. Criminal actions for the commission of a public offence, must be commenced before a justice of the peace, by an information, signed by the prosecuting attorney of the county, with the name of the prosecuting witness endorsed thereon, and filed with the justice.

3. Such information must contain,

FIRST—The name of the county, and of the justice where the information is filed;

SECOND—The names of the parties, if the defendants be known, and if not, then such name as may be given him by the prosecuting attorney;

THIRD—A statement of the acts constituting the offence, in ordinary and concise language, and the time and place of the commission of the offence as near as may be.

"The State of Iowa against A. B. defendant." 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 offence) as in an indictment. C. D. Prosecuting Attorney.

5. The justice must file such presentment, and mark thereon the time of filing the same.

6. Immediately upon the filing of such presentment, the justice must issue his warrant, directed to any sheriff, constable, or peace

453

of in any county in the status, site in easy booting the times will be

rd autes out ourse delug in CHAPTER 21. Coor odd molifo of The

meeting the defendant, if in his power, and bringing him without an

454

officer, for the arrest of the defendant, and such warrant may be served in any county in the state,

7. 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.

8. When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. If he object that he is wrongly named in the presentment, he must give his right name, and if he refuse to do so, or does not object that he is wrongly named, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection. 9. 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.

10. Upon a plea, other than a plea of guilty, if the defendant do not demand a trial by jury, the magistrate must proceed to try the issue.

11. Before the magistrate has heard any testimony upon the trial, the defendant may demand a trial by jury.

12. If a trial by jury be demanded, the magistrate shall direct the sheriff or any constable of the county, to make a list in writing of the names of eighteen inhabitants of the county, having the qualifications of jurors in the district court, from which list the prosecuting attorney and defendant, may each strike out three names.

13. In case the prosecuting attorney or the defendant neglect or refuse to strike out such names, the magistrate shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out, the magistrate must issue a venire, directed to the sheriff, constable, or any peace officer of the county, requiring him to summons the twelve persons whose names remain upon such list, to appear before such magistrate at the time and place named therein, to make a jury for the trial of the cause.

14. The officer to whom such venire is delivered, must forthwith stiffninon such jurors, and return the venire to the magistrate within the time therein specified, naming the persons summoned, and the manner of service. 15. The names of the persons returned as jurors, shall be written on separate ballots, folded each in the same manner, as near as possible, and so that the name is not visible, and shall under the direction of the magistrate, be deposited in a box or other convenient thing.

16. The magistrate must then draw out six of the ballots successively; and if any of the persons whose names are drawn do not appear, or are challenged or set aside, such further number must be drawn as will make a jury of six, after all legal challenges have been allowed.

17. 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 pannel is allowed.

18. If any of the jurors named in the venire cannot be found, or do not attend, or are challenged by either party, so that a sufficient number cannot be obtained, the magistrate may direct the officer to summon any bystanders or others who may be competent, and against whom no sufficient cause of challenge appears to act as jurors.

19. If the officer by whom the venire is received, do not return it as required, he may be punished by the magistrate as for a contempt, and the magistrate shall issue a new venire for the summoning of the same jurors, upon which the same proceedings shall be had, as upon the one first issued.

20. When six jurors appear and are accepted, they shall constitute the jury.

21. The magistrate must thereupon administer to them the following oath or affirmation : "You do swear (or you do solemnly affirm, as the case may be,) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the evidence."

22. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public. After which they may either decide in court, or may retire, for consideration.

23. If they do not immediately agree they must retire with an 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 he to ask whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

24. When the jury have agreed on their verdict, they must deliver it publicly to the magistrate, who shall enter it on his docket.

25. The jury cannot be discharged, after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the magistrate sooner discharge them.

26. If the jury be discharged, as provided in the last section, the magistrate may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict is rendered.

27. When the defendant pleads guilty, or is convicted either by the magistrate or by a jury, the magistrate shall render judgment thereon, of fine or imprisonment, or both as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment.

28. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine is satisfied.
29. When the defendant is acquitted, either by the magistrate, or

by a jury, he must be immediately discharged.

30. Whenever a conviction is had upon a plea of guilty, or upon trial, the magistrate must make and sign with his name of office, a certificate of such conviction, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon; and if any fine has been collected, the amount thereof.

31. Within twenty days after such conviction, the magistrate must cause such certificate to be filed in the office of the judge of the county court, in the county where the conviction was had.

32. Every certificate of conviction, made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places, of the facts therein contained.

33. The judgment shall be executed by the sheriff of the county, or by a constable, or marshall of the city or town where the conviction is had, by virtue of a warrant under the hand of the magistrate, specifying the particulars of such judgment.

34. If a fine be imposed and paid before commitment, it shall be received by the magistrate, and by him paid over to the county treasurer, within thirty days after the receipt thereof. 35. 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.

36. If the fine or any part thereof is paid to the magistrate, or sheriff, they must execute duplicate receipts therefor; one of which they must file without delay with the clerk of the county court.

37. The defendant may appeal to the next term of the district court, if on the rendition of the judgment, he or some one for him, make or cause to be made an affidavit, stating the facts, showing the alleged errors in the proceedings, or conviction complained of; and that he verily believes that injustice has been done.

38. Upon allowing the appeal the magistrate must take from the defendant a written undertaking, with one or more sufficient sureties, that the defendant will abide the judgment of the district court upon appeal, and prosecute the same without delay.

39. When an appeal is thus taken, the magistrate must cause all material witnesses to enter into an undertaking, as in cases of arrest, to testify in the cause at the term to which the appeal is returnable, and shall on or before the first day of the next term of the district court of the proper county, file in the office of the clerk thereof, a certified copy of the entries on his docket, together with all the undertakings and papers in the cause.

40. After hearing the appeal, the court shall give judgment, without regard to technical errors or defects which have not prejudiced the substantial rights of the defendant, and may render such judgment as the magistrate should have rendered; or may according to the justice of the case, affirm or reverse the judgment, in whole or in part, as to all, or any of the defendants, if there be more than one, or may order a new trial.

41. If the judgment be affirmed, the court shall direct the execution thereof, and if the defendant has been discharged on bail, after the commencement of the execution of a judgment of imprisonment, shall commit him to the jail of the county for the remainder of his term of imprisonment.

42. If the judgment be reversed, and the defendant be imprisoned in pursuance of the judgment of the magistrate, the district court must order him to be discharged.

REVISED CODE.-58

43. If a new trial be ordered, it shall be had in the district court, in the same manner, as upon an issue of fact on an indictment, and the court may proceed to judgment and execution thereon, as in an action prosecuted by indictment.

44. If any proceedings be necessary to carry the judgment upon appeal into effect, they shall be had in the district court.

45. If the judgment on the appeal be against the defendant, he may sue out his writ of error therefrom to the supreme court, in the same manner as from a judgment in an action prosecuted by indictment, and may be admitted to bail upon the writ of error, in like manner. 46. The same proceedings shall be had to carry into effect the

46. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the writ of error, as if it had been taken upon a judgment in an action prosecuted by indictment.

30. When an appeal is thus taken, the magistrate must cause all reasonal so meases to enter into an undertaking, as in cases of arrest, to easy in the cause at the term to which the appeal is returnable and shall an or before the first day of the next term of the district and as the proper county, file in the called of the district core first action of the district trial copy of the entries on his docket, fogether with all the undertaling and appens in the cause.

40. After meaning the appeal, the court shall give judgment, without regard to technical errors or defects which have not prejudiced the substantial rights of the defendant, and may render such judgment as the magistrate should have readured; or may according to the justice of the case, affirm or reverso the judgment, in which or in part, as in all, or any of the defendants, if these becare than one, or may order a new trial.

41. If the judgment be affirmed, the court shall direct the exponsion thereof, and if the defendant has been discharged on bail, after the commencement of the execution of a judgment of imprisonment, shall commit him to the jail of the county, for the remainder of his term of imprive known.

42. If the judgment be reversed, and the defondant be flapitione, i in pursuance of the judgment of the magistrate, the district court must erder junt to be discharged.

SUBSTITUTE FOR CHAPTER 1-TITLE V.-PART ONE.

OF THE LANDS OF THE STATE.

SECTION 1. The Auditor of State is ex-officio commissioner of the state land office, and as such has the general supervision of all sales of lands owned by the state and the investment of the proceeds thereof except when otherwise declared.

2. As commissioner of the land office, he must give bond, in the penalty of ten thousand dollars, conditioned for the faithful discharge of his duty.

3. For the additional duty imposed upon him, as such commissioner, he shall annually receive the sum of ______ dollars, in addition to his regular salary. He may also appoint an assistant auditor, with an annual salary not exceeding dollars.

[Should the general assembly prefer to make the land office separate, the substitution of the three following sections for those which precede, will be all the change necessary.

OF THE LANDS OF THE STATE.

SECTION 1st. At the August election in the year 1851 and ev(r) two years thereafter, a commissioner of the state land office shall be elected who shall remain in office until his successor is elected and qualified.

Second. He shall keep his office at the seat of government and shall have the general supervision of all the lands belonging to the state.

Third. He must give bond in the penalty of ten thousand dollars conditioned for the faithful discharge of his duties—shall take the usual oath of office and shall receive for his compensation an annual salary of eight hundred dollars payable quarterly from the state treasury.]

 The term "state lands" as used in this chapter embraces all the lands of the sale of which the general assembly has the control including those appropriated to the improvement of the Des Moines river.
 The office of school fund commissioner is abolished. His books REVISED CODE.—59

aud papers must be turned over to the county treasurer who as receiver of the state land office for his county is his successor in office except when otherwise declared. As such he must give separate bonds to be approved in the same manner as his bond as treasurerin the penalty of five thousand dollars conditioned for the full and faithful discharge of his duty.

6. Every head of a family or single person over the age of twentyone years having such a claim as is recognized by law to any tract of land belonging to this state-and not otherwise disposed of so as to cause an incompatibility with this arrangement-has a right of preemption thereto or to any part thereof in regular legal subdivisions, at the minimum price established as hereinafter provided upon his complying with the terms and conditions prescribed by law.

7. Where two or more persons are thus occupying the same tract the right of pre-emption belongs to him who holds by virtue of the earliest settlement, and occupancy which has been regularly and constantly kept up by the applicant or those under whom he claims down to the time of making the application.

8. The purchase must be consummated before the lands are publicly offered for sale or the right of pre-emption is lost.

9. The commissioner shall establish rules for the proof of pre-emptions (including the time in which they must be proved when not otherwise expressed) and for the transaction of other business in the several offices established for the selling of any state lands.

10. The commissioner and the several receivers of the state land office are hereby authorized to administer oaths in connection with their respective offices, and any person who in pursuance of the rules contemplated in the preceding section swears talsely commits perjury and shall be punished accordingly.

11. The minimum price of all lands which have been or may hereafter be appraised pursuant to law shall be the prices at which they are respectively appraised.

12. Where the county judge of any county has reason to believe that the fair value of any lands lying in his county and belonging to the school or university funds is materially greater than the minimum price as then existing it is his duty to appoint one or more persons to appraise the same and the amount at which it is so appraised (if not less than its previous minimum) shall be its minimum price. 13. The persons so appointed must be sworn to discharge their

duty faithfully they must report in writing to the county judge and shall receive such compensation as he directs-not exceeding one dollar and fifty cents per day. The judge must forthwith forward an abstract of their report to the commissioner of the land office. 14. The governor may in his discretion cause any lands belonging to the state to be laid out into tracts smaller than the legal subdivisions-or into town lots, and may cause such tracts or lots, or any other lots owned by the state to be appraised, and may allow therefor such compensation as he thinks just-not exceeding two dollars per day for each person employed. 15. He may also direct the re-appraisement of any lots or lands belonging to the state, and may allow compensation as provided in interest due on his contract.

16. In all cases of appraisement or re-appraisement as contemplated in the three last sections the expenses thereof shall be paid from

17. Persons occupying and improving any lot or tract of land held by the state for the purpose of sale and appraised as aforesaid may pre-empt the same in like manner as other lands. But no one person can thus pre-empt more than two town lots in one year. 18. No lands belonging to the state-except the swamp lands

given to the state by the act of Congress of September 1850, can be sold for less than one dollar and twenty-five cents per acre, which is the minimum price of all lands where not otherwise provided. 19. All lands not purchased by pre-emption as above authorized must be offered for sale at public auction and if not sold for a sum as great as the minimum price fixed as aforesaid will be afterwards subject to private entry at that price.

20. No lands belonging to the university or school funds not already appraised as hereinbefore contemplated can be sold by pre-emption or otherwise until a certificate is obtained from the county judge of the proper county stating that he has received satisfactory information that the lands in question are not worth essentially more than the minimum price as fixed by law; which certificate must be filed with the county treasurer and a copy thereof forwarded by him to the commissioner of the land office. I olate off of bothodize ages 21. Public sales are to be ordered by the commissioner of the land

office at such times and places and upon such notices as he may think expedient regular shall be in full for all his sentimities and shall be in full for all his section and shall be in full for all his section.

22. The commissioner may direct any of the state lands to be sold on a partial credit but not less than one fourth of the purchase money must in all cases be paid down. The remainder must be upon interest at the rate of ten per cent per annum which must be payable annually on the day fixed in the contract which must be arranged with reference to the time such interest will be wanted for distribution among the school districts or for other purposes. 23. A failure to pay such interest when due causes the note thereof to be doubled,-and if not paid within six months after it falls due the contract and all moneys paid thereon becomes forfeited and the lands may be sold anew. But the purchaser on a partial credit is at all times before such forfeiture permitted to pay off the principal and interest due on his contract.

24. Patents shall in all cases issue to the holders of the contracts herein contemplated whenever the principal and interest due thereon has all been paid.

0

25. The interest which any one receives by purchase as hereinbefore contemplated is transferable by sale or descent although the patent has not issued.

26. The contract above contemplated-at any time before it is forfeited shall for the purpose of evidence possess the same force and effect as the usual Receiver's receipt. 27. The purchaser of land on a partial credit is liable for waste committed thereon to the same extent as though he were occupying it merely as a claim. In order to use timber or other materials to a greater extent than would otherwise be permissible he must obtain authority from the judge of the county court having first given security to the state for the amount of the balance still due on the land by mortgage on other real estate to the satisfaction of the judgewhich mortgages shall be treated in all respects like those given by the borrowers of money belonging to the school fund.

23. The county treasurer is entitled to receive one per cent on all monies received by him in pursuance of the provisions of this chapter which shall be taken from the fund to which the money belongs. He is also entitled to receive from the borrower one dollar for each mortgage executed to the state to secure monies loaned as hereinafter authorized.

29. The compensation provided in the last section is in addition to his regular salary and shall be in full for all his services connected 463

with the selling of state lands and the investment of public monies as well as all services required of him in connection with the common school system. And where the discharge of the duties herein required renders it necessary for him to employ assistance for the discharge of his other duties such assistance shall be paid for out of his own compensation to the extent of the sums received in accordance with the provisions of the preceding section. 30. The commissioner of the land office must provide himself at the expense of the state with lo does mode support that a realization of FIRST-A skeleton map of the state showing the townships and ranges-the boundaries of counties and the courses of all streams which are meandered. SECOND-A set of tract books similar to those used in the land offices of the United States but of smaller dimensions if he thinks proper. in all oils bits anoismonill midd bar (vis 1) shoils aft THIRD-Skeleton township maps of each of the townships in the state in which there are any lands belonging to the United States or to this state which are or have been subject to entry and also similar maps of the half-breed tract in Lee county. Provided such maps with all previous entries designated thereon can be obtained for a price to be fixed by the census board-not exceeding seventy cents same relate to his county 30a. The amount necessary to defray the expenses required by the preceding section is hereby appropriated to be expended under the direction of the census board. To direct deep ni convertite brief

31. The township maps mentioned in the last section must be of the size of those used in the United States land offices and must be arranged in a similar manner, but prairie and timber lands need not be distinguished from each other nor need any streams be designated thereon except those which are meandered.

32. The Commissioner shall cause to be marked down on such plats all lands belonging to the State-distinguishing from each other as far as practicable those belonging to the different funds, and those which are sold from those still remaining unsold.

33. He shall also cause to be transcribed into the tract books aforesaid all the entries which have been made in either of the United States land offices in this State-omitting any items deemed unimportant by the Census Board: provided such transcribing can be

procured to be done for a sum to be fixed by the Census Board not exceeding one cent and a half for each entry.

34. He shall also as far as practicable complete the entries in such tract books by causing to be inserted therein like entries of all sales of any of the State lands.

35. All subsequent entries of State lands must be entered in the tract books and noted in the maps aforesaid.
36. Immediately after the first day of January in each year the Commissioner must procure from each of the United States land offices in the State a list of all the entries in their tract books made during the year then last past, and shall enter the same in his tract books, and mark them down upon his township plats.
37. He must furnish each county treasurer with a list and description of all the lands in his county which are to be sold by him stating the fractions (if any) and their dimensions and also the minimum price therefor if more than \$1.25 per acre. He must also furnish the officers intrusted with the sale of the saline lands with a like list and description.

)

.

38. By the first day of May in each year he must cause a list of all the entries of lands—made in the federal and state land offices and not before furnished—to be sent to each county judge so far as the same relate to his county.

39. Every officer charged directly with the sale of any lands belonging to this State must make report to the Commissioner of the land office once in each month or more frequently if such a rule is fixed by the Census Board.
40. Such report must state, FIRST—A description of the sales made similar in substance to that embraced in the tract books;

SECOND—When money has been loaned he must set forth an abstract of the contract of loan—showing the amount—the person to whom loaned—the rate of interest—the time of payment of interest as well as principal and the tract of land mortgaged to secure the payment thereof; THIRD.—Any other matter which the commissioner may require or which the law renders necessary. 41. Whenever any land is sold for cash in hand the officer making such sale must give the purchaser a receipt therefor stating the precise tract of land sold and the amount per acre and well as the sum total of such sale.

42. If sold on a partial credit the receipt must state the terms of the contract of sale—showing the tract sold—the amount per acre the amount paid down, and the terms and conditions on which the purchaser is to have a complete title to the same.

43. The receipts aforesaid must be executed in duplicate—one copy of which must be transmitted to the commissioner of the land office at the time of the making of the first regular return thereafter.

44. The patent or contract—as the case may be—emanates in all cases from the office of the commissioner. The contract must be signed by him—the patent by the Governor in the usual way and either will then be transmitted back to the proper county treasurer for the use of the purchaser.

45. The commissioner must furnish the county treasurer with the proper blank forms and instructions to enable them to make regular and uniform returns.

46: Every officer selling lands must also keep a book in which to enter a memorandum of each sale embracing the principal items contained in the tract books aforesaid.

47. The census board may make such further regulations as may be deemed expedient for the purpose of securing uniformity and of carrying out the objects herein contemplated.

48. Any officer charged with the sale of state lands with authority to receive the pay therefor is a receiver of the state land office within the meaning of this statute.

49. Separate books must be kept by the commissioner in respect to each class of lands sold as school lands—university—saline or internal improvement lands, and if lands are sold which are appropriated to different public improvements separate books and accounts must be kept in respect to each. 50. The books and affairs of the state land office are always un-

50. The books and affairs of the state land office are always under the supervision of the Governor who as often as once in each year must give the whole a thorough examination, and make report of the condition of such office to the General Assembly at each regular session.

51. The county treasurer must state his accounts in full with the State land office once in each year in relation to the expenditures connected with his office setting forth all the items thereof and verifying the whole by his oath given in such form as is prescribed by the Census Board.

52. Any officer charged with the selling of state lands who wilfully keeps false books or who uses the public money which comes into his hands in such a way as to fail in paying the same over to the proper person when legally required, is guilty of a felony and shall on conviction be punished by imprisonment at hard labor in the penitentiary for a term not exceeding ten years.

53. Suits brought in behalf of the public growing out of any of the transactions herein contemplated may be brought in the name of the State of Iowa. SUBSTITUTE FOR CHAPTER 3.—TITLE V.—PART ONE.

OF LOANING THE SCHOOL AND UNIVERSITY FUNDS.

SECTION 1. The proceeds of the sales of all the sections numbered sixteen in the different townships of this state which belong to the school fund are to be loaned by the treasurers of the respective counties in which they lie. All other monies belonging to the principal of the school and university funds are to be loaned under the supervision of the superintendent of public instruction.

2. In loaning the funds not arising from such sixteenth sections, preference shall be given.

First—To the state including the purchase of state bonds or stocks when they can be obtained at reasonable rates. Second—To the different counties giving preference to those offer-

ing the best terms. Third—Any amount remaining may be transmitted to the treasu-

Third—Any amount remaining may be distributed a way that rers of the respective counties—making the loans in such a way that the income accruing on all the investments in any county may as nearly as practicable be equal to the sum to be distributed to such county.

3. The interest on such loans must be payable annually at times and places to be fixed in the respective contracts. A failure to pay promptly causes the money to draw treble interest from the time when the interest should have been paid and the borrower becomes alone liable for the whole amount of principal and interest.

4. Where a county thus becomes a borrower the payments of principal or interest must be made in cash, to raise which, county orders must if necessary be issued and sold at their cash value.

5. Where any such money is loaned to an individual it must be secured by mortgage on real estate of the full unencumbered value of at least three times the amount so loaned—which must be exclusive of the homestead unless the mortgage is executed in such a manner as to bind the homestead.

6. The value must be ascertained by the affidavit of the owner of the property, with the certificate of the clerk of the district court relative to judgment liens. Unless loaned by the recorder himself his certificate must also be appended as to other incumbrances as well as to the title and stating his belief from the examination of the assessment rolls or otherwise that the unencumbered value of property has not been over-estimated by the applicant.

The loans must be for the highest current rate of interest that can be obtained on safe investments.
 The loans to individuals must be made as far as practicable on lands described by legal subdivisions so that they can as far as practicable be marked down at once on the township plats.
 The mortgages taken must be recorded without charge and a memorandum such as is required by the commissioner of the general land office must be forwarded to him. He shall thereupon make an entry thereof in a book corresponding to his tract book and shall mark down the same upon his proper township plat.

5. All matters perfaining firstlie above departmentshall at all times abe open to the inspection of the Governor and of the General Assemoby or either heats there is any committee of **03...3000 GENVAR** books to be assed in the schools and is anthritical to cause such series to be introduced into the districts gradually facconting to the eiterm stances of the several districts and equaing as little inconventee of a provide able, and he is empowered to require the brand of directors of the first factors the several districts and equaing as little inconventee of the introduced into the districts and equating as little inconventee of a stances of the several districts and equating as little inconventee of a provide able, and he is empowered to require the brand of directors of the districts to carry this plan into effect. Assemthe interest should have been paid and the borrower bocomes alone table for the whole amount of principal and interest.coll suchool out ainq to stand out of PART ONE-TITLE VII. Theory a proof W at 1 cipal or inferest must be made in cash to raise which, county orders Of Education. no 5. Where any meli money is loaned to an individual it must be scorred by mortgage on real . I STANDE full unchempered value of at least three times the amount so loaned which must be exclusive THE SUPERINTENDENT OF PUBLIC INSTRUCTION. the bind the homestead, at any baselourene SECTION 1. The Superintendent of Public Instruction shall keep his office at the seat of government and is entitled to receive a salary of twelve hundred dollars annually to be audited like other claims on the State and paid quarterly from any money in the state treasury not otherwise appropriated. It morticleiled tid patients has effit editor 2. The necessary expenses of printing, books, stationery and post-

0

age, pertaining to his office are in like manner to be audited and paid from the state treasury. 3. The Superintendent has the general supervision and direction

of the common school system of the State, and it is his duty to cause the same to be put into uniform operation, and to that end and to promote its advancement he is directed to visit the counties as occasion requires, to confer with school officers and give such advice and directions as he deems requisite, and generally to do and perform such offices as may tend to advance the interests of education. 4. He is directed to file and keep all papers, reports and documents pertaining to the department of education and the business thereof, and to keep a record of such acts and transactions of his department as may be useful in future time.

5. All matters pertaining to the above departmentshall at all times be open to the inspection of the Governor and of the General Assembly or either house thereof or any committee of the same.

6. He is required to examine and adopt a uniform series of text books to be used in the schools and is authorized to cause such series to be introduced into the districts gradually according to the circumstances of the several districts and causing as little inconvenience as practicable, and he is empowered to require the board of directors of the districts to carry this plan into effect.

7. He is directed to prepare and cause to be printed suitable forms

for the reports required to be made in relation to the schools, or the transaction of any other business, and to transmit them to the proper officers with such instructions as he deems advisable.

8. He is authorised to make such further rules and regulations as may be requisite to carry the law into full effect according to its spirit and intent. Such rules and regulations shall be entered in his record of proceedings and shall be of force until revoked by the same authority or by the general assembly.

9. He shall make a report to the general assembly at each regular session thereof, exhibiting the progress and condition of the department of education and of the funds appropriated thereto, and setting forth such other matters and making such suggestions relative to the affairs of that department as he may think proper.
10. By the first day of February in each year he shall apportion the interest of the school fund accruing up to the first day of the preceding month of January, and all such funds as may be in his hands or subject to his control to be so divided, among the counties in proportion to the number of persons in each between the ages of five and twenty-one years, and immediately transmit to the treasurer of each county a statement of the amount apportioned to his county with the superintendent's draft for the same when any of the money is to be drawn from another officer.

with the county indge before the treasurer goes out of office. 7. By the first day of Mare, or a soon thereafter as he receives the statement of the apportionment of money from the superintendent, the treasurer shall divide the 2. STATAHO ey apportioned to his county with the county school tax and whatever other funds may be in his hands theread stateward for a state whatever other funds may be in his bands theread stateward of a state of heread in proportion to the number of persons in each between the ages of five and twenty.

SECTION 1. The office of school fund commissioner is abolished and his duties in relation to the sale of lands and the management of funds are transferred to the officers of the state land office and the superintendent of public instruction as provided in this statute, and he is required to deliver to the treasurer of his county all books and papers in his hands relating to the lands and funds of the common schools.

2. The duties of the fund commissioner in relation to receiving and making reports concerning the schools are transferred to the county judge, and the commissioner is required to deliver to the judge all

to the counties in which the districts have heretofore been like

books and papers in his hands relating to the school districts and the reports of the officers thereof.

3. The judge shall preserve all such books and papers, and hold them subject to the inspection of the superintendent and of the school officers of his county. And he shall distribute to the district officers within his county such blank forms, circulars, and other communications as may be transmitted to him for that purpose by the superinauthority or by the general assembly. tendent

4. By the fiftcenth day of October in each year he shall transmit to the superintendent of public instruction a report containing an abstract of the several particulars set forth in the reports of the district secretaries, and stating fully as far as practicable the facts to be returned as required by law and the instructions of the superintendent. , 5. The treasurer is directed to procure (where there is none already) a substantial book adapted to account-keeping, in which he shall keep an account current of the receipt and disbursement of all school money coming into his hands to be divided among the districts, stating the several sources from which it arises with the amount from each, and also the dividend made to each district.

0

6. He shall render an account annually on or before the first Monday of August to the superintendent of public instruction and also at any other time when required by him, and shall settle such account with the county judge before the treasurer goes out of office.

7. By the first day of March, or as soon thereafter as he receives the statement of the apportionment of money from the superintendent, the treasurer shall divide the school money apportioned to his county with the county school tax and whatever other funds may be in his hands therefor, among the school districts in his county in proportion to the number of persons in each between the ages of five and twentyone years according to the last returns; but funds arising from money paid for exemption from military duty and from fines for the breach of the penal laws are to be divided among the districts in proportion to the number of inhabitants in the same.

8. The proceeds of fines which "are to be divided to the districts are the clear proceeds only after deducting the compensation which may be allowed the prosecuting officer in the cause in which such fine is collected. To the interest of the solution of the solution

9. The treasurer is required to notify the treasurer of each school district, after making the above apportionment of the amount of money to which his district is entitled, and to pay the same to such treasurer taking his receipt. 10. Such portion of the county school tax as is not then collected may be apportioned and paid at any subsequent day.

11. The treasurer is authorized to administer oaths whenever it. becomes requisite by law in the discharge of his powers and duties in relation to the school land and funds.

massioners' are to be publi from the county neasury disease off with

CHAPTER 3.

SCHOOL DISTRICTS.

said district whole to high will be alloced by the change f SECTION 1. Each school district formed and organized under any former law is hereby recognised notwithstanding any informalities in the proceedings, and is created a body corporate for the purposes in this title designated, under the name of "School District No. ---- in ---- county."

2. Where a newly organized county is to be divided into school districts, the county judge shall appoint three persons from three different parts of the county to perform that duty, who shall be sworn impartially to consult the wants and necessities of the people of each portion of the county, and of the several districts and who shall make their report to the judge.

3. Within thirty days after such report is made any person may make objection, and upon a hearing of the whole matter the judge may affirm or set aside the report in whole or in part and may make such changes in the assignment of districts as seem to be required, or may refer the same back to the same or other commissioners, and when the report is affirmed or the matter otherwise finally determined upon, the description of the districts entered of record as hereafter directed.

4. Districts may be laid out according to neighborhood and without regard to township lines. They shall be numbered from one to the end throughout the county without regard to townships. The existing districts shall be numbered in like manner and their numbers entered on the record of their description after the proceedings directed in the next two sections. hi now tointelb out it as bad againes

5. In the counties in which the districts have heretofore been laid

out the judge shall appoint three suitable intelligent persons to examine the locality and relation of the several districts and ascertain what changes are called for by the wants and convenience of the people, but in performing this duty they shall have especial regard to the districts in which school houses have been built.

6. The further action on the same shall be as above provided in relation to counties newly districted, but such changes in former districts shall not take effect until the first day of April 1852. The commissioners are to be paid from the county treasury.

3

7. When the districts have been finally established or changed in either of the methods above directed, no further change shall be made in the bounds of any one, nor shall a new one be created from existing ones until the proposition therefor has been submitted to each district whose bounds will be affected by the change for six months before action is taken thereon, nor until a vote is taken thereon in each of the districts so to be affected and such vote is found to be in favor of the proposition.
8. Proof of the matters contained in the preceding section being made to the county court, it may order the change, or the creation of the new district, if no good cause to the contrary be shown after notice to such district votes in favor of any part thereof being set off to another district it releases the inhabitants and property within the part set off from any tax before then voted and not paid.

10. The description of the boundaries of every new district and of every one changed shall be recorded in full and in a distinct manner by the county clerk in a book kept for that purpose.
11. When the alteration of the bounds of a district gives rise to disagreement respecting the rights or liabilities of the districts affected, the matter shall be settled by arbitrators appointed by the county judge, and their award shall be returned to him, and on the request of either party wishing to except thereto, he shall file a copy thereof in his office and the original in the district court to be there dealt with as an award of referees appointed by that court.

12. A district may be formed from parts of two counties in either of the modes above provided when the judges of both the counties concur therein. But in such case it must be numbered as wholly belonging to one of the counties, and the returns shall be made and all proceedings had as if the district were in fact part of such county. 13. Upon the formation of a new district the county judge is required to issue his precept to some voter thereof, describing the bounds of the district, naming the time and place of the first meeting, and naming each matter of business which is to be attended to; and the person to whom the precept is directed is required to give notice of the meeting to each voter of the district personally as far as convenient, and to post a copy of the precept at the place of meeting and at two other public public places in the district seven days at least before the meeting; but such meeting shall not be held void though all the voters are not personally notified.

14. The meeting will then organize temporarily by choosing two judges of election and a clerk, after which it will proceed to organize the district by electing a president, a secretary and a treasurer, by ballot. The three officers so chosen will hold their offices until the next election in May and until their respective successors are elected.

15. The new district being thus organized the provisions of this title apply thereto as to other districts.

16. The regular meeting of each school district shall be holden on the first Monday of May annually, at which time its officers shall be chosen. But if the meeting should fail to be held at that time or if the officers are not then elected, a new meeting may be called therefor.
17. Until another mode of calling and notifying the meetings of the district be provided by the district they shall be notified by the secretary posting in three public places in the district a written notice of the time and place thereof and of the matters to be presented to the consideration of the district. If the secretary be unable to act, or refuse to call the meeting, the president may order the same and it may be notified by any person authorized by him.
18. No matter not named in the notice shall be acted upon by a meeting, except the election of officers at the regular meeting herein named, which will be valid though not named.

19. The district has authority at a regularly notified meeting;

FIRST-To appoint a chairman and clerk in the absence of the officers, and to adjourn from time to time;

SECOND—To determine upon the sites of school houses, having regard to the wants and necessities of the inhabitants of each portion of the district.

THERD—To vote a tax on the property taxable by the district in order to purchase or lease a site for a school house or houses, and to build, purchase or rent a school house or houses, and to keep the same in good repair and furnish them with the necessary furniture. apparatus and fuel, and to procure libraries for the schools, and to defray all other the ordinary and proper expenses of a school district; but no such tax shall exceed one per cent on the value of the property in any one year. FOURTH—To direct the sale or other disposition of any school house

or the site of one, and of such other property as may belong to the district, and to direct the disposition of the proceeds thereof; FIFTH—To determine whether a school of a higher grade than the

common school shall be established; FIFTH a—To determine the number of schools which shall be taught

in the district, and the length of time each shall be kept. SIXTH—To delegate any or all of the above powers to the board of

directors; EIGHTH—To prescribe by whom the meetings of the district may be

called and how they shall be notified. NINTH-To adopt rules for the government of the meetings consistent with law, and to change the same; TENTH-To prescribe the manner of taking the sense of the meet-

TENTH—To prescribe the manner of taking the behavior ing upon any questions; and until such provision is made the vote may be taken in the manner termed "viva voce" or by the uplifted hand. But the election of officers shall be by ballot; ELEVENTH—To fix the compensation of the secretary and treasurer

ELEVENTH—To fix the compensation of the scoretary and do such of the district; and generally to transact such business and do such acts consistent with law as may tend to promote the prosperity of the schools and the advancement of education;

Schools and the advancement of curculation, Twelfth—In order to aid and extend the use of the teachers fund the district may direct an assessment upon each pupil attending school, which may be fixed by the district or left for the determination of the directors.

Furrer To appoint a obstraan and ders in the absence of the officers, and to adjourd two stime of times a biology words when Suppose Toydeterages upon the sites of achoot houses, having regard to the wants and mesoscilde of the inhabitants of each perior of the district, showing and an every forstelp ad H as had each perior CHAPTER 4. CHAPTER 4.

SECTION 1. At the district meeting on the first Monday of May in each year an election shall be holden for the choice of a president, a secretary and a treasurer of the district who will constitute the board of directors of the district, and who may continue in office for the term of one year and until their respective successors are elected and qualified.

2. The directors are required to qualify within ten days of their election, by giving bond to the district the same in substance as required of county officers, with at least one surety. The penal sum in the bond is to be fixed by the president and they must be approved by him by endorsement thereon and be deposited with him ; and the like duties in relation to the bond of the president shall be performed by the treasurer with whom it is to be deposited.

3. The board of directors may hold such meetings as it sees proper, and it shall keep a record of such of its transactions as are proper matters of record in a book distinct from that containing the records of the district meetings, which will constitute part of the record of the district. In the absence of the secretary the president may keep r to take and collect the and sign the minutes of their proceedings. 4. Should a vacancy occur in the board they may fill it by appointment unless it is deemed expedient to hold a special election. The want of qualification within the time prescribed (unless in case of absence or inability the time therefor is extended by the board,) creates a vacancy. Sell some su volloi on ni sollo oni bo 5. The above officers are the judges of the district elections. 6. The board is invested with authouity to make all contracts, purchases, payments and sales, and to do any other acts requisite to effect any vote of the district for procuring a site for a school house, for building or renting a house and for repairing or furnishing the same or disposing thereof, or any other legal vote, and to perform such other duties as may be delegated to, or imposed upon them lawfully by the district notes analodos and to tail a good assistance lials 7. The following branches of learning shall be taught in all common schools, viz : spelling, reading, writing, arithmetic, geography English grammar, and the history of the United States; and before

REVISED CODE.-61

0

employing any person to act as teacher the board shall examine him or cause him to be examined in the above branches, and should be satisfied of his capacity for teaching, and if he be found unqualified in either respect he shall not be employed.

5. The board is authorized to contract with teachers, to cause schools to be kept, to determine the number of schools when the district has not acted thereon, and direct and arrange the time of their being kept and to divide or classify the pupils when this becomes advantageous, but giving to all pupils an equal opportunity for instruction within the course of the year, and finally to manage the matters of education within its district according to their best discretion.

9. The board may also provide that higher branches of learning than those herein prescribed for common schools may be taught in any school of its district; or it may authorize individuals to contract with the teacher for teaching certain pupils such more advanced the like daties in relation to the bond of the president shall be

10. The directors may also lend the aid of their authority to assist the teacher of a school to enforce the discipline thereof, and may authorize him to dismiss from the school any scholar who persists in disobedience or is refractory.

11. When the district authorises an assessment upon the scholars in aid of the teacher's fund, the directors may contract with the teacher to take and collect the same, and if he so contract he may collect the same by action in his own name as money due to him, and no personal property shall in such case be exempt from execution which

12. But if the district is to collect it, the assessment may be carried into effect in the following manner. The secretary of the district shall furnish the teacher with a list of the scholars belonging to the district and the teacher shall carefully note the attendance of each and make return to the secretary, including the ages of all scholars whose ages are not on such list; and the teacher shall also certify and return, according to his best information and belief, the name of the person liable for the tuition of each scholar.

13. If such list be not furnished to the teacher in the above case he shall nevertheless keep a list of the scholars attending, the number of days each attends, with the name of the person liable for the tuition, which list he shall return to the secretary.

14. The amount to be made up by the assessment shall be asses-

sed upon each person not exempted, in proportion to the time which the scholars whose tuition he is bound to pay have attended. 15. The secretary shall then make out a rate bill containing the name of each person so liable and the amount due from him, adding thereto five cents on each dollar for the assessor's fee. A warrant shall be annexed to the rate-bill and signed by the president commanding the secretary to collect of the persons named therein the amount assessed upon them respectively, and that if any person on demand made neglect or refuse to pay the amount assessed on him, it be collected by levy on and sale of any personal property not exempt from taxation which may be found in the county or counties in which the district is situate. 1 adt of anne adt to too good avilab bas 16. Such levy and sale shall be conducted as provided in the case of a sale of personal property for district taxes. 17. The directors may exempt from such assessment any person whom they deem unable to pay the same.

18. They may admit to the schools of their district pupils from other districts upon such terms of payments and contribution as they find proper. and instant solt lo somen bas, reduum

19. They shall appoint a committee from their body to visit the schools monthly, to aid the teachers in establishing and enforcing the government thereof, to see that the teachers keep proper lists of the pupils, of the time of their attendance, and of the branches which each studies, and to attend to such other matters as may tend to promote the such other matters as may tend to promote the success of

20. The board shall from time to time examine the books and accounts of the treasurer and make settlement with him, and at the regular meeting of the district shall present a full statement of the receipts and expenditures of the district, and such other matters as may be deemed important. Additional of the shared out of bauft stadoest

21. Claims upon the district are to be audited by the board. 22. No money shall be paid from the treasury but by the order of the board made of record, or upon the written order of the president. 23. The president is the presiding officer of the meetings of the district and of the board of directors, and shall sign the warrants for the collection of taxes. got aid all of his graterio 24. Drafts drawn on the treasurer shall specify the fund on which they are drawn and the use for which the money is designed.

25. The president shall represent his district in suits brought by or against it, except when he is a party, in which case the secretary shall perform that duty. The officer so representing the district may employ counsel in behalf of the district.
26. The secretary is required to record the proceedings of the board and of the district meetings, to preserve copies or abstracts of reports made by him, and to file and keep all papers belonging to his office and pertaining to the affairs of the district.
27. Between the first and fifteenth of September in each year he shall take and place on record a list of the names of all white persons in the district between the ages of five and twenty-one years, and deliver a copy of the same to the teacher of each school in his district.
28. By the first day of October annually he shall file with the counterport.

28. By the first day of October annually recontaining ty judge a report of the affairs of the district, containing First—The number of white persons in the district between the

FIRST—The number of white person and the branches taught. SECOND—The number of schools, and the branches taught.

THIRD—The number and names of the teachers. FOURTH—The number of pupils in each school. FIFTH—The number of teachers employed in each school, and the compensation of each per month, designating whether it includes board. SIXTH—The number of days each school has been taught. SEVENTH—The average cost of tuition for each pupil per month in each school.

EIGHTH—The books used in each school. NINTH—The number of volumes in the library of each school. TENTH—The aggregate amount paid teachers during the year, the source from which the same was received, and the amount of the teachers fund in the hands of the treasurer. ELEVENTH—The number of school-houses, and the cost of each.

ELEVENTH—The number of school-houses, and the contract TWELFTH—The amount raised in the district by tax for the erection of school-houses and for all other purposes authorised in this chapter and such other information as may be deemed useful, and such as may be required by the superintendent.

29. Should the secretary fail to file his report as above directed he shall forfeit the sum of ten dollars, and shall be liable to make good all loss to the district resulting from such failure-both to be recovered by actions on his official bond in the name of the district. 30. The treasurer has the custody of all money belonging to the district, and shall pay it out on the order of the board or of the president, and shall keep an account of the receipt and expenditures thereof in a book provided for that purpose, standard right to nothing 31. Money derived from the dividend of interest on the school fund, from the county school tax, from fines, forfeitures and exemptions from military duty and from any other source created or established by law (unless otherwise declared.) constitute a fund which may be known as the "teacher's fund," and which shall be applied to the payment of teachers exclusively; except that when a district so determines the money derived from payments for exemption from military duty, from fines for breaches of the penal laws, and from such sources as may hereafter be applied to the use of schools by law, may be applied to the establishment of school libraries in the taxation or lest as regards hunself, the secretary must call a startistic 32. Money arising from taxation in the district, from sources provided by it, and from gift thereto, constitutes a "general fund" which may be appropriated by the district; and the secretary is directed to keep his account with that fund separate from his account with the 5. At the expiration of the thirty days the preside bind s'indist 33. The treasurer shall apply for and receive all money apportioned to, or otherwise coming to his district. of variance and animal 34. He shall render a statement of the finances of the district, at

6. The secretary all the district board. It are unsured, at a secretary all secretary at a secretary at an end of them, before proceeding to distress and sale from the person owner them if <u>he he</u> found in the district within two months from the time the secretary is authorized to collect, and the return of the latter of well as **5 ATTAHON** whall be evidence of such demand. He shall from the to time pay over the amounts collected to the treasurer.

SECTION 1. When a tax is voted by a school district the last preceding tax list of the county shall form the basis of property and valuation on which the tax is to be levied, and the secretary shall obtain a transcript of the names of the persons and of the property taxable in his district with the valuation of the property, and add thereto any names and property omitted assessing the value of the property omitted himself, and the board of directors will levy thereon the tax voted; and such list will constitute the tax list of the district. 2. Personal property is subject to taxation in the district in which the owner is a resident; and if there be joint owners residing in different districts, it is to be taxed in their respective districts in the proportion of their interests, for the ascertainment of which either of them may be sworn by the secretary. But the property of blacks and mulattoes shall not be taxed for school purposes.

480

3. When the tax list is completed the secretary shall post up in five public and conspicuous places in the district a notice that such a tax (naming the rate) is levied on the property taxable in the district, that the list is completed, and naming the place where it may be inspected; and such notices shall be posted thirty days before he proceed to collect the tax.

4. Should any person during the thirty days file with the secretary a complaint that there is any error or inequality in the assessment or taxation or list as regards himself, the secretary must call a meeting of the board of directors, who are authorized to correct the same, and such error or inequality will form no valid ground of complaint thereafter; but the person may at any time disclaim the ownership of any property.

5. At the expiration of the thirty days the president is authorized to issue his warrant or endorse it on the tax list, in general terms requiring the secretary to collect the taxes, but the proceeding will not be rendered invalid by any informality in the warrant.

6. The secretary shall then proceed to collect the taxes, and he shall make demand of them, before proceeding to distress and sale, from the person owing them if he be found in the district within two months from the time the secretary is authorized to collect, and the return of the latter as well as his testimony shall be evidence of such demand. He shall from time to time pay over the amounts collected to the treasurer.

7. If any person neglects or refuses to pay such tax it is the duty of the secretary to collect the same by the distress and sale of any personal property of the person taxed not exempt from taxation and found in the county, which he may keep until sale at the expense of the owner. He shall give notice of the time and place of the sale within five days after the day of the taking, in the manner constables are equired to give notice of the sale of personal property on execution, but the day of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding three days, in which case he shall post up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping and fees for sale shall be returned to the owner. He will be entitled to the same fees as the county treasurer in like cases.

8. If the secretary be resisted or impeded in the execution of these duties of his office he may require any suitable person to aid him therein, and if such person refuse the aid he shall forfeit a sum not exceeding ten dollars to be recovered by civil action in the name and to the use of the district, and the person resisting will be liable as in the case of resistance to the sheriff in the execution of civil process.

9. When the tax upon any land remains unpaid for three months from the time the Secretary was authorized to proceed to the collection; he shall make out a list of the delinquent lands with the amount due on each parcel and the owners names as far as known, showing that he is unable to find personal property from which to make the tax, and showing when the tax was voted and in what district, and dating and signing the list, which he shall file with the county treasurer.

10. The county treasurer shall enter these taxes as delinquent in the proper district in a column therefor in his list of delinquencies for the general tax, and shall collect such district tax in the same manner and time as the general taxes on land which are delinquent, the land being sold for the payment of both.

11. Such delinquent district tax is to be included in the sale which takes place next after the list is filed by the district secretary, if practicable; and if not, then the land must be offered for sale at the next succeeding sale; and when there are no delinquent lands to be sold for general taxes, the county treasurer may sell on the district tax alone within the same period in which he is required to sell for the general tax.
12. Such district taxes may be paid to the county treasurer within the same time and on the same terms as the general taxes; and in redemption the owner may tender either of the above classes of tax without the other when he denies the legality of the other, but the invalidity of the one will not vitiate the sale under the other, and no

informality or irregularity in any of the proceedings will vitiate a distriet tax if it be regularly voted.

13. The district taxes so collected by the county treasurer shall be paid by him to the district secretary from time to time as they are collected.
14. Lands so sold may be redeemed within the same time, in the same manner and on the same terms as land sold for the general taxes.
14. Low the same terms as land sold for the general taxes.
15. CHAPTER 6.

SECTION 1. The university established by an act of February 25th 1847 is hereby recognized and confirmed as herein provided, but the name thereof shall hereafter be the "University of Iowa." 2. The public buildings at Iowa City together with the ten acres of land on which the same are situate are hereby granted for the use of the university, to take effect when the said town ceases to be the actual seat of government of the State. 3. The two townships of land granted by act of Congress of July 20th 1840, for the support of a university, are hereby granted to the said university of Iowa, the proceeds of which shall be and constitute a permanent fund the interest of which shall be applied exclusively to the support of that institution.

3a. The block of land embraced in the plat of Iowa City known as College Square is hereby granted to the use of the university, and the trustees are authorized to build thereon whenever they have funds therefor.
4. The government and control of the university is vested in a board of trustees consisting of fifteen persons five of whom are to be appointed biennially by the General Assembly, and who shall be a body corporate under the above name. Those now in office will continue according to their terms of office as heretofore settled. They may appoint the times of their meeting; and eight members will constitute a quorum.
5. The superintendent of public instruction is ex-officio a member

of the board of trustees and is the president thereof, and may call meetings of the same when he deems it nesessary. 6. The object of the university is to provide the inhabitants of the State with the means of acquiring a thorough knowledge of the various branches of literature, science and the arts. But it shall never be under the exclusive control of any religious denomination.

7. For the attainment of the above object the board of trustees is invested with authority for the entire management, control and government of that institution, and its property and funds, subject only to the general assembly.
8. The university is to consist of three departments; Frasr—The department of literature, science and the arts; SECOND—The department of law;

3

other universities.

THERD—The department of medicine. 9. Professorships shall be established in either of the departments and in such branches as the trustees direct when there are means therefor, and such professorships shall be increased in number with the increase of the means therefor. 10. The immediate government of the several departments shall be and is hereby intrusted to their respective faculties; and each department is hereby authorised to confer such degrees and grant such diplomas as are usually conferred and granted by such colleges in

11. The board of trustees has authority to appoint the professors in the colleges, and such other officers as they deem requisite, to determine their salary or other compensation, and to remove them when the interests of the university require it. And they may require bond to be given by any officer in such manner as the board prescribe.

12. The trustees may establish branches of the university in different parts of the state, and may enact rules and regulations for the government of the same. And they may establish such a branch for the education of females in the higher branches of knowledge.

13. It shall be the duty of the trustees to institute a professorship upon agriculture at as early a day as practicable, with competent instructors in the theory of agriculture, including vegitable physiology, agricultural chemistry, and experimental and practical farming and agriculture.

14. The two townships of land herein granted to the university REVISED CODE.-62 may be disposed of under the direction of the trustees (if there be no other law relating thereto,) in the same manner and under the same regulations as may be provided by law for the disposition of any other land appropriated for education; and the superintendent of public instruction is empowered to require any officer performing duties in relation to the school lands to perform similar duties for the sale of the university lands. 15. The funds arising from such sales shall be paid into the office

15. The funds arising from such sales shall be paid into which money arising from the sale of the school lands is at the time directed to be paid, and may be drawn and shall be loaned under the direction of the superintendent. But the above directions are subject to any law which may exist in relation to the above lands and funds.

16. The board of trustees may appoint a secretary and shall keep

or cause to be kept a complete record of all its transactions in the government of the university and the management of its affairs, which shall be open at all times to the inspection of the general assembly, to which it shall report when required. 17. The general assembly retains the superior control of the university, its colleges and branches, its property and funds.

THE COLLEGE OF PHYSICIANS AND SURGEONS AT KEOKUK.

18. The "college of physicians and surgeons" at Keokuk in this state is hereby recognized and established as the medical department of the university of Iowa.19. The said medical department shall have power to grant diplo-

19. The said medical department shart note persons as they deem mas for the degree of doctor of medicine to such persons as they deem qualified for such degree.

20. Such diploma shall be a sufficient license to any person for the practice of physic, surgery and obstetrics within this state.

The auditor of State is authorized to draw on the treasurer of

state, when requested by the superintendent of public instruction, for a sum of money not exceeding one hundred and fifty dollars in any one year, to be appropriated by the superintendent to the aid, encouragement and promotion of teacher's institutes in the state, for the disposition of which the superintendent shall account to the general assembly at each regular session.

and the subsection of the second seco

1

SECTION 1. Upon satisfactory evidence being adduced to any county court in the State that there is a deaf, dumb or blind person between the ages of ten and thirty years residing in such county, it shall be the duty of that court to cause the clerk to certify that fact, together with the name and age of the unfortunate and the names of his parents or guardian to the superintendent of public instruction.

2. The superintendent is authorized, upon the receipt of such certificate and the application of the unfortunate or his parent or guardian, to certify the matter to the auditor of state who shall draw his warrant upon the treasurer of state for the sum of fifty dollars each year in favor of such person, his parent or guardian, to be applied to the education of the unfortunate person.

3. No such beneficiary will be entitled to draw more than one hundred dollars in one year; and no more than five hundred dollars shall be drawn in one year for the deaf and dumb, nor more than three hundred for the blind, in one year.

4. The superintendent shall report to the general assembly at each regular session the number of such unfortunate persons in whose favor money has been so drawn, with their names and residences, and the amount drawn for each.

state, when requested by the superintendent of public instruction, for a sam of anoney not W HITT- CARIHT TRAP fifty dollars in any one year, to be appropriated by the superintendent to the aid, encouragement and promotion of t.3r Harrando-titutes in the state, for the disposition of which the superintendent shall account to the general OF THE COMPENSATION OF OFFICERS NOT ELSEWHERE PROVIDED FOR.

486

SECTION 1. No officer is allowed fees or other compensation for any services further than is expressly permitted by law 2. Any officer legally called upon to perform any of the following services is entitled to the following compensation :

For drawing and certifying an affidavit or for giving a certificate not attached to any other paper or document, -- 25

For fixing his official certificate to any paper whether the certificate be under seal or not, net 'a vi arout tadi pist? odi mi inco35 For making out a copy or transcript of any public papers or records under his control for the use of a private individual or company, ten cents for every one hundred words. a off diw redregot

3. The secretary of state may take the following fees in addition 2. The superintendent is authorized, upon the receip: walks at ot

For making out each commission for a notary public of com-missioner of deeds, 1 00 For a copy of laws or records upon the request of any private person or company, for every one hundred words, 10

For each certificate and seal, 199 element of the noitesth 1 00 For making out and delivering each patent for lands sold by For recording articles of incorporation for each one hundred syndred for the blind, in one year. words. 4. The clerk of the supreme court may take the following fees as as his whole compensation and where they are payable by a party to to a suit they may (except in criminal cases) be required in advance. If not so paid in advance the clerk may at any time after judgment issue a fee bill which shall have the force of a special execution against the party adjudged to pay costs.

3 00 Upon the filing of each appeal, -Upon entering each judgment where the cause has been deci-

ded upon its merits, -_ _ 2 00 1 00

Upon each continuance of a cause,

Upon issuing each execution, 125-11-11-11-11-125-00 Upon entering satisfaction of judgment, and - and - and - 50 Upon issuing each writ rule order to be served upon any person not in court, a well yd-barispos teil yrai alle as llow se (an1:00 For recording all opinions of the court, for every one hundred words (to be paid out of the state treasury, 10 - 10 For copying an opinion to be transmitted to the district court in case of a reversal of judgment, ten cents for every one hundred words to be parties against whom costs are adjudged. And if a cause occupies more than one full day in the aggregate, either in the argument of preliminary questions or on the merits, for each additional day or fraction thereof - - 2 00 5. The allowance of the last charge in the preceding section must in all cases be made by the court and paid by the appellant in the 10. Where money is collected on un execution the panatani tanh 6. In criminal cases the clerk shall charge no fees against the county or state-except that where a judgment is reversed he is entitled to the legal fees for a copy of the decision-to be paid from the county treasury. As against the accused he is entitled to the same compensation as is allowed in civil cases. Solido req and litur doared 7. The clerk of the district court must, in addition to the fees elsewhere authorised charge and collect the following: betaging and collect the following: On the filing of an appeal or the commencement of an origin-030 gendered at the instance and for the benefit of some opins la rson Additional amount on issuing attachment, - - - 2 00 On entering judgment by confession in a case not pending in 00 is the suit is entitled to recover them bank filmnith truos site If the case is already pending-in addition to the first charge, the at the commencement of the suit, and a sace leading at 1 00 On the submission of a cause without action, On entering judgment when not by confession, 2 - 2 50 On entering a special continuance at a parties costs, and judg-

A

O On issuing execution and entering return, - 7114 6 74 9791 1/25 On entering satisfaction of judgment, and standard build - 200 50 On all amounts collected on execution one per cent. Where a cause occupies more than one full day in court ei-13. In criminal cases whether commenced by indictment or broug

ther on the trial or on the argument of preliminary questions for J every additional day or fraction thereof,

8. The above fees of the clerk of the district court (except the per centage) as well as the jury fee required by law must be paid in advance unless ample security is given to the approval of the clerk for the payment thereof when the suit is terminated.

9. Where security is given as contemplated in the preceding section if the money is not paid at the time stipulated the security shall be treated as an authority to confess judgment for the proper amount and the clerk must enter up judgment either in term time or vacation and issue execution thereon accordingly. And in all cases heretofore decided in the district court the clerk is authorized to issue a fee bill in the same manner as is above provided for the elerk of the Supreme Court.

10. Where money is collected on an execution the per centage allowed must be retained out of the same, in preference to all other claims on such money, and if the execution is satisfied in whole or in part by a purchase, on behalf of the plaintiff in execution, of the property levied upon such plaintiff cannot require a certificate or deed thereof until the per centage is paid.

The above fees of the supreme or district clerk must unless otherwise directed by law be paid in the first instance by the plaintiff or appellant as the case may be except in cases where the services are rendered at the instance and for the benefit of some other person in which case the fees must be paid by such person. But unless otherwise ordered by the court the party paying such fees if successful in the suit is entitled to recover them back from the opposite party.
 In criminal cases where the defendant is adjudged to pay the costs the clerk of the district court must charge fees as follows: In cases of appeals the same fees in all respects as are allowed on appeals in civil cases.

judgment must be charged in criminal as in civil cases.

13. In criminal cases whether commenced by indictment or brought

Coon each continuance of

up on appeal the fees shall not be required in advance but must be collected by execution if against the defendant being added to and treated as a part of the judgment or fine in case a judgment for money has been rendered against the defendant.

14. The county judge shall in addition to the fees elsewhere permitted charge ten cents for every one hundred words for all wills and certificates recorded in his office as required by law and shall retain pay therefor out of the first money coming into the hands of the executor after the payment of the charges of the last will and testament of the deceased.

15. The recorder of deeds must charge for recording each premium note given to a mutual insurance company containing less than fifty words, 25 For each deed or mortgage not containing more than one hundred words, 50

For every additional 100 words or fraction thereof in either of the above cases, 10 16. All the fees allowed above or elsewhere to the judge, clerk or recorder must be paid into the county treasury to be dealt with as provided by law.

A

19

17. The sheriff is entitled to the following fees: For serving any writ or notice (not including subpœnas) and For each copy of such writ or notice when required ten cents per Receiving prisoner on surrender by bail. - - - - . sbrow 001 Levying writ with posse comitatus, - - - - Led war go 1 50 Discharge from prison, oldeogrado nodw egioli ovode, od 1. 125 Attending with a person before a judge or court when required not at a regular term of the court in his county-for each day besides mileage, or bus abdeter enbelyout ad as 1 00 Copy of paper required by law for each one hundred words, 10 Summoning a grand or petit jury for each panel including mileage, (to be paid out of the county treasury.) - 8 00 Travelling fees in other cases required by law-going and

returning, per mile; -- eringy lo merrew enording the 06

Selling land or other property on execution-per day, - - 1 00 Making and executing a deed for land sold on execution, - 1 00 Serving one person with order of court besides mileage, 50 For each additional person embraced in the same order, - 25 Summoning a jury in cases of forcible entry and detainer including mileage, bedaugt and trave tob shap not strade to 1 50 Serving an execution or order for the partition of real estate or assigning dower, (besides mileage,) - - - - - - 2 00 For each bond required by law, and set to enter a set of 25 For summoning a jury to assess the damages to the owner of lands taken for any work of internal improvement, and attending upon them-in all, and the state of the state of the 5 00 If the case occupies more than one day he may charge for additional day or fraction thereof, on reastron to best done 1 50 For the time necessarily employed in making an inventory of property attached or levied upon-per day, - so - 1 00 For collecting and paying over money; on the first two hundred dollars or part thereof, three per cent. ad total bing ad taum robiosan On the next three hundred dollars or any partthereof, two percent;

on the next three hundred donars of any particulation, two percents, and on all excess over five hundred dollars, one per cent: But where property is purchased by a plaintiff in execution so that the money does not pass through the sheriff's hands he is only entitled to one half the above named rates.

Returning a writ not served, - - - 05 Receiving prisoner on surrender by bail, - - 25 Taking new bail, - - 25 Dieting a prisoner per day, - 25 17. The above items when chargeable in criminal cases where prosecution fails or where the money cannot be made from the person liable to pay the same—the facts being certified to by the clerk as far as his knowledge extends and sworn to by the sheriff shall be allowed and paid out of the county treasury.

18. The sheriff is also entitled to receive one tenth of the annual salary of the county judge for delivering notices (including mileage) and for other services for which no other compensation is allowed by law. 19. Coroner's Fees;

For a view of each body and for taking and returning inquest 5 00 Each subpœna warrant of venire ______25 The above fees are to be paid from the county treasury where they cannot be obtained from the estate of the deceased. For all other services the same fees as are allowed to sheriffs

3

3- ~

Commitment to prison (besides mileage,) - 25 21. The fees of a constable for services in criminal cases when the prosecution fails or when the money cannot be made from the person liable to pay the same, the facts being certified by the justice and sworn to by the constable, shall be allowed and paid out of the county treasury. And the same of the county treasury. 22. Notary's Fees. 23. For every protest of a bill or note, 24. Noting a bill of exchange for non-acceptance or non-payment, 100 of the county design of the county of the constable, shall be allowed and paid 25. Noting a bill of exchange for non-acceptance or non-payment, 100 of the county design of the county of the county of the county and the county design of the coun

Notarial affidavit to an account under seal, osor of -orod + as 25

Being present at demand, tender or deposit and noting the 28 y cannot be obtained from the estate of the deceased. same. Other services the same fees as are allowed to other officers

for like services. 20. Constable's Fees.

23. Justice's Fees.

At the commencement of each suit, org to solder-yns envire to 150 In case of an attachment or forcible entry and detainer, - 1 00 On taking judgment by confession after suit is commenced, 30 50 0 If not on suit previously brought, who to an a suit a start of 100 On submitting controversies without action, the same fees as T

Summoning a jury (including mileage.) on suit brought. The following additional fees are allowed in the cases to Serving execution (besides mileage.) which they apply. 0 On entering judgment when not contested, files - no -nisit-wh/ 50

20 46 _ 66 "(ope "in soli "d) if jury is called one dollar more, pri-1/00 On issuing execution (for issuing as well as for return and en-06Returns of execution when no levy is ande, tering satisfaction,) When any cause consumes more than one entire day of six hours the justice is entitled to one dollar for each day or fraction of a day, thereafter in addition.

And on all amounts of money coming into the justice's hands and by him actually paid over, two per cent shall be allowed him therefor. For every continuation or adjournment at the request of either

02.21. The fees of a constable for services in criminal cases where the Making and certifying transcript, and -radw-to aligh no-tuppeorg 50 On setting aside a judgment of non-suit or by default al no-100 50 Justices shall also be allowed the following fees in criminal cases: For process of any kind except subpœnas, as a time of 161 50 06 32. - Notary's Fees. - - -Entering judgment,

Taking recognizance or any undertaking, a lo t-plote 790 to 25 Order of discharge to jailor, non not egnadoze to llid- a geito/ 25

The first of the above charges shall be payable by the county in cases where the prosecution fails neccount stilla stillarity

Registering protest of a bill of exchange or promissentiWote22 CEach witness for attending before the district court each day 00 (Iertifying power of ettorney, - - - , attorney, 07 Administering any oath, -Before a justice of the peace,

An attorney or juror or officer who is in habitual attendance on the court during the term at which he is subprenaed as a witness shall only charge for one day's attendance. To the interest and the estimate the estimate

Nor shall a witness who is subpænaed in two or more cases by the same party be entitled to but one single compensation from such party for the same day's attendance or travel. The court may disallow to the successful party any witness who without sufficient cause was absent at the trial or whose testimony was unimportant or unnecessary, loze they work per hundred words excl. yraces

1

-

For attending before a grand or petit jury in a criminal case, witnesses are entitled to a like fee, which when they are called in behalf of the prosecution shall be paid out of the county treasury. But they cannot claim their fees in such cases in advance. 138. Juror's. I but a half abilit atmos silt of bowolle soal HA. 38 A juror for each day's attendance whether as a grand or petit juror, les ten te noviel ve babiver as perinted and and and and and appropriate as provided by large and appropriate and appropriste and appro Before justices of the peace, 50 Travelling per mile going and returning, 26. County surveyor for each days service actually performed in travelling to and from the place where the survey is to be made making survey and return, one boditornal and toleroos 3 00 For a certified copy of plat or field notes, 27. Supervisor of roads-the supervisor of roads is entitled to receive from the road fund, the sum of two dollars per day's service actually rendered in the discharge of his duty. He must keep a weekly register of all the time so spent, marking down the days and fractions of a day spent by him during the week reckoning eight hours service as a day's labor as nearly as practicable and at the settlement of his accounts with the county court which must be as often as once in each year he must be sworn to the correctness of his register. 28. The township trustees and township clerk shall each receive at the rate of one dollar per day for services rendered by them reckoning six hours as one day, and from week to week whenever they perform any services for which they are entitled to compensation from the county treasury they must keep a register thereof and must at the time of their settlements with the county court make oath to the correctness of their accounts. When serving as fence viewers they must be paid by the parties interested. 29. Where fees are charged against the county as hereinbefore

refuse costs at their discretion upon all motions.

provided in certain cases their correctness and the actual rendition of the services for which they are charged must be sworn to.

29 a. Every appraiser of property is entitled to fifty cents for each day or fraction thereof during which he is employed as such, except when a different compensation is provided. 30. Any person authorized to marry is entitled to charge two dollars, for officiating in each case and making return thereto. 31. Any officer or person taking depositions is authorized to charge therefor at the rate of ten cents per hundred words exclusive of the certificate. 32. Every officer charging fees shall if required by the person paying them give him a receipt therefor setting forth the items and the

date of each.
33. All fees allowed to the county judge clerk and recorder whether in this chapter or elsewhere are to be deemed a part of the county revenue and appropriated as provided by law.
34. Each of such officers must keep an accurate account of all fees received by him, stating the person from whom received, the date, and the services for which charged. These accounts must be kept in a permanent book to be preserved in the county office, the accounts of the recorder being transcribed into such book as often as once in each quarter. And annually or oftener each of said officers must make a settlement and append to his account as contained in such book an

oath of the following or other equivalent form:

I do solemnly swear (or affirm) that the above account is just and true, and that since my last settlement I have charged all the fees allowed me by law and that I have charged or taken no fees or compensation directly or indirectly for any service pertaining to my office as except those above set forth.
35. This book must be open to public inspection and a failure to insert any fee therein shall subject the delinquent to the forfeiture of ten dollars to be sued for and recovered by any person making the complaint and for his own use. Or the suit may be brought in the name and for the use of the county.
36. A wilful making of false entries in such book is a misdemeanor, and in addition to the fine and imprisonment due to the officer, it works a forfeiture of the office of the delinquent.

37. In all cases unless otherwise provided the party in whose favor judgment is given shall recover costs, but all courts may allow or refuse costs at their discretion upon all motions. 38. Where no other provision is made on the subject, the party requiring any service shall pay the fees therefor, upon the same being rendered and a bill of particulars being presented if required.

39. 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.

40. Every officer entitled to fees shall keep posted up in his office a fair table thereof on pain of forfeiture of two dollars per day for the benefit of the county for each day he fails to keep such table of fees thus posted up; nor is any one obliged to pay any fees to an officer who does not keep a list thereof thus posted up.

41. Any officer who wilfully takes higher or other fees than is allowed by law is guilty of a misdemeanor and may be fined therefor a sum not les than ten nor more than fifty dollars.

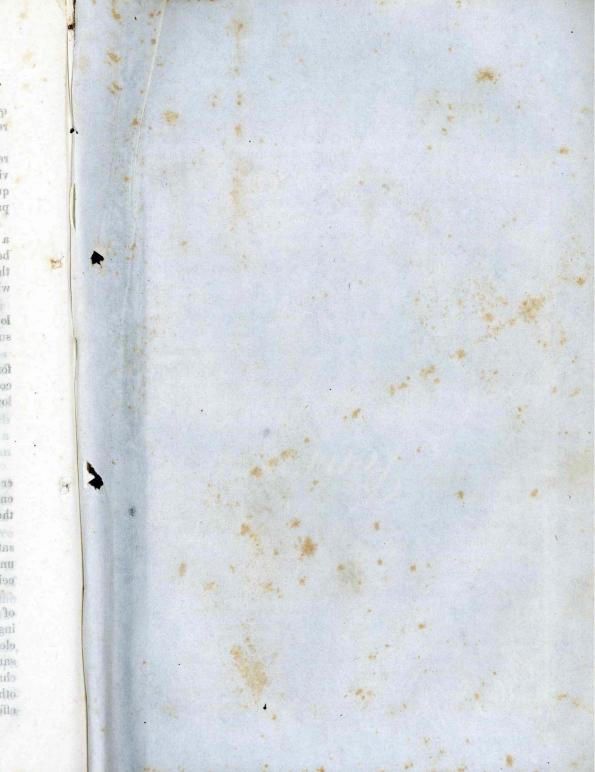
42. An attorney appointed by a court to defend a person indicted for any offence on account of such person being unable to procure council is entitled to receive from the county treasury one of the following fees :

For	defend	ling in a case of murder, -	-	-		25 00
	"	in cases of other felonies,	-		-	10 00
1	"	in cases of misdemeanors.	-	-	_	5 00

43. The attorney cannot be compelled to follow a case into another county or into the supreme court and if he does so may receive an enlarged compensation to be graduated on a scale corresponding to the prices above allowed.

44. Only one attorney in any one case shall receive the compensation above contemplated—nor is he entitled to this compensation until he files his affidavit that he has not directly or indirectly received any compensation for such services from any other source.

45. The provisions of this chapter which relate to fees of the clerks of the supreme or district courts do not apply to cases already pending in those courts respectively, except that the fees received by the clerk of the district court shall go into the county treasury in the same manner as hereinbefore provided. But the provisions of this chapter are intended to apply fully in all other respects and to all other officers in regard to all cases pending when this statute takes effect so far as it respects the compensation for their future services.



38. Where no other provision is made on the subject, the party requiring any service shall pay the fees therefor, upon the same being rendered and a bill of particulars being presented if required. 39. In all cases where an officer in the discharge of his dity is required to set up an advertisement he shall, when not otherwise provided, he allowed twenty-five cents, and if an advertisement is required to be published in a newspaper the money therefor shall be gaid by the party and may be taxed in the hill of costs. 40. Every officer entitled to five shall keep posted up in his officer a fair table thereof on pain of forfeiture of two dollars per day for the after table thereof on pain of forfeiture of two dollars per day for the

benefit of the county for each day he fails to keep such table of frees thus posted up; nor is any one obliged to pay any frees to an officers who does not keep a list thereof thus posted up. 41. Any officer who wilfully takes higher or other faces there is al

lowed by law is guilty of a misdemeanor and may be fined therefore a subsum not les than ten nor more than fifty dollars.

42. An attorney appointed by a court to defend a person indicted for any offence on account of such person being unable to procure council is entitled to receive from the county treasury one of the following fess For defending in a case of murdee.

43. The attorney cannot be compelled to follow a case into another county or into the auprence court and if he does so may receive an enlarged compensation to be graduated on a scale corresponding to the prices above allowed.

44. Only one attorney in any one case shall receive the compensation above contemplated—nor is he entitled to this compensation until he files his affidavit that he has not directly or indirectly received any compensation for such services from any other source. 45. The provisions of this chapter which relate to fees of the clerks

of the supreme or district courts do not apply to cases already pending in those courts respectively, except that the free received by the elects of the district court shall go into the county treasury in the same manner as precision for provided. But the provisions of this chapter are intended to apply fully in all other respects and to all other officers in region to all cases gending when this statute takes effect so far as in respects the compensation for their future services

their discretion apon all most