REPORT OF COMMISSIONERS

TO

REVISE THE STATUTES

OF THE

STATE OF IOWA,

MADE TO THE GOVERNOR OF THE STATE,

In accordance with Chapter Seventy-five, Acts 13th General Assembly.

WM. H. SEEVERS, *of Mahaska County.*
WM. J. KNIGHT, *of Dubuque County,*
WM. G. HAMMOND, *of Johnson County,*
} COMMISSIONERS.

DES MOINES:
G. W. EDWARDS, STATE PRINTER.
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REPORT ON THE REVISION OF THE STATUTES.

To His Excellency, SAMUEL MERRILL, *Governor of Iowa:*

The undersigned, Commissioners to revise the statutes of Iowa under the provisions of chapter seventy-five of the laws of the Thirteenth General Assembly, have the honor to submit to your Excellency the following report of their action as such Commissioners, together with a manuscript copy of the entire Code of Statutes, now in force in the State of Iowa, as revised and arranged by them.

The Commission, as constituted by the act above referred to, consisted of William H. Seevers, of Mahaska county, John C. Polley, of Clinton county, and William J. Knight of Dubuque county. It held its first meeting on the ninth day of November, 1870, when the Commissioners took the oath required by section two of the act, and organized by choosing Wm. H. Seevers, of Mahaska county, as their chairman.

In view of the very limited time given the Commission for its task, and the great amount of labor to be performed, it was thought best to divide the work among the members of the Commission, so far as preparation of the first draft of the proposed Code was concerned; and it was arranged that Mr. Polley should undertake the duty of revising and co lifying the laws contained in Parts First and Second of the Revision of 1860, with the Session Laws on the same subjects; Mr. Seevers, in like manner, should undertake Part Third, (the Code of Civil Procedure,) and its amendments; and Mr. Knight, Part Fourth, embracing Crimes, and the Code of Criminal Procedure, with the amendments.

Before any progress had been made in the execution of the work, Mr. Polley removed from the state, and tendered his resignation as a member of the Commission. On the twenty-fourth day of December, 1870, your Excellency commissioned William G. Hammond, of Johnson county, to fill the vacancy, who accepted, and took the oath

as Commissioner on the twenty-sixth of the same month. The membership of the Commission has remained unchanged since that time.

At a meeting of the Commission, held soon afterwards, the division of labor, made at the first meeting, was confirmed, Mr. Hammond assuming the parts assigned to Mr. Polley, and the other assignments remaining unchanged. From that time to the present the Commission has been actively and constantly engaged in its labors, meeting from time to time, usually at intervals of about a month, for the purpose of comparing and examining the drafts prepared by each member, and consulting together upon the amendments to be proposed and other duties of the Commission.

These frequent meetings have enabled us to discuss and settle all differences of opinion as the work proceeded, and to bring it to a conclusion, which all could regard as satisfactory ; and it is with peculiar gratification that we are enabled to submit to your Excellency and the Legislature, so voluminous a Code, embracing so many provisions of the most various nature, without a single dissent from any member of the Commission to any recommendation contained either in the Code or in this Report.

It was evident from the beginning that the time granted us was altogether too short for such a performance of our duties, as would be most satisfactory to us and to the people, who are to use the Code thus prepared, and to be benefitted or injured by its merits or defects. In the framing of a code of laws, time is requisite, not only for the mere manual labor of compilation and copying, but for careful study, full consideration, and a frequent and diligent revision of every part in comparison with every other part. We have done the best we could in this respect, although the time at our disposal has not been more than sufficient for the first process of compilation. Both the previous Commissions of this kind appointed in this state, had much more time allowed them. The Commission which framed the Code of 1851, was created by an Act of the Extra Session of the First General Assembly, in January, 1848, and consequently had three full years to prepare the Code which they reported to the Third General Assembly, in the winter of 1850–51. It is but justice to those gentlemen to say that their work is itself a proof of the

advantage to be gained by the use of ample time. The careful examination which we have been obliged to make of that Code, as well as all the subsequent legislation of the state, warrants us in saying that,—speaking now with reference to form, style, and method only, and without reference to the subject-matter—the Code of 1851 is altogether the best executed piece of legislation we have ever had in the state, of any considerable length, and is equalled by very few of the laws of the other states of the Union, in these qualities, so far at least as we have had opportunity to examine.

The Revising Commission who prepared the "Revision of 1860," was created by the Seventh General Assembly, and had two years to prepare the report to the Eighth, embodied in that volume. And yet so far as Parts First and Second (of that Revision and of the Code of 1851) are concerned, their task was a much easier and briefer one than has been assigned us : since their work was not to prepare a Code, not even a Revision, in the strictest sense of the word, but simply to *compile* the session laws from 1851 to 1860, and combine them in the same volume with the unrepealed parts of the Code—"a compilation and arrangement in proper order, of the existing laws without change," as they describe it themselves in their report. "We add nothing to the law—subtract nothing therefrom—make no change of word or phrase—merely of the arrangement of the existing law. We simply put into one chapter what we think belongs to one chapter. * * Whether it is all the law depends upon the fidelity of the revision ; and any one disputing its rectitude, in any instance, may go for himself in that instance to the sources whence it is drawn, and may also obtain the decision of the courts thereon." (*Preface to Revision of 1860, page 5.*)

To offer any criticism here upon the execution of that Revision would be foreign to our purpose, and ungracious ; but we may properly remark that the chief objections to that volume are founded on the method itself, as detailed in this quotation. Without verbal changes, and many of them, it is impossible to bring a large number of acts, passed at different times, with no unity or plan of purpose, into a harmonious system ; or to escape the necessity of retaining the separate titles, rubrics, numbers and dates of the single acts,

which do so much to confuse the general and even the professional reader in these parts of the Revision of 1860. It was, no doubt, with a full appreciation of this fact that the present Commission was instructed not only to "revise," and "arrange," but also to "rewrite" the statutes before us.

This, however, we were required to do in little more than one-fourth of the time allowed for the Revision of 1860, or one-sixth of that granted to the Codifiers of 1851 : without regard to the enormous increase in population, business, wealth, and consequently in the amount and variety of legislation of the state since those periods. The necessity of waiting until after the election of October, 1870, had determined the fate of the plan for a Constitutional Convention, before entering at all upon the task, and the subsequent delay produced by Mr. Polley's resignation and the uncertainty for some time as to his successor, brought it to the beginning of 1871 before the Commission could enter effectively upon its work. By the statute we were required to terminate it and make our report on the 4th of July in the same year. To comply literally with this provision was an obvious impossibility : it has only been by great effort that we have completed our duties two months later ; and considering the facts already mentioned, we feel that if not within the letter of the statute, we are certainly within its equity and spirit, and have even come nearer to the time originally fixed than we ourselves could have ventured to promise beforehand.

The instructions given us by the Legislature are contained in the following passages of the Act before referred to :

Sec. 3. They shall carefully revise the statutes of this state, rewrite the same, divide them into appropriate parts, arrange them under proper titles and chapters, omit all parts repealed, and such as have become obsolete, insert all amendments, so as to make the same complete ; transpose words and sentences, arrange and number the same in their proper order, and when necessary change the phraseology by leaving out and inserting words and sentences so as to adapt the same to the form of county governments and system of courts as fixed by law. They shall omit from such revision all statutes of a private, local, or temporary character ; those relating to the apportionment of the State into Congressional, Senatorial, Representative, and

Judicial Districts; all references to prior laws, decisions, notes, and references to their own report or that of any former commission on revision.

SEC. 4. They shall by July 4th, 1871, complete the duties assigned them, make a report to the Governor of what they have done, what changes they have made, what statutes omitted, and what amendments and further legislation they deem necessary. They shall write out in full, and embody in the latter part of their report such sections as they recommend should be added to our statutes.

* * * *

SEC. 5. The Governor shall cause one thousand copies of such report to be printed by September 1st, 1871, which shall be disposed of as follows: Two copies to each member of the Thirteenth and Fourteenth General Assemblies, and each officer thereof; two to each of the judges of the several courts, etc., etc. * * * *

From these sections we gathered the following conclusions as to the intention of the Legislature, and the course marked out by them for us, and (so far as they could determine the same) for the succeeding General Assembly:

1. It seems clear that our duties were confined to the statutes of the state. We were to codify these, but not to draw new materials for a code from the unwritten law and judicial decisions of the state. With these decisions we had nothing to do, except in the few cases where they had declared a statute unconstitutional, or where they rendered necessary a change in the form of some provision already on the pages of the statute-book. Some few examples of this kind will be found in our report. Possibly the number might have been increased with advantage. Indeed the connection is so intimate between the written and unwritten law in our system, that no fixed limit can be drawn between mere amendments of the one and the codification of the other. But the want of time supplied a peremptory limit on our efforts in this direction, so that if we have deviated in any way from the intention of the Legislature, it is by doing less rather than more.

2. It is equally clear that we were to revise and re-write the statutes, not merely to compile them. The power to do this is given with remarkable fullness and particularity, and great care is taken to exclude the possibility of our reporting a compilation, with the

marks and references which in a mere compilation are necessary. The evident intention was that the new volume should be, like the Code of 1851, a homogenous unit, dating and deriving its validity from a single enactment, so that no question could be raised as to the repeal or superseding of one section by another, or the relative age of different provisions. The legislation necessary to carry out this purpose will be stated on a subsequent page.

3. It also seems plainly intended that the *Code* or revision of actual law thus to be prepared should be a different work from the *Report* provided for by Section Four, and ordered to be printed and distributed; and consequently that the Code itself was to go into the hands of the Fourteenth General Assembly in manuscript. The members of the Commission all agreed in this view from the beginning; but their careful attention was drawn to the point by the fact that a contrary view had been taken by some persons, and had led to a very general expectation among lawyers and other persons interested, that the entire volume reported by the Commission would be printed and distributed in advance of the next session. The principal argument in favor of this view will be referred to in the next paragraph. It would have great weight if the question were one for us to decide; but cannot have any against what we understand to be the express direction of the Legislature.

4. Less easy to decide is the next question which arises under our instructions: that is, how are we to determine what amendments shall be included in our printed report, and what ones left to be noticed by the Legislature when they take up the Code reported in manuscript? We are directed to report what changes we have made, etc., in general terms. But it certainly could not have been the intention of the Legislature that we should include in our report every change of phraseology, transposition of word or phrase, substitution of circuit court for county court, etc., contemplated in Section Three above quoted. To do this would render our report more voluminous than the Code itself. In fact this was the argument already referred to, in favor of printing the entire Code with our report. It was said, very justly, that in legislation there could be no safe criterion between verbal and substantial changes; that the change of a single word in some sections might be a far more important

one than the insertion or omission of many entire sections ; that the evident intention of the Legislature was to obtain the judgment of the entire state on our amendments before they acted ; that as the whole code must be new enacted, it would have to be printed for the Legislature themselves to act upon ; and that really the easiest and most economical way of accomplishing the whole purposes would be to print it in full with the report.

The conclusive answer to these arguments has been given already. From personal motives, we would have been very glad to have our entire work submitted to public criticism before discussion in the Legislature. We do not see how it can be satisfactorily discussed there, without being printed like any other bill, in spite of its extreme length. But that question will be for the Fourteenth General Assembly to decide ; and there we apprehend, is exactly where their predecessors meant to leave it.

It may be suggested that the Act itself points out a criterion, by requiring us to write out in full, and embody in the latter part of our report, such sections as we recommend should be added to our statutes (Section Four, as above). But this, certainly, cannot mean that every section which may be added to any particular chapter, should be included in the report, if new in form. This would burden the report with a great deal of useless matter. For instance, we propose a section not in the present law, making every official term extend until a successor is elected, (or appointed) and qualified, unless the contrary is expressly provided. This section does not change the law in the least; it only saves the repetition of the words, " and until his successor is elected, (or appointed) and qualified," in some hundreds of places through the volume. A similar section is inserted, to save the constant repetition of the word " organized," in connection with " county "—a phrase, which, otherwise must stand on almost every page of our statute book for years after the last " unorganized " county shall have disappeared from the state, as it may very possibly do, before this volume is printed. On the other hand, some of our most important suggestions will require no new section at all. Perhaps none will attract more general attention, or awaken more interest, either for, or against it, than the amendment we propose to the Liquor Law, taking the duty of granting licenses from the

Circuit Court, and giving it to the Board of Supervisors. Yet this requires no new section to be added. It only changes a few words in each of two, or three, long sections; just such a change, in fact, as we have made of hundreds of other sections, as a mere matter of form. The most frequent, and merely formal changes, in the whole book, are, perhaps, those where the same words (Board of Supervisors) are substituted for County Court.

After giving much study to the subject, we became fully convinced that no single satisfactory line of division could be drawn between the two kinds of amendments, and that the best we could do was to make special mention in our report of each, or leave it unmentioned as one of form, according to the circumstances of each particular case. Some very large classes of amendments are treated as formal throughout, being such : "Board of Supervisors," or "Auditor," for "County Judge," or "County Court;" "Circuit Court." or "Judge," for the same, etc. Even these sometimes involve changes that may be called substantial, or difficulties as to the substitution of one officer rather than another, which make our task something more than a formal or merely clerical one. But they are specifically provided for in the Act, among the changes of form, (Section Three), and whatever errors we may have committed in cases of difficulty, we have the satisfaction of knowing that *all* the changes, whether included in our report or not, must come under the careful scrutiny of the Legislature and its committees before they take effect.

In selecting the amendments to be stated at length in the report, we have endeavored to include every one (except the above classes) which makes any change in the substance of the present law; every one effecting any important interest; every one which could possibly be a subject of difference; in short, every one in which the community at large will feel any kind of interest. On the other hand, we have made it an object to bring our report into as brief a form as possible, to save at once expense in publication, and time in its perusal; and, therefore, have inserted no amendment without some such reason for it, leaving all those unreported to the scrutiny of the Legislature, and feeling confident that that scrutiny will vindicate the propriety of our selection.

It may be proper here to mention a few of the general rules we

have followed in determining what changes and omissions should be made in the great mass of statutes upon which we have had to act. These, of course, are supplementary to the directions given in Section Three, of the act quoted above.

1. Our first principle in all cases was that no change should be made for its own sake. The advantage of familiar and tried forms of statutory law, and the danger of changes made without a definite and clearly understood purpose, are too generally appreciated to make anything more necessary than a mere statement of this rule.

2. We have tried to avoid all changes that were connected with partisan or sectional purposes, or that involved yet unsettled questions of public policy, even where our own convictions in regard to them were clear. A Code like this is no place for the advocacy of specific reforms in the substance of the law (as distinguished from its form and methods of procedure), however meritorious in themselves. Such changes are better proposed and discussed in separate acts. The consideration and adoption of the entire Code will tax the patience of the Legislature heavily at the best, and it would be unwise to increase the burden by complicating it with irrelevant questions. Besides, the Commission should not allow its own attention to be diverted to such objects. Its legitimate and quite sufficient vocation is to bring a given body of law into the best possible form and method, and the advocacy of particular reform can only interfere with its accomplishment.

3. In the arrangement of new matter we have invariably been governed by the practical convenience of those who are to use the volume, rather than by any so-called scientific rules. In saying this we do not mean to show any disrespect to legal science ; but only to intimate our strong conviction that the two things are at bottom the same, and that in the present state of our knowledge, utility is the best criterion of true science. Any method of classification which does not prove itself convenient, needs first to revise its own theories, and the supposed principles on which it rests.

4. Where language was to be altered, we have aimed *first*, at precision; *second*, at clearness; *third*, at brevity. No other quality of style in the composition of statutes bears any comparison with these. But we have also taken occasion to remove all foreign words

and phrases from the laws, and to make the statute-book speak plain English throughout, even when a few more letters were required. Thus we have submitted "by virtue of his office" for *ex-officio*, "in good faith," for *bona fide*, "presumptive" for *prima facie*. The only foreign words left are the few which not only have no English equivalent, but being the recognized names of a well-understood process, such as *habeas corpus*, *certiorari*, etc., have in fact become our own technical terms.

5. Repetition has been carefully avoided. The same provision of law has never intentionally been inserted in two places, even when it seemed to belong with equal propriety to both. In some cases, occupying little space, this might seem the most convenient disposal of the matter; but it is open to one serious objection. If in future legislation one provision is altered or repealed, overlooking the other, confusion is the necessary result. Of this we have had not a few illustrations in our state legislation already; and it is practically impossible to prevent it, except by the rule that the statute-book shall not say the same thing twice.

6. Similar in principal is the rule which excludes from the statutes all repetitions of constitutional provisions. Quite a number of sections have been struck out of Part First on this ground alone. Of course there is no danger here that hasty or careless legislation may make the rule doubtful; but, beside the needless occupation of space, such repetitions confuse the memory of the hasty reader as to the important distinction between such provisions as can, and such as cannot be changed by a new statute.

Several kinds of provisions which appear very frequently in every collection of entire acts, like the Session Laws, or Part First of the Revision of 1860, disappear as a matter of course from a Code in which the same acts are embodied. These may properly be mentioned here once for all, since it would be a waste of time and space to mention separately every such section dropped from the Revision of 1860, or the various Session Laws. It will be understood, then, that we omit:—

(*a*). All special *repealing* clauses. Every section of the Code, when enacted, will stand on an equal footing, and the relations of the whole Code to all prior legislation will be determined by the

general provisions, on account of which, as we propose them, will be found on a subsequent page.

It may be worth while to remark here that the section found at the end of so many acts of the Legislature :—"All acts and parts of acts inconsistent with this act are hereby repealed,"—is entirely superfluous and meaningless. The passage of the new act would of itself be such a repeal, without the section ; and in either case it is left to the judgment of the reader, and eventually to the courts, to determine how far the repeal extends. A better practice would be to make a careful examination of the previous legislation in each case, and repeal specifically whatever is intended to be so. One of the amendments we propose has an indirect bearing on this matter.

(*b*). All sections merely amending other acts, which are themselves incorporated in their amended form.

(*c*). All sections giving a legislative construction to prior acts, and all sections providing that nothing therein contained shall interfere with the operation of certain other provisions. Sections like these are sometimes necessary in ordinary legislation ; but when both the provisions in question form part of the same Code, and are re-enacted together, there can be no need of them, except by the mere blunder of the draftsman.

(*d*). All provisions for the first election of a new officer, first organization of a new institution, (drawing of lots for terms, etc.) first introduction of a new rule. The enactment of the Code will find all these matters going their regular train. There are some exceptions, however, to this rule ; as, for instance, there must be provisions for the first election of municipal officers, since new towns and cities may be organized at any time.

(*e*). All sections by which the general provisions, remedies, penalties, etc., of a former act are extended to a new case, or class of cases. The place of these is to be supplied by a mere insertion of the new case in the former general rule.

(*f*). All *curative*, and other *retroactive* clauses. These, in their very nature, are temporary, and thus are among the provisions we are directed to omit. There is another objection to their insertion in their original form. Each is operative on cases prior to its

own date, only; to re-enact them would really be to make a new rule, while the omission of them from the Code does not affect the rights vested under them according to their original intention.

But here again there seems to be an exception. Acts curing defective acknowledgments, or recording of deeds, and some few others, of similar nature, have important consequences for the future, as rules of evidence. We have, therefore, inserted such acts of this kind as are not superseded by later ones.

Our instructions "to revise the statutes, re-write the same, *divide them into appropriate parts*, arrange them under proper titles and chapters," are broad enough to allow of our abandoning entirely the method of the Code and Revision, and arranging the entire volume on a different plan. As this was evidently inserted in the act to bring the matter under our consideration, we may properly state that it has been fully considered, the statutes of other states examined, and the advantages of different plans weighed as well as our very limited time would allow. Our conclusion was that even if the plan of the Code of 1851 had not already the all-important advantage of possession, and long familiarity in the minds of the people, it is substantially the one that we would choose in a new case. On a comparison made of the volumes in which the laws of most of our sister states have been revised, or compiled, or codified, one is struck with the fact that under an apparently arbitrary diversity, there are really but two or three different types or methods; and cannot help suspecting that the true principles of such a classification are much fewer and simpler than they are commonly supposed to be. In nearly all of these collections there is one series of divisions which governs all the rest, and serves, so to speak, as the unit of classification, by reference to which all the other combinations or divisions are made. It may be called chapter, as with us, or by any other name; it may have inferior divisions between it and the sections, or not; it may be the only division of the volume, or the units may be grouped into titles or parts, (or, as in New York, into chapters, the place of our chapters being there represented by *articles*;) it varies greatly in length in the same volume, but will be found, if we take the statute-books of the whole country together, to have a pretty definite average length in all; and, further, if we run through all

these collections, the rubrics of this particular series of divisions will show a striking uniformity throughout. It might not be difficult to obtain by comparison and analysis the laws which determine this uniformity of length and subject; but such a piece of mere legal disquisition would be out of place here. We have only mentioned this especial form of division so particularly, because all the different forms of our statute-books seem to consist chiefly in different combinations of these. And really there are but two such combinations; these chapters are either placed in the alphabetical series of their principal topics, or they are arranged in an order formed by grouping kindred topics together. These groups may again be denoted by collecting the chapters into titles and parts, as in our Code; or may be left unexpressed, the chapters following each other with formal connection; the principle is the same in both cases. The choice of one or the other of the two combinations just mentioned seems practically to exhaust the freedom of will left to the American codifier. We do not say this in ridicule. On the contrary, we regard the uniformity of method thus pointed out as a great advantage; and we believe that the true direction for the improvement of legal science is in studying and following the generalizations thus furnished us by experience, rather than in framing theoretical systems from assumed bases.

The alphabetic order of chapters has been adopted in several remarkably well-executed revisions, especially among the western states, and they have given it considerable popularity. We doubt, however, whether it has any intrinsic merit but the one that it costs no trouble whatever to learn or understand its plan of arrangement. It is supposed to be peculiarly convenient for consultation; but any volume to which the community has once become accustomed is so, and the relative merits of the two in this respect have not, to our knowledge, been tested.

The other order has been termed, by the very able Commission now engaged in revising the Federal Statutes, the logical, or philosophical order; but for fear that these titles may prejudice it in some minds, it may better be termed the natural order. It requires a little more effort than the other to master at first, and perhaps is more easily spoiled by imperfect execution. But twenty years' experience

in our own state have proved its general convenience and utility, as represented in the Code of 1851. And we hope that the few and careful changes we have ventured to make will not diminish its acceptability.

Its principal division, into four parts, coincides very nearly with the simplest and plainest division that has been generally recognized in the whole field of Municipal Law. The only change we propose, affecting this division, is intended to make the coincidence more complete. It is the transfer of the greater portion of Title XIII in the Code and Revision—"Regulations pertaining to Trade," from Part First to Part Second. This change is primarily one of convenience, suggested by the frequent handling of the volume in former active practive. The provisions of Title XIII., relating to Interest, Bills and Notes, Mechanics' Liens, and kindred subjects, are constantly referred to in private litigation ; and every lawyer is struck with the fact that they are separated from the other parts he has like occasion to use, and placed in a part of the volume comparatively unfamiliar to him. By transferring them to Part II he will find nearly all the provisions of special interest to him together. And this illustrates what has been already said, that utility is the best test of a genuine legal science. For this change being made, the line between Parts First and Second will represent, perhaps as accurately as could be done in any collection of actual statutes, the familiar, and important distinction between Public and Private Law. Upon this subject we may be allowed to quote a passage from the report made last winter to the New York Assembly by a majority of the Commission engaged there in a similar task to ours. This report only came into our hands after our work was done, and most of the foregoing matter written ; but the similarity of the conclusions arrived at by the two Commissions seems to us a proof of the truth of what has already been advanced : that this form of arrangement, chosen with primary reference to convenience only, and modified in each state to meet its own uses, has yet a more truly scientific character, and will probably become the basis of a more truly scientific method of treating American Law, than any of the elaborate theories which have been devised "out of the depths of their own consciousness or borrowed from foreign jurisprudence, by recent

writers on classification. It will be noticed that what is said of the division of the New York Revised Statutes applies, without the change of an essential word, to our own.

"The most natural and convenient general distribution of legislation, (and indeed among free peoples of all law), is into that which concerns the ordinary administration of the government; that which concerns the rights of individuals with respect to their persons and property; and that which concerns the special functions of the government to prevent and punish the commission of crimes and other offenses against society. The laws belonging to each of these heads are again primarily divided into declaratory and remedial laws; but as the genius of our institutions forbids the creation of special remedies on behalf of the administration of the government, except in the very rare cases where the ordinary remedies will not suffice, the remedial laws of the first head are generally undistinguishable, in their practical operation, from those of the second and the third.

"Thus the appropriate grand divisions of our legislation are five in number, corresponding to the general intent and scope of the five codes: [referring to the well-known codes reported by a former commission in New York, and embodying the unwritten law.] In truth, the latter simply represent the four parts into which the present Revised Statutes [or the Iowa code] are divided, the declaratory and remedial statutes concerning crimes and public offenses having been condensed by the revisers into one part for reasons of convenience merely, which are equally operative now, as they depend upon the small bulk of those statutes, as compared with the statutes belonging to the other divisions. We propose, accordingly, to divide the new Revised Statutes into four parts, and to style them respectively: the Political Code, the Civil Code, the Code of Civil Procedure, and the Penal Code. * * * Perhaps the titles of these parts would more accurately indicate their subjects, if they were styled the Code of Government, the Code of Civil Rights, the Code of Civil Remedies, and the Code of Crimes and Punishments. * * This is the primary division adopted by the original revisers. It also corresponds, as the revisers stated in their report, with the general division of subjects among the four books of Blackstone's Commentaries."

(*Report &c., N. Y. Assembly Documents, 1871, No. 17, pp.9, 10.*)

In the arrangement of titles and chapters, we have departed no farther than we could help from those of the Code of 1851. The reasons for such changes as have been made will be stated under the respective parts, in the latter part of this report. We have also adhered to the original plan of the Code, in making no intermediate division between chapters and sections. The undue multiplication of such distinctions is apt to give an appearance of great accuracy and niceness of arrangement, while really tending to confusion ; and (what is a matter of consequence) it much increases the risk of mistake or misunderstanding in references or amendments made in the course of subsequent legislation.

In the first two parts, the changes of order, insertions, and omissions are so frequent, that any attempt to adhere to the numbering of sections in the Revision, would only end in hopeless confusion ; and the same is true of chapters. It has therefore, seemed, the best plan to number the titles of each part, the chapters of each title, and the sections of each chapter separately, especially as this will also facilitate the adding or striking ont of sections in the passage of the bill through the Legislature. In Parts Third and Fourth, the changes are comparatively few, and the Revision numbering is retained. It is of course understood that all these numbers are only temporary. When the Code shall have received its final form from the Legislature, the person appointed to edit it should be instructed to make the numbering of sections and chapters continuous throughout the volume, as well as to insert in their proper places all acts separately passed at the same session.

The manner in which the Legislature shall consider and act upon the material submitted to them in the amendments contained in this Report, and in the manuscript Code accompanying it, will, of course, be altogether for them to determine. It may not be out of place, however, for us to offer one or two suggestions designed to facilitate their labor.

The relation which the new Code, as a whole, is designed to bear to existing statutes, will be found fully set forth and regulated in Chapter Four of Title First. This is substantially the same with

the corresponding chapter of the Code of 1851. Of course, when rëenacted, it will be a new law, and the force of all its provisions must be taken from its new date in 1872. But we have thought it better to repeat the old language, which has once borne the test of use and judicial examination in a precisely analogous case: for it cannot be too clearly stated that the new Code is framed to bear in 1872 the same relation to the present statutes of the state that the Code of 1851 bore to the statutes then in force: an entirely different one from that of the Revision to the statutes of 1860. The number of sections remaining entirely unchanged, in words as well as substance, is so small, comparatively speaking, and they are so scattered through the entire mass, that any attempt to distinguish between so much of the new Code as absolutely requires rëenactment, and so much of it as might be left to stand in its present force, would certainly involve more labor than it could possibly save. The Four Parts might perhaps be taken up separately, so as to enact one, two, or three of them, leaving the others in their present condition, if a little care were exercised in amendment. But we apprehend that the easiest way to deal with the entire Code is to bring it before either House of the Legislature in the form of a single bill, as early in the session as can conveniently be done, that members may familiarize themselves with its arrangement and general character, before being called on to consider the specific amendments offered to it, either by this report, or from other sources. It is not necessary that all such amendments should be considered and incorporated in the bill for the Code, (so far as approved), before the latter becomes a law. We have omitted from the draft of the chapter above referred to, that section which provided that the code of 1851 should prevail over any general act, passed at the same session and conflicting with it. Consequently, the Legislature may enact the Code at any time in the session which they may find most convenient, without thereby estopping themselves from subsequent alterations of it by other acts. Some such alterations there undoubtedly will be, in the course of the ordinary business of the session. Any amendments not incorporated in the Code before its passage, may take the same course. Provision should, and no doubt will, be made for the incorporation of all such acts of the session as properly

belong to the public statutes, into the Code as prepared for the printer: and provision also at the same time for its proper editing, indexing, the re-numbering of chapters and sections, addition of marginal notes, (if desired), and all other work necessary to fit the volume for convenient use. We do not feel called upon to make any specific suggestions on this subject.

Annexed to this general report, and forming parts thereof, will be found specific reports on each of the four parts into which the Code is divided, prepared by the several members of the Commission to whom such parts were assigned for revision, showing "what they have done, what changes they have made, what statutes omitted, and what amendments and further legislation they deem necessary," as required by Sec. 4 of the Act so often referred to.

We hope that the circulation given to this Report before the meeting of the Legislature will be the means of securing for it a careful and critical examination by all who are interested in having so important a work accurately and well done. We cannot hope that we have accomplished a very difficult task like this, including a great mass of petty details, in such a brief space, without many errors and omissions. We beg leave to insert here a general request that notice of such errors, etc., and other criticisms upon our work, will be received with thanks by any member of the Commission, especially if sent us in time to allow of their being used in the improvement of the Code before it assumes the form of positive law.

With these few words of preliminary explanation we leave our report in your Excellency's hands, and remain

Yours, very respectfully, etc.,

W. H. SEEVERS,
WM. J. KNIGHT,
WM. G. HAMMOND.

DES MOINES, IOWA, Sept. 9th, 1871.

SYNOPSIS

of all previous laws embodied in the new code, as reported; showing the disposition made of each chapter of the Code of 1851, Revision of 1860, and Session Laws from 1860 to present time; with the place where they will be found in the new Code.

The asterisk (*) signifies that the contents of the chapter or article are entirely superseded by later legislation, but other provisions on the same subject will be found in the places referred to in the other columns.

PART FIRST.

CODE OF 1851.	REVISION OF 1860.	REPORTED CODE, 1872.
Title 1, ch. 1....	ch. 1	Part I, title 1, ch. 1.....
ch. 2....	2 articles 1, 2.....	" " 1, ch. 2.....
	article 3, *obsolete*.....	
ch. 3....	ch. 3	" " ch. 3.....
ch. 4....	ch. 4 article 1.....	" " ch. 4.....
	article 2, *obsolete*.....	
Title 2, ch. 5....	ch. 5 article 1 and 4.....	" title 2, ch. 1.....
	articles 2 and 3.....	" title 5, ch. 7.....
ch. 6....	ch. 6 article 1.....	" title 2, ch. 2.....
	article 2 *obsolete*.....	
ch. 7....	ch. 7	" title 2, ch. 3.....
ch. 8....	ch. 8	" " ch. 4.....
	ch. 9 article 1.....	" " ch. 5.....
	articles 2 and 3, *obsolete*.	
	ch. 10 *.....	" title 3, ch. 1.....
	ch. 11	" " ch. 2.....
	ch. 12 art. 1, 2, 3.....	" title 2, ch. 8.....
	art. 4.....	" title 1, ch. 3.....
	ch. 13 art. 1.....	" title 2, ch. 9.....
	art. 2, *obsolete*.....	
	ch. 14 *obsolete*.....	
ch. 9....	ch. 15 *.....	" title 3, ch. 7.....
ch. 10....	ch. 16 art. 1 and 2.....	" " ch. 8.....
	art. 3	Part II, title 2, ch. 3.....
	ch. 17	Part I, title 2, ch. 7.....
Title 3, ch. 11, 12, 13	ch. 18, 19, 20, *omitted*..	
ch. 14....	ch. 21	" title 4, ch. 1.....
ch. 15....	22 art. 1.....	" title 4, ch. 2.....
	2, *obsolete*.....	
	3, *obsolete*.....	
	4*.....	Part II, titie 1, ch. 7.....
	5, *obsolete*.....	
	6, *obsolete*	
	7	Part I, title 11, ch. 3.....
	8	" title 4, ch. 3.....
	9	" title 4, ch. 4.....
	10	" title 4, ch. 2.....
	11	" title 4, ch. 2.....
	12, *obsolete*	

PART FIRST—CONTINUED.

CODE OF 1851.		REVISION OF 1860.	REPORTED CODE, 1872.
		Ch. 22, art. 13, *obsolete*	
		14, *obsolete*	
		15,	Part I, title 5, ch. 3
		16, *obsolete*	
Title 3,	ch. 16.	ch. 23, art. 1	" title 3, ch. 5
		art. 2 and 3	Fee bill
	ch. 17.	ch. 24, art. 1	Part I, title 4, ch. 4
		art. 2, *obsolete*	
	ch. 18*.	ch. 25	" title 3, ch. 4
	ch. 19.	ch. 26	" title 4, ch. 6
	ch. 20.	ch. 27	" title 4, ch. 7
	ch. 21.	ch. 28	" title 4, ch. 8
	ch. 22.	ch. 29	Fee bill
	ch. 23.	ch. 30	Part I, title 4, ch. 9
Title 4,	ch. 24.	ch. 31	" title 5, ch. 1
	ch. 25.	ch. 32	" title 5, ch. 3
	ch. 26*.	ch. 33	" title 5, ch. 3
	ch. 27.	ch. 34	" title 5, ch. 4
	ch. 28.	ch. 35	" title 5, ch. 3
	ch. 29.	ch. 36	" title 5, ch. 5
	ch. 30.	ch. 37	" title 5, ch. 6
	ch. 31.	ch. 38	" title 5, ch. 7
	ch 32.	ch. 39	" title 5, ch. 7
	ch. 33.	ch. 40	" title 5, ch. 8
	ch. 34.	ch. 41	" title 5, ch. 9
	ch. 35.	ch. 42	" title 5, ch. 10
		ch. 43	" title 1, ch. 2
Title 5,	ch. 36.	ch. 44	" title 12, ch. 13
Title 6,	ch. 37*.	ch. 45, art. 1	" title 6, ch. 1, 2, 3.
		art. 2	" title 6, ch. 2
		art. 3, 4, *obsolete*	
		art. 5	" title 6, ch. 1
Title 7,	ch. 38.	ch. 46, art. 1, 2, 4, and 5	" title 7, ch. 1
		art. 3	" title 7, ch. 2
		ch. 47, *obsolete or local*	
Title 8,	ch. 39*.	ch. 48	" title 2, ch. 6
	ch. 40.	ch. 49, art. 1	" title 8, ch. 1
		art 2, *obsolete*	
Title 9,	ch. 41.	ch. 50	" title 4, ch. 11
	ch. 42*.	ch. 51	" title 4, ch. 10
Title 10,	ch. 43.	ch. 52	" title 9, ch. 1
	ch. 44.	ch. 53	" title 9, ch. 2
Title 11,	ch. 45.	ch. 54, art. 1, 2, 3	" title 7, ch. 4
		art. 4	" title 10, ch. 1
	ch. 46.	ch. 55, art. 1	" title 10, ch. 2
		art. 2, *local and private*	
		art. 3	" title 10, ch. 2
		art. 4	" title 10, ch. 3
		art. 5, *local and private*	
		art. 6, 7	" title 10, ch. 3
		art. 8	" title 4, ch. 1
	ch. 47.	ch. 56	" title 10, ch. 4
Title 12,	ch. 48.	ch. 57	" title 11, ch. 1
	ch. 49.	ch. 58	" title 11, ch. 8
	ch. 50.	ch. 59, art. 1	" title 11, ch. 3
		art. 1, §§ 1449–57	Part II, title 3, ch. 5
		art. 2, *obsolete*	
		art. 3	" title 3, ch. 1

PART FIRST—CONTINUED.

CODE. OF 1851.	REVISION OF 1860.	REPORTED CODE, 1872.
Title 12, ch. 51....	ch. 60, art 1 and 2.....	Part I, title 11, ch. 5.....
	art. 3*.....	" title 11, ch. 3.....
ch. 52....	ch. 61.....	" title 11, ch. 4.....
ch. 53–54	ch. 62 and 63	" title 11, ch. 3 .....
ch. 55*...	ch. 64.....	" title 11, ch. 6.....
	ch. 65 *repealed* 1870	
	ch. 66 *repealed* 1870	
	ch. 67 arts. 1 and 2.....	" title 9, ch. 3.....
	art. 3.....	" title 12, ch. 3.....
	arts. 4 and 5 *obsolete*...	
	ch. 68 *.....	" title 9, ch. 4 and 5
	ch. 69	" title 11, ch. 7 .....
	ch. 70	Part II, title 1, ch. 12 .....
Title 13, ch. 56....	ch. 71	" title 2, ch. 1 .....
ch. 57....	ch. 72	" title 2, ch. 2 .....
ch. 58....	ch. 73	" title 2, ch. 3 .....
ch. 59....	ch. 74	" title 2, ch. 4 .....
ch. 60....	ch. 75	" title 2, ch. 5 .....
ch. 61....	ch. 76	" title 2, ch. 6 .....
ch. 62....	ch. 77	" title 2, ch. 7 .....
ch. 63....	ch. 78	Part I, title 3, ch. 6 .....
ch. 64....	ch. 79	Part II, title 2, ch. 8 .....
	ch. 80	" title 2, ch. 9 .....
	ch. 81 *.....	" title 2, ch. 10 .....
	ch. 82	" title 2, ch. 1 .....
	ch. 83	" title 1, ch. 10 .....
Title 14, ch. 65....	ch. 84 *art. 1	Part I, title 12, ch, 2 .....
	art. 2, 3, 4, 5, 6, *obsolete*	
	ch. 85	" title 12, ch. 14 .....
ch. 66*...	ch. 86 art. 1.....	" title 12, ch. 12 .....
	art. 2 *obsolete*.....	
ch. 67*...	ch. 87 *.....	" title 12, ch. 1 .....
	ch. 88 art. 1.....	" title 12, ch. 9 .....
	art. 2, 3, 4, 5, *obsolete*..	
	ch. 88 art. 1, 2, 3, 4, 5, 6 *obsolete*	
	art. 7 and 8.....	" title 12, ch. 9 .....
	art. 9 and 10 *obsolete*.	
	art. 11.....	" title 12, ch. 11 .....
ch. 73*...	ch. 90	" title 12, ch. 5 and 6
Title 15, ch. 74....	ch. 90 art. 1 *obsolete*.....	
	art. 2, 3, 4, 5.....	" title 2, ch. 7 and 8
	art. 6.....	" title 4, ch. 1 .....
	art. 7.....	" title 4, ch. 11 .....
	art. 8.....	" title 11, ch. 3 .....
	art. 9.....	" title 1, ch. 1 .....

PART SECOND.

Title 16, ch. 75....	ch. 92	Part II, title 1, ch. 3 .....
ch. 76....	ch. 93	" title 1, ch. 4 .....
ch. 77....	ch. 94	" title 1, ch. 5 .....
ch. 78 ...	ch. 95 art. 1.....	" title 1, ch. 6 .....
	art. 2.....	" title 1, ch. 10 .....
ch. 79....	ch. 96 art. 1, 2, 3. 5, 6, 9.....	" title 1, ch. 7 .....
	art. 4, 8, *superseded* ...	
	art. 7	" title 1, ch. 6 .....
ch. 80....	ch. 97 art. 1.....	" title 1, ch. 8 .....
	art. 2, *unconstitutional*.	

PART SECOND—CONTINUED.

CODE OF 1851.	REVISION OF 1860.	REPORTED CODE, 1870.
Title 16, ch. 81	ch. 98	Part II title 1, ch. 9
ch. 82	ch. 99	" title 1, ch. 10
ch. 83	ch. 100 art. 1, 2, 3, 4, 7 ... art. 5, 6, *superseded*	" title 4, ch. 1, 2, 3, 4, 5.
Title 17, ch. 84	ch. 101	" title 3, ch. 1.
ch. 85	ch. 102	" title 3, ch. 2.
ch. 86	ch. 103 art. 1 ... art. 2, *obsolete*	" title 3, ch. 3.
ch. 87	ch. 104	" title 3, ch. 4.
ch. 88	ch. 105	" title 3, ch. 5.
ch. 89	ch. 106	" title 3, ch. 6.
	ch. 107	" title 3, ch. 7.

☞ It has already been stated in the General Report, that all the chapters of Parts Third and Fourth, retain temporarily in the reported code, the same numbers by which they have been designated in the Revision of 1860. It is therefore needless to continue this table through those parts.

SESSION LAWS, 1861–1870.

SESSION AND CHAPTER.	PLACE IN REPORTED CODE.
Extra Ses. 8th G.. A. (1861), ch. 1	Part III Fee bill.
2	I Title 4 Ch. 3
5	IV 247
12	I. 6. 1
24	I. 6. 1
Acts of 9th G. A. (1862), ch. 4	IV. 174
15	III. Fee bill.
22	II. 4. 3
23	I. 5. 3
25	I. 5. 5
26	I. 3. 5
27	II. 3. 5
28	III. 122
29	IV. 169
30	I. 4. 11
31	I. 6. 1
32	II. 1. 2
33	IV. 241
34	IV. 166
35	IV. 174
36	I. 5. 3
46	I. 2. 7
47	I. 11. 6
48	IV. 247
49	I. 4. 1
51	I. 7. 2
52	III. Fee bill.
53	IV. 166
54	I. 5. 10
56	I. 2. 5
61	I. 7. 3

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.		PLACE IN REPORTED CODE.
Acts of 9th G. A. (1862), ch.	66	Part III. .... Fee bill.
	71	.... II Title 4 Ch. 5
	73	.... I.... 4.... 9
	75	.... III.... 122
	76, §9	.... I.... 11.... 3
	78	.... I.... 4.... 11
	80	.... I.... 4.... 9
	82	.... II.... 2.... 1
	84	.... IV.... 176
	87	.... I.... 4.... 1
	88	.... I.... 5.... 10
	89	.... I.... 5.... 3
	90	.... III.... ....Fee bill.
	93	.... III.... 120
	94	.... I.... 11.... 6
	96	.... I.... 7.... 2
	97	.... I.... 4.... 10
	102	.... I.... 11....3 and Fee bill.
	110	.... I.... 6.... 2
	111	.... II.... 2.... 8
	112	.... I.... 7.... 1
	116	.... II.... 2.... 3
	121	.... IV.... 167
	123	.... II.... 1.... 7
	128	.... II.... 2.... 9
	135	.... IV.... 170
	137	.... III.... ....Fee bill.
	141	.... I.... 7.... 1
	146	.... IV.... 172
	148	.... I.... 12.... 12
	150	.... III.... 123
	151	.... II.... 4.... 4
	152	.... I.... 12.... 6 and 7.
	154	.... III.... 149
	156	.... II.... 1.... 2
	"	.... IV.... 247
	158	.... I.... 10.... 3
	159	.... I.... 10.... 3
	165	.... III.... ....Fee bill.
	168	.... I.... 6.... 2
	169	.... I.... 10.... 3
	172	.... I.... 12.... 9
	173	.... I.... 6.... 1 and 2.
	"	.... III.... ....Fee bill.
	174	.... III.... ....120—158
Extra session of Ninth General Assembly, (1862,) chap.	8	.... I.... 6.... 1
	20, § 3	.... I.... 11.... 3
	25	.... I.... 4.... 10
	26	.... I.... 12.... 3
	27	.... I.... 4.... 2
	27	.... I.... 5.... 5
	34	.... I.... 4.... 1
Acts of 10th G. A. (1864), ch.	9	.... I.... 2.... 4
	10	.... IV.... 211
	12	.... I.... 9.... 2
	14	.... III.... .... 124, 142

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.		PLACE IN REPORTED CODE.		
Acts of 10th G. A. (1864), ch.	17	Part III		Fee bill
	18	IV		Ch. 173
	20	I Title	10	3
	22	I	3	1 and Fee bill
	23	III		109
	25	I	4	10
	26	I	6	1
	29	I	5	3
	30	I	2	7
	31	I	10	1
	33	III		Fee bill.
	34	I	5	6
	36	I	12	6
	37	I	10	1
	38	III		Fee bill.
	40	I	11	1
	43	I	6	2
	44	I	10	3
	46	III		Fee bill.
	51	III		125
	52	I	12	1
	53	IV		
	54	I	12	6 and 7
	56	II	2	1
	57	I	12	9
	60	I	4	2
	65	I	11	3
	66	I	2	4
	68	III		Fee bill.
	69	I	5	10
	72	I	12	12
	74	II	1	7
	75	I	11	8
	79	I	6	1
	84	I	8	1
	85	I	2	1
	86	I	10	3
	88	I		Fee bill.
	91	I	10	1
	92	III		Fee bill.
	93	III		149
	95	I	4	1
	100	I	6	2
	102	I	12	9
	103	1	2	5
	105	I	8	1
	109	I	9	3
	110	IV		173
	114	I	2	7
	115	III		Fee bill.
	"	I	6	2
	117	I	12	3
	118	I	12	12
	120	II	2	10
	121	I	12	3
	124	I	6	1
	127	I	4	10

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.	PLACE IN REPORTED CODE.
Acts of 10th G. A. (1866) ch. 129.....	Part I Title 4 Ch. 4 and 5
"	.... III.... ....Fee bill.
130.....	.... I... 7.... 4
133.....	.... III.... 124
134.....	.... I.... 12.... 12
Acts of 11th G. A. (1866), ch. 3.....	.... I.... 1.... 2
5.....	.... I.... 4.... 6
6.....	.... I.... 6.... 3
10.....	.... IV.... 174
12.....	.... IV.... 232
20.....	.... I.... 3.... 1
24*.....	.... II.... 3.... 1
27.....	.... I.... 6.... 2
28.....	.... IV.... 170
29.....	.... I.... 2.... 5
33.....	.... I.... 12.... 9
34.....	.... I.... 4.... 10
43.....	.... I.... 12 ... 6
46.....	.... II.... 1.... 7
47.....	.... I.. . 12.... 3
48.....	.... I.... 8.... 1
49.....	.... III.... 141
53.....	.... III.... 158
57.....	.... III.... ....Fee-bill.
61.....	.... II. .. 1.... 7
66.....	.... I.... 10.... 1
67.....	.... III.... ....Fee-bill.
69.....	.... I.... 4.... 10
71.....	.... I.... 12.... 3
75.....	.... III.... ...Fee-bill.
81.....	.... I.... 2.... 2
87 $2...	.... I.... 4.... 2
87 $1....	.... I.... 6.... 1
88.....	.... I.... 3.... 4
89...	.... I.... 3.... 1
91.....	.... III.... 125
92.....	.... I.... 12.... 4
102.....	.... I.... 10.... 3
103.....	.... I... 6.... 2
104.....	.... I.... 6.... 2
107..... ..	.... I.... 4.... 9 and 10
108 See 23 Iowa Report, 130.	
109.....	.... III.... ....Fee-bill.
110...	.... II.... 1.... 2
113.....	.... I.... 10.... 3
114.....	.... I.... 6.... 3
116.....	.... III.... 146
118 §§1, 2	.... I.... 1.... 2
." §3 ...	.... I.... 4.... 2
." §4 ...	.... III.... .... Fee-bill.
119.....	.... I.... 10.... 1
120.....	.... II.... 4.... 5
122.....	.... I.... 8.... 1
124.....	.... I.... 6.... 2
125.....	.... II.... 3. ... 5
128.....	.... I.... 9.... 3
132.....	.... I.... 11.... 2
135.... ...	.... IV.... 174

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.		PLACE IN REPORTED CODE.			
Acts of 11th G. A. (1866) ch.	136.....	Part	I Title	12 Ch.	7
	137.....	....	I....	5....	10
	138.....	....	I....	5....	10
	139.....	....	II....	4....	2, 3, 5.
	142.....	....	I....	4....	10
	143.....	....	I....	12....	9
	144.....	....	I....	10....	3
Acts of 12th G. A. (1868), ch.	3.....	....	I....	2....	5
	10.....	....	I....	2....	5
	11.....	....	III....	....	125
	14.....	....	III....	....	109
	27.....	....	III....	....	109
	28.....	....	I....	12....	9
	29.....	....	I....	12....	9
	39.....	....	IV....	....	191
	42	....	I....	10....	3
	45.....	....	IV....	....	174
	47.....	....	I....	7....	1
	48 *See.* 27	*Iowa.*	*Hanson* v. *Vernon.*		
	52.....	....	III....	....Fee bill.	
	53...	....	III....	....Fee bill.	
	56.....	....	II....	1....	1
	59.....	....	I....	12....	5
	60	...	I....	3 ...	8
	61.....	....	I....	4....	10
	65.....	....	III....	....	109
	66.....	....	I....	12....	4
	69.....	....	IV....	....	247
	74.....	....	IV....	....	166
	75.....	....	I....	6....	2
	76.....	....	I....	7....	2
	78.....	....	II....	1....	2
	"	....	I....	12....	12
	79.....	....	I....	10....	3
	80.....	....	I....	4....	10
	86.....	....	I....	3....	5
	"	....	I....	4 ...	6
	"	....	II....	4....	1
	"	....	III....	....	109–115
	"	....	III....	....Fee bill.	
	92.....	....	I....	6....	1
	93.....	....	I....	2....	7
	94.....	....	I....	12....	6
	95.....	....	I....	11....	1
	96.....	....	I....	2....	9
	98	....	I....	12....	9
	100.....	....	I....	7....	2
	106.....	....	I....	12....	7
	108.....	....	IV....	....	166
	110.....	....	I....	7....	1
	111.....	....	I....	4....	10
	113.....	....	IV....	....	174
	115.....	....	I....	5....	8
	117.....	....	I....	10....	2
	122.....	....	I....	12....	9
	128.....	....	I....	11. ..	6
	134 §1	....	III....	....Fee bill.	

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.	PLACE IN REPORTED CODE.
Acts of 12th G. A. (1868), ch. 134 §2	Part I Title 3 Ch. 5
136.....	.... I. .. 9.... 3
137.....	.... I.... 4.... 9
138.....	.... I.... 9.... 4
140.....	... I.... 6.... 2
141.....	... III.... ....Fee-bill.
142.....	.... I.... 12.... 3
143.....	.... IV.... 174
144.....	.... I.... 11.... 3
145.....	.... I.... 7.... 4
148.....	.... I.... 7.... 1
149.....	.... III.... 158
150.....	.... IV.... 169
153.....	.... I.... 6.... 1
154.....	.... I.... 4.... 10
155.....	.... I.... 1.... 2
160	.... I.... 4.... 3
"	.... I.... 5.... 5
"	.... II.... 1.... 7
"	.... III.... ... Fee-bill.
161.....	.... I.... 12.... 13
162.....	. .. I.... 12.... 1
165.....	.... I.... 4.... 2
166.....	.... I.... 4.... 10
168–170....	.... III.... ....Fee-bill.
171.....	.... I.... 5.... 2
172.....	.... I.... 10.... 3
173	.... I.... 9.... 5
179 §12....	.... II.... 3.... 5
181.....	.... I.... 12.... 9
183.....	... I.... 12.... 9
185.....	.... IV.... 174
188.....	.... I.... 4.... 10
189.....	.... I.... 10.... 3
190.....	.... I.... 6.... 2
191.....	.... II.... 3.... 2
193.....	.... II.... 1.... 1
195 §§1,2,3	.... IV.... ... 174
" §4....	.... II.... 2.... 1
Acts of 13th G. A. (1870), ch. 3.....	.... III.... 115
7.....	.... II.... 4.... 4
8.....	.... I.... 12.... 9
12.....	.... I.... 4.... 10
14...	.... I.... 4.... 10
18.....	.... I.... 11.... 7
20.....	.... I.... 7.... 2
21.....	.... III.... 114
24.....	.... I.... 11.... 3
26.....	.... I.... 11.... 3
29.....	.... I.... 12.... 12
31.....	.... I.... 12.... 6
34.....	.... I.... 2.... 6
38.....	.... I.... 4.... 2
41.....	.... III.... .... 111 141
42.....	.... III.... 109
43.....	.... III.... ... 125
44.....	.... I.... 3.... 7

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.	PLACE IN REPORTED CODE.
Acts of 13th G. A. (1870) ch. 45	Part I Title 4 Ch. 10
46	.... I.... 12.... 12
47	.... I.... 5.... 10
54	.... I.... 4.... 1
59	.... I... 4.... 10
62	.... I.... 10.... 2
65	.... I.... 4.... 10
68	.... III.... ....Fee bill.
69	.... IV.... 246
74	.... IV.... 174
77	.... I.... 14.... 11
78	.... I.... 12.... 7
79	.... I.... 12.... 6
80	.... I.... 4.... 10
81	.... I.... 4.... 10
82	.... I.... 11.... 6
83	.... I.... 3.... 5
84	.... I ... 7.... 4
87	.... I.... 12.... 2
88	.... II.... 1.... 8
89	... I.... 6.... 1
90	.... I.... 6.... 2
91	.... I.... 10.... 2
94	.... I.... 12.... 9
98	.... II.... 1.... 10
100	.... I.... 6.... 1
102	.... I.... 10.... 3
106	.... I.... 6.... 1
107	.... IV.... 247
108	... I.... 9.... 4
109	.... I.... 11.... 2
112	.... III.... ....Fee bill.
116	.... I.... 12.... 8
121	.... I ... 10.... 3
124	.... I.... 12.... 10
125	.... I.... 10.... 2
126	.... II.... 3.... 1
127	.... II.... 3.... 3
129	.... I.... 12.... 6
131	.... I.... 11.... 2
133	.... II.... 1.... 3
137	.... IV.... 193
138	.... I.... 6.... 1, 2
139	.... I.... 10. . 3
140	.... II.... 2.... 8
142	... III.... 120
144	.... I.... 12.... 3
145	.... I ... 12.... 13
146	.... I.... 4.... 3
148	.... I.... 4.... 2
150	.... III.... 125
151	.... I.... 9.... 2
152	.... III.... ....Fee bill.
153 §1, 2,	.... III.... 111
" §§3, 4, 5	.... II.... 4.... 1, 2,
156	.... IV.... 173
158	.... II.... 4.... 1, 2, 3,

SESSION LAWS—CONTINUED.

SESSION AND CHAPTER.	PLACE IN REPORTED CODE.
Acts of 13th G. A., (1870,) ch. 159	Part I Title 10 Ch. 1
160	.... II.... 1.... 7
161	.... I I.... 124
165	.... II.... 2.... 10
166	.... III.... ....Fee bill.
167	.... III.... .... 114, 159
172	.... I.... 9.... 2
174	.... I.... 5.... 2
175	.... III.... ....Fee bill.
176	.... IV.... 172
" §§4, 9, 10	.... I.... 11.... 3
177	.... IV.... 174
178	.... II.... 2.... 10
179	.... I.... 4.... 10
180	.... I.... 7.... 1
181	.... I.... 6.... 1
183	.... I.... 4.... 8
185	.... IV.... 166
187	.... I.... 6.... 1
188	.... III.... 158

SUMMARY.

Acts of 8th G. A., extra sess., embodied in	Part I,	3	Part II,	0	{ Part III, including fee bill. }	1	Part IV,	1
9th G. A.,	"	"	35	"	11	Part III,	13	"	12
9th G. A., extra sess.,	"	"	7	"	—	"	—	"	—
10th G. A.,	"	"	46	"	3	"	13	"	4
11th G. A.,	"	"	39	"	7	"	9	"	4
12th G. A.,	"	"	57	"	7	"	13	"	10
13th G. A.,	"	"	58	"	13	"	15	"	8
Total number of acts	"	"	245	"	41	"	65	"	39

Total number of Acts passed, 1861—1870, and embodied in new Code.....373

(The discrepancy between this number and the sum of the numbers given under the four parts above, arises from the fact that a single act is sometimes divided among two or more parts.)

Total number of private, local, obsolete, etc., Acts.....532

Total number of chapters of Session Laws, 1861-1870.....905

PART FIRST.

PUBLIC LAW.

The title of this part, in the Code of 1851 and Revision, was "Of the State and its Divisions, Officers and Police, the General Assembly and the Statutes." These are merely a portion of the topics treated therein, taken almost at random. All of them are comprehended in the much briefer title we have chosen, which has a well defined and familiar meaning in legal science, and covers the actual contents of this part with as much accuracy as could well be found in a statute book, arranged for actual use, and therefore not dividing its subjects with theoretical precision.

In arrangement, the intention has been to follow that of the Code of 1851 as nearly as possible. The chief changes made may be briefly stated thus: Titles V, IX, and XV disappear entirely; the first and last of them being entirely needless now for the arrangement of the existing statutes, and Title IX being united with Title III (now IV) in order to bring all matters of local government into one title. On the other hand, Title II is divided so as to place all officers of the judicial department together. All the other titles remain substantially the same in order and contents, except that Title XIII has been transferred to Part Second, for reasons given above, in the General Report. Changes in the order and contents of the Chapters will be found explained below, under the respective titles.

It should be remembered in regard to Part First, (and the same thing is true of Part Second, though its consequences are there less important, owing to the different nature of its contents,) that the laws therein contained have never been revised in any true sense of the word, since 1851. The difference in this respect between these two parts and the other two, containing the Codes of Civil and Criminal Procedure, is striking. The two codes were carefully revised in 1858–60 by an able commission, and then re-enacted. The First

and Second Parts of the Revision of 1860 are merely a compilation of such parts of the Code of 1851 as were understood to be in force at that time, and the Session Laws of a public nature passed between 1851 and 1860. The latter were printed without even the slightest verbal changes; and an amending act was usually thrown into the form of a subsequent article, without any attempt to arrange the several sections in their appropriate places. Even the misprints, errors in punctuation, and other defects of the session laws, (which were then most carelessly printed,) were reproduced with scrupulous fidelity. Conflicting sections were frequently allowed to remain, and in a few cases sections were omitted which had not been repealed. The additional matter was professedly arranged according to the plan of the Code; but with so little care as almost to obliterate that plan entirely, under the chaos of new subjects introduced by ten years of active legislation.

These remarks are made reluctantly, and only to explain and justify the course pursued: which was to disregard entirely the changes made by the Revision in the plan of the Code of 1851, and to make that Code, in its original form, the basis of our work. At first indeed the Revision was taken as a guide by the member of the commission who had these parts in charge, and a considerable amount of work done in adapting the later laws to its arrangement. But so soon as an attempt was made to put a chapter thus arranged into its final shape, omitting all the numbers, rubrics, foot-notes, etc., by which the relation of one section to another, and the meaning of both, are there determined, the fatal defects of the method adopted became evident. It was seen that almost every chapter of the Revision (except those taken without change from the Code) would have to be reconstructed, before it would be even intelligible without these extraneous aids. And the easiest way to do this was to go back to the Code of 1851, and to construct the present work from that Code and the Session Laws of 1851–1870.

This will explain the references given under each chapter in the following synopsis of Part First. These references, immediately following the rubric of the chapter, denote the sources from which it has been compiled. As a rule, the reference is given to an entire chapter of the Code, or act of the Session Laws, without any attempt

to designate the sections used or omitted, except in a few long and important acts, or in some cases where one or two sections only were taken from the Code. And every act is usually referred to which has given even a section or a clause to the new chapter. Any attempt to be more precise in these references would have greatly increased their bulk, without a proportionate addition to their value ; since in the vast majority of cases, a glance at the act will determine just what its contribution to the chapter has been.

Another advantage of this plan of composition is, that it shows the exact relative effect of each authority used in compiling the chapter. As these parts of the Revision were not re-enacted in 1860, a reference to that volume gives no information as to the date of the statute, except that it was passed somewhere from 1851 to 1860. But the Code of 1851, and the Session Laws, are the original source of the whole body of our statute law, and every reference to them fixes its own date and relative value with precision.

But to omit all references to the Revision would be very inconvenient, since that volume is much more generally accessible than the Code or the older statutes. It will be noticed, therefore, that the citations from the earlier authorities are accompanied by one in brackets, showing where the same matter may be found in the Revision.

Beside the references thus described, there will be found, under each chapter requiring it, some account of the changes that have been made in its arrangement or place, of the omissions in the new Code compared with the Revision, and the reasons for them, and finally, the amendments that we propose, involving any change in the law as it now stands. (The distinction between the amendments set out here, and those which have been made in the code itself, merely to conform it to the existing law, will be found explained in the General Report, p. 10.) Brief notes are added to these, giving our reasons for the recommendation. But from the nature of the case, these amendments are much fewer in these parts than in the codes of Civil and Criminal Practice, which follow them.

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

Chapter I. Of the Sovereignty and Jurisdiction of the State.

Code of 1851, chap. 1. Acts 6th General Assembly, chap. 218. (Rev ,§§ 1, 2, 3, 2197-8.)

Chap. 2. Of the General Assembly.

Code of 1851, chap. 2. Acts of 7th General Assembly, chap. 126. Acts of 1st General Assembly, chap. 77. (Rev., §§ 4-16, and 674-686.)

Acts of 11th General Assembly, chap. 3. Acts of 12th General Assembly, chap. 155.

Chap. 3. Of the Statutes.

Code of 1851, chap. 3. Acts of 8th General Assembly, chap. 119. (Rev., §§ 19-29, 161.) Of 11th General Assembly, chap. 118.

To this chapter we propose to add the following new sections, introducing a permanent rule as to the publication and distribution of the statutes:

SEC. —. Immediately after the adjournment of each session of the legislature, the Secretary of State shall prepare a manuscript copy of all the laws, joint resolutions and memorials passed thereat, arranging the same into chapters and dividing them into two series or parts: one of said parts to contain all the public laws of that session, and the other part to contain the private, local, and temporary laws, with the resolutions and memorials. The chapters of each part shall be numbered separately, in the order of their approval, and provided with marginal notes: and each part shall have a separate title-page and index, so that they may be bound either in separate volumes or together, as may be found convenient.

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

Note.—The public laws of each session must necessarily be very freely distributed all over the state, but there seems to be no reason why the same expense should be incurred for the private and local laws which now form more than half of every volume of the session laws. A comparatively small edition

of these would answer every purpose. Moreover, when the public laws are printed by themselves in a style uniform with the code, it will be possible to bind not only one, but two or three such editions with the code itself. If enough of the state's edition of the code is left in sheets for that purpose, it will be easy, after the session of 1874 and again after that of 1876, to issue a volume containing the entire general legislation of the state up to each period respectively, without any expense for revising or re-printing. After the session laws become too numerous to be treated thus, they may be bound in a separate volume, uniform with the code. We believe that if these provisions are approved by the legislature, and moderate care taken in carrying them out, the statute law of the state may be left unrevised for a quarter of a century, with less trouble and confusion resulting therefrom than has arisen in ten years of the old system, or want of system.

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

Note.—This section, with the preceding ones, is intended to simplify the whole process of reference to the statute law, and thus obviate the frequent mistakes produced by the present awkward and unsystematic method. Every public act, in the code, or subsequent to it, will have one number by which it can always be identified, though the session, date, and every other part of its description should be omitted. And, each new act bearing in its title a reference to this number of the act it modifies, there will be an easy and plain clue to the connection between different statutes.

SEC. —. The Secretary of State shall deliver the manuscript so prepared to the State Printer, and shall superintend the printing and binding of the laws as above directed. The number of copies to be printed and bound, and the time within which the same shall be completed, may be fixed by resolution of each General Assembly: or, in

case no such resolution be passed, shall be determined by the census board.

SEC. —. The Secretary of State shall distribute the public laws of each session in a book or pamphlet by themselves, as follows: Of copies bound in sheep, to the Librarian of each State and Territory, two copies; to the Governor of each State and Territory, one copy; to the Librarian of Congress, two copies; to the State University, to the State Agricultural College, to each Insane Asylum, to the Institution for the Blind, to that for the Deaf and Dumb, to the State Reform School, to each of the Iowa Soldiers' Orphans' Homes, to the Penitentiary, to the State Agricultural Society, two copies; to the Library of the Law Department of the State University, twenty copies; to the State Library, fifty copies; to the State Historical Society, eighty copies; to each state officer and to each newspaper publisher in the state, one copy; to each officer and member of the General Assembly for that session, two copies; to each Supreme, District, and Circuit Judge, one copy. Of the copies in paper with cloth backs, eighteen thousand shall be distributed to the several counties in the ratio of their population, and delivered to the County Auditor, who shall deliver one copy to each supervisor or officer of the county, each township trustee, clerk, and assessor, each justice of the peace and constable; and shall retain the remainder for sale, at a price to be fixed by the legislature or census board.

Note.—This is substantially sections four and five of chapter 31, Laws of 12th General Assembly, which was also adopted by the 13th General Assembly as the rule for distribution of their session laws. Some few changes are made. We have prepared no directions as to the distribution of the private laws, leaving this to be determined by each General Assembly according to circumstances.

Chap. 4. Of the Code and its Operation.

Code of 1851, ch. 4. (Rev., §§ 30–38.)

This important chapter is intended to determine the effect of the new Code upon the existing legislation of the state, and to prevent any awkward questions from arising out of the substitution of a new body of law for that now in force. But for that purpose we can not do better than to offer chapter 4 of the Code of 1851, which served precisely the same purpose when that Code was adopted—a case, as shown in our general report, precisely similar to the present. Its re-enactment will of course give it exactly the same force, from its

date in 1872, that it had in the old Code, from its date in 1851. It has been fully tested by long usage, and approved by judicial interpretation, and thus has an advantage that no new form of words could possess, however skillfully devised, for the same purpose.

We have, however, omitted Section 36, of the Code of 1851, (Rev., § 39) which gave that Code preference over all general statutes of the same session without regard to priority of date. We see no good reason for departing from the usual rule that the later act modifies the earlier. In providing for the publication of the new Code, and the other laws of the session, the Legislature will of course take care that the latter are properly incorporated in and made a part of the former, and all numbered and indexed together. More than this seems unnecessary. It may be a great convenience, too, to pass the Code without waiting to settle every possible amendment, with the intention of amending it by a separate act ; and that section would interfere with this if retained.

We hesitated for a long time what name to adopt for the body of law prepared by us, and now referred to in this report as "The Code." Either Code, or Revision, or Revised Statutes, would be a proper appellation. The notion that a "Code" must properly be made out of unwritten law has gained ground of late, because several much-talked-of codes are of that description. But the usage of at least fifteen centuries has settled the meaning of the word as denoting any body of law, especially one of statute law, in a methodical form ; while Revision denotes more properly, as it did with us in 1860, a mere re-shaping or re-editing of matter already codified. But the controlling reason with us for selecting "Code" at last was one of pure convenience. In nine cases out of ten, where the word is used for some years to come, it will be used in contradistinction from the body of law immediately before it in use ; and, that being known as the Revision, the new one only need be called the Code to distinguish it easily and perfectly.

It will of course be necessary to fix the time when this new Code must go into operation, since it is very doubtful whether the volume could be prepared and distributed soon enough after the session to allow the general rule to apply. The time given should be long enough to allow of careful work in every step of its preparation ; but it is

rather to call attention to the matter, than from any reason to be given for the particular date, that we propose as an additional section to this chapter the following :

SEC. 10. This Code shall take effect on the first day of January, A. D., 1873.

TITLE II. OF THE EXECUTIVE DEPARTMENT.

Chapter 1. Of the Governor.

Code of 1851, ch. 5. Acts of 8th G. A., ch. 151. (Rev., §§ 44, 45, 57.) Acts of 10th G. A., ch. 85.

All provisions respecting the salary or fees of this and other offices are omitted, to be placed together in the chapters on that subject prepared by Mr. Seevers.

Sections 46–56 of the Revision are transferred to the chapter on Removal and Suspension from office. Rev., sec. 43, is superseded by the Constitution of 1857.

Chap. 2. Of the Secretary of State.

Code of 1851, ch. 6. (Rev., ch. 6, Article 2, is superseded by later legislation, to be found in other chapters. Rev., section 62, will also be superseded if the amendments we propose to Title I, ch. 3, are adopted.) Acts of 11th Gen. Ass., ch. 81.

Chap. 3. Of the Auditor of State.

Code of 1851, ch. 7. (Rev., §§ 71–81.) Acts of 9th G. A., ch. 172, § 93; and ch. 173, § 8.

Chap. 4. Of the Treasurer of State.

Code of 1851, ch. 8. Acts of 8th G. A., ch 164, §§ 96–7. (Rev., §§ 83, 91, and 806–7.) Acts of 10th G. A., ch. 9, and ch. 66.

Chap. 5. Of the State Land Office, and the Register thereof.

Acts of 5th Gen. Ass., ch. 153. Acts of 8th Gen. Ass., ch. 4 and 5. (Rev., sections 92–100 and 108.) Acts of 9th Gen. Ass., ch. 56. Acts of 10th Gen. Ass., ch. 103. Acts of 11th Gen. Ass., ch. 30. Acts of 12th Gen. Ass., ch. 3, and ch. 10. (Rev., ch. 9, article 2, is understood to be obsolete as well as several sections of Art. 1; and all sections relating specifically to the D. M. Improvement Lands have been omitted as local.)

Chap. 6. Of the Census Board, and Board of Immigration.

Acts of 7th G. A., ch. 138. (Rev. ch. 48.) Acts of 13th G. A., ch. 34.

Chap. 7. Of duties assigned to two or more officers jointly; and general regulations.

Acts of 4th G. A., ch. 102. Acts of 5th G. A., ch. 163. Acts of 8th G. A., ch. 106, ch. 60. (Rev. §§ 2169-70, 2172-6, 2180-4, 214-16.) Acts of 9th G. A., ch 46. Acts of 10th G. A., ch. 30, 114. Acts of 12th G. A., ch. 93.

Chap. 8. Of the State Printer.

Acts of 2d G. A., ch. 17. Acts of 5th G. A., ch. 90. Acts of 6th G. A., ch. 223 Acts of 4th G. A., ch. 102. Acts of 8th G. A., ch. 126. (Rev., §§ 133-159, 2170 2177-8.)

Chap. 9. Of the State Binder.

Acts of 5th G. A., ch. 5. (Rev., §§ 163-175.) Acts of 12th G. A., ch. 96.

TITLE III. OF THE JUDICIAL DEPARTMENT.

This is a new title. It enables us to bring together the provisions relating to a number of officers, whose duties are closely connected, but were formerly scattered in different and often inappropriate places. To make the system complete, the organization of the courts should have been placed here also; but it was thought best to leave this in Part III, where it always has been.

Chap. 1. Of the Supreme Court Reporter.

Acts of 10th G. A. ch. 22, ch. 33. Acts of 11th G. A. ch. 20 and ch. 89 Acts of 12th G. A. ch. 52, ch. 161. (Rev. ch. 10 is entirely superseded by the above legislation.)

Chap. 2. Of the Attorney-General.

Acts of 7th G. A. ch. 104. (Rev., §§ 124-8, 130-1.)

Chap. 3. Of the District Attorneys.

Acts of 7th G. A., ch. 102. (Rev., §§ 374-379.)

Chap. 4. Of the Clerk of the Supreme Court.

Code of 1851, ch 91. (Rev., §§ 2647-52.) Acts of 11th G. A., ch. 88.

Chap. 5. Of the Clerk of the District and Circuit Courts.

Code of 1851, ch. 16. Acts of 9th G. A., ch. 26. (Rev., ch. 23. Articles and 3 are transferred to the chapter on fees above mentioned.) Acts of 12th G. A., ch. 86, § 10, ch. 134, § 2.

Chap. 6. Of the Administration of Oaths.

Code of 1851, ch. 63. (Rev., §§ 1843–4.) This chapter is introduced here in order to bring together all the provisions of our statutes on the subject.

Chap. 7. Of Commissioners in other States.

Acts of 13th G. A., ch. 44. (Supersedes Rev. ch. 15, and all other provisions respecting these officers.)

Chap. 8. Of Notaries Public.

Code of 1851, ch. 10. Acts of 5th G. A., ch 158. Acts of 12th G. A., ch. 60, and Joint Resolution No 21. (Rev, ch. 16. Article 3 is transferred to the chapter on Notes and Bills in Part II.)

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

In the Code of 1851 and Revision, this title was headed "Of the Civil and Political Divisions of the State and the Officers thereof." But the only general statutes affecting Congressional, Judicial, and Legislative Districts we are expressly directed to omit. On the other hand we have introduced here the chapter on Municipal Corporations which is strictly a part of the same subject. The above title is therefore not only briefer but more accurate than the former.

Chap. 1. Of Counties.

Code of 1851, ch. 14. Acts of 8th Gen. Ass., ch. 27 and ch. 84. Acts of 9th G. A., ch. 49, ch. 87. Acts of 9th G. A. Extra Session, ch. 34. Acts of 10th G. A., ch. 95. Acts of 13th G. A., ch. 54. (Nearly all of Rev. ch. 21 is superseded by later legislation. Sections 221, 223 are still in force. Section 226–230, on unorganized counties, will no doubt be obsolete before this code is printed, as only two counties remain unorganized at the time of this report. Article 2 is entirely superseded by 9th G. A., ch. 49, referred to above. We have transferred to this chapter sections 1345 6, and 2186–8, from other parts of the Revision.)

Chap. 2. Of the Board of Supervisors.

Code of 1851, ch. 15, §§ 114–124. Acts of 6th G. A., ch. 193. Acts of 8th G. A., ch. 46.

Acts of 10th General Assembly, chapter 60.

Acts of 11th General Assembly, chapter 118, § 3, and chapter 87.

Acts of 13th General Assembly, chapters 38 and 148.

(Rev. ch. 22. Most of article 1st, and all of articles 2, 3, 4, 5, 12, 13, 14, 16, we regard as obsolete, or superseded by later legislation. Article 15 is transferred to the chapter on elections, and article 8 to the next chapter.)

Chap. 3. Of the County Auditor.

Acts of 12th G. A., ch. 160, and of 13th G. A., ch. 146. Acts of 8th G. A. ch. 46, §§ 18–21. Acts of Extra Session, 8th G. A., ch. 2. Acts of 6th G. A. ch. 228.

Chap. 4. Of the County Treasurer.

Code of 1851, ch. 17, §§ 152–161. Acts of 9th G. A., ch. 168. Acts of 10th G. A., ch. 129.

(Rev. ch. 24. In this and the following chapters almost every section contains one or more changes of official title, the result of changes in the system of county government or of courts. We have not thought worth while to burden this report with references to the acts which are the authority for each particular change.)

Chap. 5. Of the County Recorder.

Code of 1851, sec. 159. (Rev. § 358.) Acts of 10th G. A. ch. 129.

To the second section of this chapter, (corresponding to sec. 8 of ch. 129 of the Acts of the 10th General Assembly,) we propose to add the following proviso:

Provided, That when the County Recorder is also County Auditor, he shall be ineligible to the office of County Treasurer.

Note.—The present state of our law on this subject is an example of the curious results sometimes reached by the adoption of changes without any uniform plan. By sec. 162 of the Code (Rev., § 368) a number of different officers are precluded from holding the office of county recorder. The real purpose of the act was to keep them from controlling the county treasury, the recorder being then treasurer by virtue of his office. As it now stands the section is utterly purposeless; but by sec. 7, of Ch. 161, of 12th G. A., the county recorder is expressly made eligible to the office of auditor, as he is by the section we propose to amend to that of treasurer. The result, therefore, is that the law expressly sanctions the union of the offices of auditor and treasurer in one person—being the two which of all it is most important to keep separate as checks on each other. Perhaps the best plan would be to make the substance of this amendment an independent section and repeal all the rest. Under the present rules of party conduct there is very little practical danger that two paying offices will at any time be united in the hands of a single individual.

Chap. 6. Of the Sheriff.

Code of 1851, Chap. 19. (Rev., ch. 26) Acts of 11th G. A., ch. 5. Acts of 12 G. A., ch. 86, sec. 10.

Chap. 7. Of the Coroner.

Code of 1851, ch. 20. (Rev., ch. 27.)

The following amendment, the reason of which will be obvious, is proposed to the second section of this chapter (corresponding to Rev., § 394):

Insert after the words, "on the part of the Sheriff," the following: "Or that the Sheriff and his deputy are absent from the county and are not expected to return in time to perform the service needed."

Chap. 8. Of the County Surveyor.

Code of 1851, ch. 21. Acts of 5th G. A., ch. 21. Acts of 13th G A., ch. 183. (Rev., ch. 28.)

The chapter immediately following, (Code, ch. 22, Rev., ch. 29,) treating of the salary and fees of county officers, is transferred, with all other provisions on the same subject, to the general fee-bill, to be placed in another part of the volume. It is believed that this arrangement will be the most convenient one for reference, and also that the frequent amendments necessary to be made in such provisions will cause less confusion there than if they are scattered through the book. The only class of exceptions to this rule is where the amount of fees is so connected with the provisions relating to the services to be performed, that they cannot be separated, nor the whole transferred to the fee bill without much repetition.

Chap. 9. Of Townships and Township Officers.

Code of 1851, ch. 23. Acts of 8th Gen. Assembly, ch. 164, sec. 16. (Rev., secs. 441–458.)

Acts of 9th General Assembly, ch. 80, ch. 73. Acts of 11th General Assembly, ch. 107. Acts of 12th General Assembly, ch. 137. Acts of 13th General Assembly, ch. 89.

Chap. 10. Of Incorporated Towns and Cities.

We have transferred to this place the long chapter on this subject, with its many amendments and additions. Their connection with

the title of corporations is merely a nominal one, while they form an integral and important part of the system of local government established in the state, and to which the present title is devoted. The fundamental law of these corporations begins with chapter 157 of the Acts of 7th General Assembly, to be found in Revision, chapter 51 ; the whole of chapter 42, of the Code of 1851, having been long superseded. It is an exceedingly verbose, clumsily drawn statute, and the various amendments to which it has been subjected have left the whole matter in great confusion. We have done as well with it as the time allowed us permitted ; but the state law of municipal corporations will hardly be in satisfactory shape, while so many anomalous special charters and special provisions are allowed to remain. Whether any important interests are served by leaving these special charters untouched, the Commission have hardly the means of judging ; being convinced, however, that, if it is possible to do away with them all, and substitute one uniform law for all municipal corporations of the same class throughout the state, it is certainly desirable to do so, the Commission have prepared an amendment for that purpose, which will be found below.

The statutes from which this chapter has been prepared are the following :

Acts of 7th General Assembly, ch. 105, 108, 157. (Rev., secs. 1030-1146.)
Acts of 8th General Assembly, ch. 111.
Acts of 9th General Assembly, ch. 80, 97. Ex. sess. 9th G. A., chs. 8 and 25.
Acts of 10th General Assembly, ch. 25, 127.
Acts of 11th General Assembly, ch. 69, 142, 34, 107.
Acts of 12th General Assembly, ch. 61, 80, 111, 154, 166, 188.
Acts of 13th General Assembly, ch. 12, 14, 45, 59, 65, 80, 81, 84 179.

The amendment above referred to is as follows :

SEC.— From and after the first Monday of March, A. D. 1873, all special charters heretofore granted to any city or incorporated town shall be repealed ; and all cities and incorporated towns within the State of Iowa shall be governed by the provisions of this chapter.

Note.—If adopted, this amendment will be a substitute for all but the first clause of sec. 1, and for the concluding sections of the chapter as contained in the reported Code.

Chap. 11. Of Villages and Village Plats.

Code of 1851, ch. 141. Acts of the 4th General Assembly, ch. 88. Acts of 6th General Assembly, ch. 73, ch. 131. Acts of 8th General Assembly, ch. 56. (Revision, secs. 1016–1029, 2190-2192). Acts of 9th General Assembly, ch. 30, ch. 78.

TITLE V. OF ELECTIONS, QUALIFICATIONS FOR OFFICE, ETC.

Chap. 1. Of the Election of Officers and their Terms.

This chapter corresponds generally with chap. 31 of the Revision, (ch. 159 of the Acts of the 7th Gen. Assembly,) introducing the changes made by the different acts since that time. These acts are numerous, but are all referred to in other parts of this report for their several chief purposes, so that it would be of no use to enumerate them here, where the only change made by them is in the insertion or omission of an officer's title.

Chap. 2. Of Registration of Voters.

Act of 12th General Assembly, ch. 171, as amended by ch. 174 of 13th General Assembly.

Chap. 3. Of the General Election.

Code of 1851, ch. 25 and 28. Acts of 8th General Assembly, ch. 122. (Rev., secs. 333–5, 479–528, 547–8.)

Acts of 9th General Assembly, ch. 23, 36, 89.

Acts of 10th General Assembly, ch. 29.

(Chapter 33 of the Revision is superseded by this last cited act. Chapter 35 of the Revision is also embodied in this chapter.)

Chap. 4. Of Electors of President and Vice President.

Code of 1851, ch. 27. (Revision, ch. 34.)

Chap. 5. Of Qualification for Office.

Code of 1851, ch. 29. (Revision, ch. 37.) Acts of 9th General Assembly, ch. 25.

The changes in this chapter are numerous, and the same remark applies to them as is made in the note above to Chap. 1 of this title.

Chap. 6. Of Contesting Elections.

Code of 1851, ch. 30. Acts of 7th General Assembly, ch. 159, §§ 29–31. (Rev., §§ 569-626.) Acts of 10th General Assembly, ch. 34.

It is a difficult question who is by law the presiding judge of the court for the trial of a contested county election, since the county judge's office was abolished. An argument may be made for either of three persons, the Circuit Judge, County Auditor, and Chairman of the Board of Supervisors. On the whole, there seemed to be fewer objections to the last construction than either of the others. Several other minor questions as to the constitution of the court are also affected by this. The Circuit Court has been substituted for the District Court, as the appellate tribunal, as being the general court of appeal from inferior tribunals in civil cases. The whole chapter is a good illustration of the difficulty we have found in exercising the power given us to "adapt the statutes to the form of county government and system of courts as fixed by law," without making substantial changes in it, that may in some cases be important. Yet there is not a single section in the chapter where any other phraseology could be adopted than the one we have used without laying ourselves open to a still better founded charge of innovation.

Chap. 7. Of Removal and Suspension from Office.

Code of 1851, ch. 31, 32. Acts of 7th General Assembly, ch. 160. Acts of 8th General Assembly, ch. 102. (Rev., §§ 628–641, and 46–56.)

Chap. 8. Of Deputies.

Code of 1851, ch. 33. (Rev., §§ 642–648.) Acts of 5th General Assembly, ch. 21. Acts of 6th General Assembly, chap. 146, § 1, 2. Acts of 12th General Assembly, ch. 115, 134.

Chap. 9. Of Additional Security and the Discharge of Sureties.

Code of 1851, ch. 34. Acts of 5th General Assembly, ch. 97. (Rev., §§ 649–661.)

Chap. 10. Of Vacancies and Special Elections.

Code of 1851, ch. 35. Acts of 7th General Assembly, ch. 159, §§ 26, 33, 35. Acts of 8th General Assembly, ch. 146, § 11. (Rev., secs. 662–673, 312 subd. 19.)
Acts of 9th General Assembly, ch. 54–88.
Acts of 10th General Assembly, ch. 69.
Acts of 11th General Assembly, ch. 137, 138.
Acts of 13th General Assembly, ch. 47, 148, sec. 6.

(*Ch. 43* of the Revision is transferred from the end of this title to ch. 2 of Title I. As an election by the legislature, its provisions

have no analogy with those of this title, but belong properly with other matters pertaining to the General Assembly.)

TITLE V of the Code and Revision is omitted as useless. Its only contents in force relate to the State Library, and are transferred to Title XII of this Code.

TITLE VI. OF THE REVENUE.

Chap. 1. Of the Assessment of Taxes.

Code of 1851, §457, Acts of 8th General Assembly, ch. 145, and ch. 164, §§ 1–43 (Rev. §§710–753, and 818.)

Acts of 8th General Assembly, extra session, ch. 24

Acts of 9th General Assembly, ch. 31, 110, 173; extra session, 9th General Assembly, ch. 8.

Acts of 10th General Assembly, ch. 26, 79, 124.

Acts of 11th General Assembly, ch. 87, 104, 61, §9, 10.

Acts of 12th General Assembly, ch 75, 92, 138, §38, 153.

Acts of 13th General Assembly, ch. 89, 100, 106, 138, 181, 187.

The amendments proposed to this chapter are as follows:

(*a*) Change subdivision 4 of section 711 as the same is numbered in the Revision, being sec. 3 of this chapter, so that the last clause shall read thus:

"Such opinion being *in all cases reported* to the board of equalization, and subject to reversal by them."

As the law now stands the power of the assessor to remit taxes on the ground of age or infirmity is practically absolute, since there is nothing to require his action in this respect to be reported to any one, or to appear in any shape on his books, and the parties whose taxes are remitted are not likely to call attention to it.

(*b*) Change section 722 of the Revision, being sec. — of this chapter as reported in the new code, so that the first line thereof shall read:

"In making up the amount of *personal property*, money and credits."

There seems to be no just reason why a person should pay taxes on more than the net value of his personal estate, whether it consist of goods and chattels or of money at interest and other credits. The present rule seems to be unfair to the very class who feel most the

burden of taxation. A man in trade or professional life usually has a considerable amount of his available means trusted out, and therefore can always take advantage of the clause as it now stands to the full amount of his debts. But a farmer or laboring man has no occasion to accumulate money or credits in the regular course of business, and therefore it is only the wealthier who do so. Those in moderate circumstances, having all their means in stock, horses,farm implements, and other tangible property, must pay full taxes on its value, although they may be in debt for the full price of it, or to an equal amount.

(*c*) Add to sec. — of this chapter, being sec. 721 of the Revision, this clause:

"Money loaned on tax-paying real estate in this state, need not be listed."

There seems to be no reason why a mortgaged farm should pay two taxes, one on the land itself, and the other on the money secured and represented by it. And every one who understands the subject knows that it is virtually the borrower who pays both taxes; that of the lender being always represented in the average rate of interest. This is one reason why it is better to remit the tax from the money than from the land: the other being that the tax given up will thus be the one most easily and frequently evaded, and thus will involve least loss to the revenue.

Chapter 2. Of the Collection of Taxes.

Acts of 8th General Assembly, ch. 164, sections 44 and 82; ch 98. (Rev., sections 754–792, 810–1.)

Acts of 8th General Assembly, extra session, ch. 24
" 9th " " ch 173, 168.
" 10th " " ch. 43, 100, 115.
" 11th " " ch. 27, 103.
" 12th " " ch. 75, 140, 190
" 13th " " ch. 90, 138.

We propose to amend ch. 168 of the Acts of 9th Gen. Assembly, constituting secs. —— of the code as reported, so that the same shall read as below. It will be seen that the amendment is simply an extension of the principle of that act to all cases, with a more

efficient sanction; and the reasons for its adoption will be understood without statement here.

SEC. — The county treasurer shall certify in writing the entire amount of taxes and assessments due upon any parcel of real estate, and all sales of the same for unpaid taxes or assessments shown by the books in his office, with the amount required for redemption from the same, if still redeemable, whenever he shall be requested so to do by any person having any interest in said real estate, and paid or tendered his fees for such certificate, at the rate of fifty cents for the first parcel in each township, incorporated town, or city, and ten cents for each subsequent parcel in the same township, town, or city. Each description in the tax-list shall be reckoned a parcel in computing the amount of such fees.

SEC. — Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax-sales therein mentioned, shall be conclusive evidence for all purposes and against all persons, that the parcel of real estate in said certificate and receipt described, was at the date thereof free and clear of all taxes and assessments, and sales for taxes or assessments, except sales whereon the time of redemption had already expired, and the tax-purchaser had received his deed.

SEC. — For any loss resulting to the county, or any subdivision thereof, or to any tax-purchaser, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond.

Note.—The difficulty of ascertaining whether a given piece of real estate is absolutely clear of taxes and tax-sales increases with every year, and must eventually become a serious obstruction to transfers of property, unless some means like the foregoing can be found to enable the purchaser to make his position secure. As between private individuals, if an intending purchaser goes to the holder of an incumbrance, or his authorized agent, and obtains a statement of the incumbrance, and then settles with his vendor on that basis, the incumbrancer will afterward be equitably stopped from claiming a greater amount, or setting up a claim conflicting with his previous statement. In justice, the state or county should be bound by the same rule ; and as the risk of loss from an error must in any event fall on some one, it seems properly to fall on the officer whose duty it is to see that no errors are committed. But besides this it is believed that

the fees allowed for the certificate, while in each instance a mere trifle compared with the security afforded, in the aggregate will prove a reasonable compensation to the treasurer for the extra trouble required and the risk incurred ; and having this in view it will obviously be proper that provision be made in the proper place for giving these fees to the treasurer himself, even when his other fees belong to the county.

Chap. 3. Provisions for the Security of the Revenue.

Acts of 8th General Assembly, ch. 164, secs. 83–95. (Rev., sections 793–805.)
" 11th " " ch. 6, ch., 14.

(Sections 806, 807 of the Revision have been transferred to chap. 4 of Title II, "Of the Treasurer of State." Sections 808, 809, with the whole of Articles 3 and 4 of ch. 45 are regarded as obsolete.)

TITLE VII. OF ROADS, FERRIES, AND BRIDGES.

It seemed best to unite with this title, as originally framed in the Code of 1851, Chapter 45 (of Title XI) of that Code, containing the provisions respecting the granting of licenses for ferries, bridges, etc. All these topics come under the cognizance of the same boards, officers, etc., in most cases, and it will suit their convenience to find them together. Indeed, the first hint of the change was derived by us from the handy little manual of the road laws, compiled last year for the use of the above by the Secretary of State and Attorney General, under the direction of ch. 86, Acts of 13th G. A.

Chapter 47 of the Revision, added by the revisers to the original Title VII, as found in the Code of 1851, contained all the laws relating to swamp lands, from 1851 to 1860, arranged chronologically and covering fourteen pages. These and the subsequent acts on the same subject we have omitted. Most of them are obsolete ; and what remain in force are only of local interest, and are therefore excluded from the plan of this Code.

Chap. 1. Of the Opening of Roads, etc.

Code of 1851, ch. 38; Acts of 6th General Assembly, ch. 130; Acts of 7th General Assembly, ch. 149; Acts of 8th General Assembly, ch. 78 (Rev., §§ 819–879, 913-916.)

Acts of 9th General Assembly, ch. 112, 141.
Acts of 12th " " ch. 47, 110, 148.
Acts of 13th " " ch. 180.

We propose to amend Secs. 824 and 869 of the Revision, (Secs. ——, —— of this chapter of the reported Code), by adding to each of such sections the following words :

"And a copy of such notice shall be served on each owner or occupant of land lying in the proposed road or abutting thereon, who resides within the township, in the manner provided by law for the service of original notice in actions at law."

Note.—This seems adapted to prevent the cases of fraud and surprise in road proceedings, of which there have been so many complaints; and we think it the most convenient and least troublesome or costly method that will prove effectual for that purpose.

We propose also the following as an additional section, to follow the section now designated as Rev., § 915.

SEC. — Within one year after this code goes into effect, the auditor of each county shall cause every road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and known as the road plat-book. Each township shall be platted separately, on a scale of not less than four inches to the mile. It shall also be the auditor's duty to have all changes in, or additions to, the roads of the county, legally established, immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found.

Note.—Such plat-books as these are kept in some counties, and found very useful. But changes in them are so easily made, and apt to escape detection, that they should always be under the care of some officer responsible for their safe-keeping and accuracy. If only as a guide to the files of road-papers, they will be well worth their cost.

Chap. 2. Of Working the Roads.

Acts of 7th General Assembly, ch. 154. (Rev. sections 880-910.)
Acts of 9th General Assembly, ch. 51, 90, 96.

Acts of 10th General Assembly, ch. 76.
Acts of 12th General Assembly, ch. 76, 100.

Chap. 3. Of Plank Roads.

Acts of 9th General Assembly, ch 61.

Chap. 4. Of Ferries and Bridges.

Code of 1851, ch. 45. Acts of 5th General Assembly, ch. 99. Acts of 7th General Assembly, ch. 93. (Rev., sections 1200--1260.)
Acts of 10th General Assembly, ch. 130.
Ats of 12th General Assembly, ch. 145.
Acts of 13th General Assembly, ch. 84.

TITLE VIII. OF THE MILITIA.

Chap. 1. Organization and Discipline.

Code of 1851, ch. 40, secs. 621-2, 628; Acts of 10th General Assembly ch. 84, ch. 105; Acts of 11th General Assembly, ch. 48, 122; Acts of 12th General Assembly, ch. 68; and Constitution, Art. VI, sec. 1.

All the sections of the Revision on this subject, §§ 1002–1013, appear to be superseded by the Act of 1864, except §§ 1002, 1003, 1009. Section 1003 has been modified by substituting "Adjutant-General" for "Secretary of State," in order to conform to the Federal law. Act of Congress 2 Mar. 1803, Vol. 2, p. 207.

TITLE IX. OF CORPORATIONS.

This is Title X of the Code of 1851 and Revision, the original Title IX having been transferred to form a part of our Title IV, as already explained. Three new chapters have been added from Title XII.

Chap. 1. Of Corporations for Pecuniary Profit.

Code of 151, ch. 43. Acts of 7th General Assembly, ch. 85. Acts of 8th General Assembly, ch. 124. (Rev., secs. 1150--1185, 1338.)
Acts of 12th General Assembly, ch. 173, sec. 26.
Acts of 13th General Assembly, ch. 172.
Rev. secs. 1182–4, are regarded as obsolete.

Chapter 2. Of Corporations not for Pecuniary Profit.

Code of 1851, ch. 44. Acts of 5th General Assembly, ch. 93. Acts of 7th General Assembly, ch. 131. (Rev., secs. 1187-1199.)
Acts of 10th General Assembly, ch. 12.
Acts of 13th General Assembly, ch. 151, 172.

Chap. 3. Of the State and County Agricultural Societies.

Acts of 6th General Assembly, ch. 188. (Rev., secs. 1697–1713.)
Acts of 10th General Assembly, ch. 109.
Acts of 11th General Assembly, ch. 128.
Acts of 12th General Assembly, ch. 136.

Chap. 4. Of Insurance Companies.

Chap. 138 of 12th General Assembly, amended by chap. 108 of 13th General Assembly.

Chap. 5. Of Life Insurance Companies.

Chap. 173, of 12th General Assembly.

TITLE X. OF INTERNAL IMPROVEMENTS.

This title corresponds to Title XI of the Code of 1851 and Revision. Articles 1, 2, and 3 of chap. 54 of Revision have been transferred to Title VII, for reasons given under that title. Articles 2 and 5 of chap. 55 have been omitted as private acts and to a large extent obsolete: and Article 8 is transferred to the chapter on counties, Art. IV, ch. 1.

Upon the principal subjects contained in this title, there has been a great deal of important recent legislation, the exact force of which has not yet been settled by judicial decision. We have therefore been very cautious even in verbal amendments, confining ourselves strictly to an orderly statement of the existing law. Had we set about suggesting any amendments whatever to the substance of the law, they would probably have been too radical and extensive to be accepted without much discussion, even if the Commission themselves had fully agreed in the recommendation.

Chap. 1. Of Mill-Dams and Races, and of Drainage.

Acts of 5th General Assembly, ch. 92, (Rev., §§ 1264–1277.)
Acts of 10th General Assembly, ch. 31, 37, 91.
Acts of 11th General Assembly, ch. 119, 66.
Acts of 13th General Assembly, ch. 159.

Chap. 2. Of taking private property for works of internal improvement.

Code of 1851, ch. 46. Acts of 4th General Assembly, ch. 31. (Rev., §§ 1278–1298 and 1314–1331.)
Acts of 12th Gen. Ass., ch. 117, 145, 189.
Acts of 13th Gen. Ass., ch. 62, 91, 125.

Chap. 3. Of Railways and their management.

Acts of 5th General Assembly, ch. 159, and ch. 128, § 1, Acts of 7th General Assembly, ch. 85. (Rev., §§ 1332-4, and 1339–42.)

Acts of 9th Gen. Ass., ch. 158, 159, 169.
Do 10th " " ch. 20, 44, 86, 130.
Do 11th " " ch. 102, 113, 144.
Do 12th " " ch. 42, 79, 172.
Do 13th " " ch. 102, 121, 139.

Chap. 4. Of Telegraphs.

Code of 1851, ch. 47, (Rev. §§ 1343–1353.
Acts of 13th General Assembly, ch. 100.

TITLE XI. OF THE POLICE OF THE STATE.

This corresponds to Title XII of the Code and Revision, and we have retained the familiar heading, which becomes more appropriate by the changes made in the contents. In the Revision some singular subjects were classified here : Banking, Insurance, Agriculture, and the Agricultural College. Chapters 65 and 66, containing the Banking Laws, disappear entirely from the statute book. Chapter 67 has been divided. Articles 1 and 2, relating to agricultural societies, will be found in Chap. 3 of Title IX ; Article 3, of the Agricultural College, in Chap. 3 of Title XII, with other institutions of learning. Articles 4 and 5 have been superseded by later legislation. Chapter 68, of Insurance, is superseded by the acts constituting Chapters 4 and 5 of Title IX. Chapter 59 is nearly all superseded by Chap. 2 of the new Title ; Article 3 of the former chapter has been transferred to the chapter on Husband and Wife, and Sections 1449–1457 to the Chapter on Guardianship, both in Part II. Chapter 70, of Hedges, relating entirely to private rights, is also transferred to Part II.

Chap. 1. Of the Settlement and Support of the Poor.

Code of 1851, ch. 48 (Rev., §§ 1355-1415.)
Acts of 10th General Assembly, ch. 40.
Acts of 12th General Assembly, ch. 95.

Chap. 2. Of the Care of the Insane.

Acts of 7th General Assembly, ch. 141, §§ 34 and 51–58. (Rev., §§ 1442 and 1458–65.)

Acts of 11th General Assembly, ch. 132.
Acts of 13th General Assembly, ch. 109, 131.

Chap 3. Of Domestic and Other Animals.

Code of 1851, ch. 53 and 54. Acts of 8th General Assembly, ch. 14. (Rev., §§ 1548–57 and 2193–5.)
Acts of 9th General Assembly ch. 102, ch. 76, § 9. Acts of extra session, 9th General Assembly, ch. 20, § 3.
Acts of 10th General Assembly, ch. 65.
Acts of 12th General Assembly, ch. 144.
Acts of 13th General Assembly, ch. 24, 26, 176, §§ 4, 9, 10.

Chap. 4. Of Fences.

Code of 1851, ch. 52. Acts of 4th General Assembly, ch. 105. Acts of 6th General Assembly, ch. 235. (Rev., §§ 1526–1547.)

Chap. 5. Of Lost Goods.

Code of 1851, § 890. Acts of 4th General Assembly ch. 104. (Rev., §§ 1504–1521.)

(So much of this act [Rev., ch. 60, Art. 2] as relates to estrays, was repealed by ch. 102 of 9th G. A., which will be found incorporated in chap. 3 of this Title. Art. 3 of the same chapter of the Revision was repealed by ch. 65 of 10th G. A., also to be found in chap. 3, above.)

Chap. 6. Of Intoxicating Liquors.

Acts of 5th G. A., ch. 45. Acts of 6th G. A., ch. 157. Acts of 7th G. A., ch. (Rev., secs. 1559–1587.)
Acts of 9th General Assembly, ch. 47, 94.
Acts of 12th General Assembly, ch. 86, sec. 3, ch. 128, 154.
Acts of 13th General Assembly, ch. 82.

We have endeavored to reduce the above acts to a single harmonious whole, making no change other than verbal ones, except the necessary substitution of "circuit" court or judge for "county." But we now propose, as an amendment to the Act reported, that the words "Circuit Court," "Circuit Judge, and clerk" be struck out from all the sections relating to the granting of a license, being secs. 4, 6, 7, 8, 10, 12, of the new chapter, corresponding substantially with Rev. §§ 1575–6, and the amendments thereto, and that the

words "Board of Supervisors," or "County Auditor," respectively, as the case may be, be substituted therefor. The force of this amendment will be at once apparent, and to print at length the sections named, merely to introduce these words, would be to burden this report with needless matter. This amendment has been suggested to the Commission by several persons familiar with the working of the law. The arguments in favor of the change will be obvious, and no strong objection to it has occurred to our minds. The matter has been ably stated in a few words by one of the Circuit Judges, writing to the chairman of the Commission:

"I think the experience of every Circuit Judge in Iowa will coincide with mine as to the inexpediency of imposing upon them the exercise of this function. The persons composing the Boards of Supervisors are usually better acquainted with the wants and wishes of the people of their respective counties than the Circuit Judge. In addition, the granting, or refusing to grant a permit, often engenders feelings of animosity on the part of the disappointed, to such an extent as to affect or cripple the Judge in the performance of his other and more legitimately judicial duties."

Chap. 7. Of Fire Companies.

Acts of 6th G. A., ch. 156. Acts of 7th G. A., ch. 48. (Rev. secs. 1763–8.)
Acts of 13th General Assembly, ch. 18.

Chap. 8. Of Illegitimate Children.

Code of 1851, ch. 49. (Rev. secs. 1416–24).
Acts of 10th General Assembly, ch. 75.
Acts of 13th General Assembly, ch. 153.

We leave this chapter in the same title where it has remained for twenty years, though we regard it as more properly coming within the field of Part IV. It is understood that the chapter has never worked well, and that prosecutions under it have been few. At present it is in a very anomalous shape, the Circuit Court having jurisdiction in the first instance, with an appeal from that to the District Court. One or the other of these provisions should certainly be changed, and the amendment we suggest gives original jurisdiction to a justice of the peace.

(*Title XIII* of the Code of 1851 and the Revision, "Regulations pertaining to Trade," has been transferred to Part Second, and forms the second title thereof in the reported code. The reasons for this change have been stated in the General Report (*Ante*, p. 16). A single chapter, that on "Oaths and Acknowledgments," has been taken from it and placed in Title III of Part First.)

TITLE XII. OF EDUCATION.

Corresponds to Title XIV of the Code of 1851 and Revision, though nearly all the matter contained, even in the latter of these volumes, has been superseded by more recent legislation, and most of the chapters are entirely new.

Chap. 1. Of the Superintendent of Public Instruction.

Acts of 10th General Assembly, ch. 52.
Acts of 12th General Assembly, ch. 162.

Chap. 2. Of the State University.

Acts of 13th G. A. ch. 87. The entire contents of the Revision, ch. 84, and all other acts on this subject are believed to be now either repealed or obsolete.

Chap. 3. Of the State Agricultural College and Farm.

Acts of 7th General Assembly, ch. 91. (Rev., sections 1717-21 and 1728-33.)
Acts of 9th General Assembly, ex. sess. ch. 26.
Acts of 10th General Assembly, ch. 121.
Acts of 11th General Assembly, ch. 47, 71.
Acts of 12th General Assembly, ch. 142.
Acts of 13th General Assembly, ch. 144.

Chap. 4. Of the Soldiers' Orphans' Homes.

Acts of 11th General Assembly, ch. 92.
Acts of 12th General Assembly, ch. 66.

Chap. 5. Of the State Reform School.

Acts of 12th General Assembly, ch. 59.

Chap. 6. Of the Institution for the Education of the Blind.

Revision, sections 2141, 2145-2152, 2154. Acts 9th G. A., 152, sec 2. Acts 10th G. A., ch. 36. Acts 11th G. A., ch. 43, except sec. 1. Acts 12th G. A., ch. 94, sections 1, 2. Acts 13th G. A., chs. 31, 79, 129, sections 1, 4.

Chap. 7. Of the Institution for the Deaf and Dumb.

Rev., §§ 2155 2163, 2165, '7·
Acts of 11th General Assembly, ch. 136, § 1.
Acts of 12th General Assembly, ch. 106.
Acts of 13th General Assembly, ch. 78.

Chap. 8. Of County High Schools.

Acts of 13th General Assembly, ch. 116.

Chap. 9. Of the System of Common Schools.

Acts of 9th General Assembly, ch. 172.
Acts of 10th General Assembly, ch. 57, 102.
Acts of 11th General Assembly, ch. 33, 143.
Acts of 12th General Assembly, ch. 28, 29, 98, 122, 181, 183.
Acts of 13th General Assembly, ch. 8, 94.

Chap. 10. Of School House Sites.

Acts of 13th General Assembly, ch. 124.

We propose to amend this chapter by substituting for the second section thereof as reported in our code (which section corresponds to the two last provisoes of Sec. 1 in the printed act of 13th G. A.) the following:

SEC. 2. The site so taken must be on some public road, at least twenty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park. But this section *shall not apply* to any independent district, *or district situated in an incorporated town.*

Note.—It is evident that without the last clause, the entire value of the act would be destroyed in a thickly settled place, where almost every vacant lot is some man's garden. The original act excepts independent districts from the second proviso; we only suggest the carrying out of the same principle in a similar case.

Chap. 11. Of Appeals.

Laws of Board of Education Dec. 24, 1859. (Rev., secs. 2133-40.)

Chap. 12. Of the School Fund.

Acts of 8th General Assembly, ch. 162. (Rev., secs. 1962-1994.)
Acts of 9th General Assembly, ch. 148, ch. 172, secs. 57, 93.
Acts of 10th General Assembly, ch. 72, 118, 134.
Acts of 12th General Assembly, ch. 78.
Acts of 13th General Assembly, ch. 29, 46.

Chap. 13. Of the State Library.

Code of 1851, ch. 36. Acts of 5th G. A., ch. 157. (Rev., secs. 688–708.)
Acts of 13th General Assembly, ch. 145.

Chap. 14. Of the State Historical Society.

Acts of 6th General Assembly, ch. 203. (Rev., secs. 1959–61.)

Title XV of the Code of 1851 contained a single provision, now obsolete. In the Revision a number of different acts, having no connection with each other, were collected in eight additional articles. All these we have assigned to their appropriate places in other parts of the volume.

PART SECOND.

PRIVATE LAW.

In the Code of 1851 and the Revision, this Part was entitled, "Of the Rights of Persons." To some of its contents this title was strictly applicable; to others it could be applied only in the broad sense in which all legal rights are rights of persons, since nothing but a person, real or fictitious, is recognized by the law as possessing rights. If the term "Rights of Persons" be understood in the sense most common in English and American Law, the sense in which it is used by Hale, Blackstone and Kent, then it denotes only the smallest portion of the rights treated of in this part of the former Code and Revision. All of Title XVI in those volumes, treating of property, would fall under Blackstone's division of the Rights of Things: a phrase, by the way, which has provoked much petty criticism of late from writers who suppose Blackstone to have thereby asserted that rights could belong to things, but who only prove that their own knowledge of the commentaries is confined to the backs of the volumes. For, had they examined the text, they would have seen that Blackstone himself is very careful to explain that he means by *rights of things*, "Those rights which a man may acquire in and to such external things as are unconnected with the person." (Comm. I. 122, II. 1.) We have preferred, therefore, to use for this Part the title of PRIVATE LAW; which is at once more comprehensive and more accurate, and also marks, as we have already pointed out, with sufficient precision, the distinction between the subject-matter of this Part and Part First.

The number of Titles in this Part has been increased from two to four, by transferring Title XIII from Part First, for reasons already explained, and by making a separate title of the important chapter on "The estates of decedents." Some minor changes will be mentioned in their respective places. But the contents of this Part,

regarded as a whole, have been far less affected by recent legislation than those of Part First.

TITLE I. OF RIGHTS TO PROPERTY.

Chap. 1. Of the Rights of Aliens.

Acts of 12th General Assembly, ch. 56 and 193.

We regard these acts as superseding all previous legislation on the subject, and among the rest Articles 5 and 6 of Rev., ch. 100.

Chap. 2. Of Title in the State or County.

Acts of 9th General Assembly, ch. 32, 156.
Acts of 11th General Assembly, ch. 110.
Acts of 12th General Assembly, ch. 78.

Chap. 3. Of Perpetuities and Land in Mortmain.

Code of 1851, sec. 1191. (Rev., § 2199.)
Acts of 13th General Assembly, ch. 133.

Chap. 4. Of the Transfer of Personal Property.

Code of 1851, ch. 76. (Rev., §§ 2201–2204.)

Chap. 5. Of Claims on the Public Lands.

Code of 1851, ch. 77. (Rev., §§ 2205–2206.)

Chap. 6. Of Real Property.

Code of 1851, ch. 78. Acts of 7th General Assembly, ch. 33. (Rev., §§ 2207–17, 2255) (Rev., §§ 2216, 2218, are transferred to the chapter on Landlord and Tenant.)

We propose the following new section as an addition to this chapter.

SEC.— No vendor's lien for unpaid purchase money shall be recognized or enforced in law or equity, after a conveyance by the vendor, unless the said lien be reserved in such conveyance or created by a mortgage or other instrument in writing executed by the vendee.

Note.—The so-called vendor's lien owes its existence to peculiarities of the English law of real estate which have never been adopted by us: and it not only lacks any reason for its perpetuation, but

is directly at variance with the whole spirit and intent of our system of land records. On these grounds it has been refused recognition by some American courts, even without legislative interposition: and although it has been sustained in Iowa ever since the important case of *Pierson v. David*, 1 Iowa, 23, yet the objections to it have been strongly stated in the recent case of *Porter v. City of Dubuque*, 20 Iowa, 440. Most of the Iowa cases usually cited to sustain it are not authorities for the vendor's lien in the proper sense of the words, but only for the right which a vendor has to enforce payment after he has delivered possession, but before conveyance. With this latter right we of course, do not propose to interfere. The amendment suggested only cuts off the secret lien, after an absolute conveyance, enforced in equity. The language of the court in *Porter v. City of Dubuque* certainly throws doubt enough over the doctrine to call for the interposition of the legislature to settle the question one way or the other; and we think there cannot be much hesitation in which way this should be.

Chap. 7. Of the Conveyance of Real Property.

Code of 1851, ch. 79. Acts of 5th General Assembly, ch. 38, 49. Acts of 7th General Assembly, ch. 22, 103. (Rev., §§ 2220-2262.)

Acts of 9th General Assembly, ch. 123

Acts of 10th General Assembly, ch. 74.

Acts of 11th General Assembly, ch. 46, 61.

Acts of 12th General Assembly, ch. 160.

Acts of 13th General Assembly, ch. 160.

(Articles 4, 5, 8, of Rev. ch. 96, we omit as obsolete or superseded. Article 5 has been twice re-enacted of late, in almost identical words, as ch. 158 of 12th General Assembly, and ch. 160 of 13th General Assembly. In the last form we incorporate it with this chapter. See remarks on *curative acts*, in the General Report, *ante*, pp. 13, 14.)

Chap. 8. Of Occupying Claimants.

Code of 1851, ch. 80. (Rev., §§ 2264-73)

Acts of 13th General Assembly, ch. 88.

We have replaced in this chapter sections 1237 and 1238, of the Code of 1851, and omitted article 2, of Rev., ch. 97, (Acts of 7th General Assembly, ch. 153,) to conform to the decision of the Supreme Court, in *Childs* v *Shower*, 18

Iowa, 261, holding the latter act to be unconstitutional, and its repeal of the provisions of the Code consequently of no effect.

Chap. 9. Of the Homestead.

Code of 1851, ch. 81. (Rev., §§ 2277-98.)

To this chapter we suggest the following amendments:

(*a*) Add to sec. 12 of the chapter, (sec. 2288 of the Revision) as follows:

"And no such change of the entire homestead, made without the concurrence of the wife, shall affect her right or those of the children."

Note.—Whether this is not the law now, seems to be doubtful, and the amendment is proposed rather to remove the doubt than as an innovation. Rev., §§ 2279 and 2514, seem to make the present rule what this amendment would declare it to be. Yet in *Williams v. Swetland*, 10 Iowa, 51, the majority of the Supreme Court said that a husband may fix *or change* the homestead without the wife's consent. But there was a dissent from this by Wright J. and his opinion is sustained by Judge Dillon (extra-judicially) in a note to an article on the Homestead Laws in 1 Am. Law Register, N. S., p. 711. In this condition of the authorities it is certainly desirable to have the question set at rest by the Legislature.

(*b*) Insert a new section after sec. 19, (Rev. § 2295) as follows:

SEC. — The setting off of dower in the real estate of the deceased shall be such a disposal of the homestead as is contemplated in the preceding section. But the survivor may elect to retain the homestead for life in lieu of all dower in the real estate of the deceased.

Note.—This amendment is intended to set at rest a question not conclusively determined by *Nicholas v. Purcell*, 21 Iowa, 266, *Meyer v. Meyer*, 23 Iowa, 359, *Dodds v. Dodds*, 26 Iowa, 311, *Burns v. Keas*, 21 Iowa, 258, and other cases on the subject. The doctrine of *Meyer v. Meyer*, that dower and homestead are in their nature incompatible, seems to us to be the true one.

Chap 10. Of Landlord and Tenant.

Code of 1851, ch. 82. Acts of 7th General Assembly, ch. 49. (Rev., §§ 2299-2303, 2216, and 2218.) Acts of 13th General Assembly, ch. 98.

We transfer to this chapter the provisions on tenancy at will, now found in Rev., ch. 95, and we propose to add to them the following new section, the purpose of which will be at once seen :—

SEC. 8. When such tenant cannot be found within the county, the notice above required may be given to any sub-tenant or other person in possession of the premises; or, if the premises be vacant, by affixing the same to the principal door of the building, or in some conspicuous position on the land, if there be no building.

Chap. 11. Of Walls in Common.

Acts of 5th General Assembly, ch. 86. (Rev., §§ 1914–1925.)

We have transferred this chapter from Part I to this place, because it relates entirely to private rights, of the same nature with those regulated by the preceding chapters of this title.

Chap. 12. Of Liens for Hedges.

Acts of 6th General Assembly, ch. 217. (Rev., §§ 1769–1774.)
Transferred from Part I, for the same reason as the preceding chapter.

We also suggest the following amendments :

In sec. 3 (Rev., sec. 1771) strike out the words, "having his own signature," and substitute in their place the words, "signed by the party to be charged thereby."

Strike out sec. 4 (Rev., sec. 1772) and insert, "The recorder of deeds shall record and index said memorandum as a mortgage of real estate."

Note.—There seems to be no reason why a hedge-grower should have the privilege, granted to no one else, and inconsistent with the spirit of our statute of frauds, of creating an incumbrance on another man's land by an instrument under his own signature, and which the person to be charged has no means of correcting.

TITLE II. OF TRADE AND COMMERCE.

This is substantially Title XIII, of Part I, of the Code of 1851 and Revision. The reasons for changing its place have been stated before.

Chap. 1. Of Weights, Measures, and Inspection.

Code of 1851, ch. 56. Acts of 5th G. A., ch. 5, 26, 34. Acts of 6th G. A., ch. 165. Acts of 7th G. A., ch. 110. Acts of 8th G. A., ch. 34. (Rev., §§ 1777–84 and 1906–13.)

Acts of 9th G. A., ch. 82.
" 10th " ch. 56.
" 12th " ch. 195.

Chap. 2. Of Moneys of Account, and Interest.

Code of 1851, ch. 57. Acts of 4th G. A., ch. 37. (Rev., §§ 1785–92.)

Chap. 3. Of Notes and Bills.

Code of 1851, ch. 58. Acts of 4th G. A., ch. 108. Acts of 7th G. A., ch. 25, 108. (Rev., §§ 1794–1814, and § 213.)

Acts of 9th G. A., ch. 116.

Chap. 4. Of Tender.

Code of 1851, ch. 59. (Rev., §§ 1815–8.)

Chap. 5. Of Sureties.

Code of 1851, ch. 60. (Rev. §§ 1819–22.)

Chap. 6. Of Private Seals.

Code of 1851, ch. 61. (Rev., §§ 1823–5.)

Chap. 7. Of Assignments for Creditors.

Code of 1851, ch. 62. Acts of 6th Gen. Ass., ch. 254. Acts of 7th Gen. Ass. ch. 112. (Rev., §§ 1826–1842.)

(Chap. 63 of the Code of 1851, [ch. 78 of Revision,] is transferred to Part I, title 3, ch. 6, as belonging properly to Public Law, and also for the sake of bringing it in connection with other provisions as to oaths.)

Chap. 8. Of Mechanics' Liens.

Code of 1851, § 1009. Acts of 8th G. A., ch. 163. (Rev., §§ 1845-73.)
Acts of 9th G. A., ch. 111.
Acts of 13th G. A. ch. 140.

Chap. 9. Of Limited Partnerships.

Acts of 7th G. A., ch. 98. (Rev., §§ 1874–97.)
Acts of 9th " ch. 128.

Chap. 10. Of Warehousemen and Carriers.

Acts of 9th G. A., ch. 84.
" 10th " ch. 120.
" 13th " ch. 178.

This chapter is a substitute for Ch. 81 of the Revision, superseded by the act last cited. Some other provisions of a like character have been incorporated with it, and the title changed to embrace them.

TITLE III. OF THE DOMESTIC RELATIONS.

Chap. 1. Of Husband and Wife.

Code of 1851, ch. 84, and sec. 1192 of ch. 75. (Rev., §§ 2200 and 2499-2514.)
Acts of 8th General Assembly, ch. 141. (Rev., §§ 1500-3.)
Acts of 13th General Assembly, ch. 126.

The last act passed on this subject (13th General Assembly, ch. 126) does not clearly decide whether a husband shall still be liable for the torts of the wife committed during marriage. To settle this point, we propose the following new section, intended to follow sec. 2506 of the Revision, as amended by that act :

SEC. —. For all civil injuries committed by a married woman, damages may be recovered from her alone ; and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her if the marriage did not exist.

We have added to the end of this chapter art. 3 of chap. 59 of the Revision, in regard to the release of dower of an insane wife, this seeming to be the most appropriate place therefor.

Chap. 2. Of Marriage.

Code of 1851, ch. 85. (Rev., §§ 2515–2531.)
Acts of 12th General Assembly, ch. 91.

The act last mentioned provides a substitute for Rev., § 2529, by which the exemption from the provisions of this chapter, in favor

of persons having conscientious scruples, is extended to the procuring of a license as well as the solemnization of marriage. We have, of course, inserted the new section in the Code. But we propose as an amendment to the present law that it be *repealed*, and the *original language of the section restored.* With the utmost respect for scruples of conscience, we cannot see how any sane conscience can take offense at the obligation to procure a license from the civil authority before entering a condition which has such important civil consequences; unless, indeed, it be a conscience of that peculiar kind which repudiates *all* legal restraints upon the conjugal union. It is very desirable to make the requirement of a license uniform, if only as a means of securing evidence, in the absence of a good system of registration. This last is a deficiency in our law which we should have endeavored to supply, had there been time to properly consider a subject involving so much detail.

Chap. 3. Of Divorce and Alimony.

Code of 1851, ch. 86. Acts of 5th General Assembly, ch. 76. Acts of 7th General Assembly, ch. 64. (Rev., §§ 2532–7.)
Acts of 13th General Assembly, ch. 127.

We have inserted in this chapter, as now in force, sec. 1486 of the Code of 1851, not found in the Revision. It was probably omitted there by mere accident, as it clearly seems to have been revived with the rest of the chapter in 1858.

Article 2, of Rev., ch. 103, and chap. 91, of Acts of 9th General Assembly, which is a mere transcript thereof, we omit as purely retrospective, for reasons stated in the General Report.

Some provisions will be found among the amendments proposed to Part Third, designed to prevent the abuse of our divorce laws. and especially the obtaining of fraudulent divorces by persons not actually entitled to the benefit of our laws. For the same object we suggest the following substitutes for sec. 2, answering to Rev., § 2533:

SEC. 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, specifying the town and county in which he has so resided, and the entire length of his residence therein, after deducting all absences from

the territory of the state ; that he now is, and verily expects to remain a resident thereof ; that such residence has been in good faith, and not for the purpese of obtaining a divorce only ; 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.

SEC. 3. All the statements above required, and all other allegations of the petition, must be verified by the oath of the plaintiff, and proved to the satisfaction of the court by competent evidence other than such oath. And unless the court be satisfied that the allegations of residence are fully proved, the hearing shall proceed no further, and the action shall be dismissed by the court on its own motion.

Chap. 4. Of Minors.

Code of 1851, ch. 87. (Revision, §§ 2539-2542.)

Chap. 5. Of the Guardianship of Minors and Lunatics.

Code of 1851, ch. 88. Acts of 4th General Assembly, ch. 56, 86. Acts of 7th General Assembly, ch. 141, §§ 42-50. Rev., §§ 2543-72, and 1449-57.)

Acts of 9th General Assembly, ch. 27.

Acts of 11th General Assembly, ch. 125.

Acts of 12th General Assembly, ch. 179, § 12.

Acts of 13th General Assembly, ch. 83.

We have united with this chapter as it formerly stood, the provi sions respecting the guardianship of persons of unsound mind, found in Title 12, chap. 59, of Revision. They relate to private and personal rights, and have many analogies with the guardianship of minors.

We suggest the following substitute for the first two sections of this chapter. (Rev., §§ 2543-4.)

SEC. 1. The parents are the natural guardians of the persons of their minor children, and are equally entitled to the care and custody of them.

SEC. 2. Either parent, dying before the other, may by will appoint a person to be associated with the survivor in such guardianship ; and the survivor may also appoint a guardian by will. If there be no parent or guardian qualified and competent to discharge the duty, the circuit court shall appoint a guardian.

Note—These sections explain themselves. We have already, in this state, given to married women the same freedom of action in

business matters, and the same control of their property, as possessed by married men. The exclusive guardianship of the father remains as a single vestige of a system of family rights which we have discarded. Consistency requires us to make no exception : or at least not to make one of the very right which a wife and mother would value most highly. If a married woman is to stand on an equal and independent footing with her husband in all matters of property—if she is intrusted with the sole protection of her own interests,—there certainly can be no argument against giving her an equal voice in the control of her children, whether that control be regarded as a trust or as a privilege.

It might perhaps be as well to add to the first section some provision for cases of dissension between the parents ; but we believe that the rules on which the courts now act in such cases will answer every purpose, when the fundamental principle of perfect equality between the parents is once established.

Chap. 6. Of Masters and Apprentices.

Code of 1851, ch. 89. (Rev., §§ 2573–99.)

Chap. 7. Of the Adoption of Children.

Acts of 7th General Assembly, ch. 67. (Rev. §§ 2600–4.)

TITLE IV. OF THE ESTATES OF DECEDENTS.

In the Code of 1851 and the Revision the subject of this title was treated in a single chapter of the Title "Of Property." (Code, ch. 83 ; Rev., ch. 100.) The lack of any subdivisions in so long a chapter was more objectionable than its position ; and as amendments and changes accumulated, this very important chapter became perhaps one of the most confused and perplexing in the statute book. Four years ago the Supreme Court of our own state spoke of it thus :

"Of all the statutes, none should be plainer, more exact and certain in meaning, than those regulating the descent and distribution of property. It may be quite confidently affirmed that of all existing statutes in this State, none are, in many material respects, more

obscure and uncertain than those which undertake to define what becomes of, and who is entitled to, a man's property upon his death. * * * That is left to judicial construction, which should be unmistakably defined by legislative words. * * * Perceiving that unless the statutes in this respect are revised, many other questions of great doubt will arise, we limit our decision strictly to the case in hand." *Meyer* v. *Meyer*, 23 Iowa, 359.

Since this was written, the transfer of all probate jurisdiction from the county to the circuit courts, involving an almost complete remodeling of the details of probate practice, has been added to the causes of doubt and perplexity referred to by the court. The reasons which make such doubt and perplexity a greater evil on this very subject, than any where else on the statute book, are too obvious to be dwelt on here. We have done what we could to cure them by amendments in the form of the law. Had time been granted us, we should have preferred to go much farther, and suggested amendments and additions that would bring the whole subject into a "plain, exact, and certain" body of law, equally intelligible and equally certain to the lawyer and the layman. But we have not thought it worth while to suggest partial changes of substance, when the most pressing necessity was to put the law as it now stands in a better form.

The appropriateness of the place we have given to the subject, at the end of that part of the code treating of Private Law, needs no explanation. The importance of it fully justifies its treatment in a title by itself: and the division into chapters, which is entirely new, is intended to facilitate not only reference in daily use, but the process of substantial amendments, which cannot be delayed more than a session or two at most.

Chap. 1. Of Probate Jurisdiction.

Code of 1851, §§ 1272–5. Acts of 4th General Assembly, ch. 91. (Rev., §§ 2304–7, 2472–3.)

Acts of 12th General Assembly, ch. 86, § 3.

Acts of 13th General Assembly, ch. 178.

Chap. 2. Of Wills and Letters of Administration.

Code of 1851, §§ 1277–1327. (Rev., §§ 2309–59.)

Acts of 11th General Assembly, ch. 139, § 1, 2.

Acts of 13th General Assembly, ch. 158.

Chap. 3. Of the Settlement of the Estate.

Code of 1851, §§ 1328–1389. (Rev., §§ 2360–2421.)
Acts of 9th General Assembly, ch. 22.
Acts of 11th General Assembly, ch. 139, §§ 3-6.
Acts of 13th General Assembly, ch. 158.

Chap. 4. Of the Descent and Distribution of Intestate Property.

Code of 1851, §§ 1390–1420. Acts of 4th General Assembly, ch. 61. Acts of 7th General Assembly, ch. 63. (Rev., §§ 2422–46, 2480, 2494–7.)
Acts of 9th General Assembly, ch. 151.
Acts of 13th General Assembly, ch. 8.

Chap. 5. Of Accounting, and Miscellaneous Provisions.

Code of 1851, §§ 1422–46. Acts 4th General Assembly, ch. 86. (Rev., §§ 2447–71, 2474–5.)
Acts of 9th General Assembly, ch. 71.
Acts of 11th General Assembly, ch. 139, §§ 7–16.

PART THIRD.

Chapter 108.

Sections 4112, 4127, and 4128, of chapter 161, transferred to this chapter; also sections 4173, 4179, 4183, and 4184 of chapter 163; it being proposed to omit those chapters.

For section 4173, substitute as follows :

1. The rules of proceeding prescribed for civil actions by ordinary proceedings shall be followed in all proceedings of a special character so far as applicable and not otherwise regulated.

Sections 2615 and 2616 have been rewritten to avoid the reference to sections 2611 and 2612, and in place of such reference the terms " by the provisions of this code " are used ; but the following substitute is proposed for both sections :

2. The defendant may have the correction made by motion at or before filing his answer, where it appears by the provisions of this code the wrong proceedings have been adopted.

This, it is suggested, covers the ground, and occupies much less space.

The following new section to be inserted after section 2617 :

3. If there be more than one party plaintiff or defendant who fail to unite on the kind of proceeding to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking that the same be done.

It may be the court possesses this power, but the substitute removes all doubt.

For section 2619, substitute as follows :

4. An error as to the kind of proceedings adopted in the action, is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter ; and all errors in the decision of

the court, on any of the motions named in this chapter, are waived unless excepted to at the time.

The matter omitted is contained in section 3018.

New section to be inserted after section 2620:

5. No action shall be brought upon any judgment against a defendant therein rendered in any court of record of this State, within fifteen years after the rendition thereof, without leave of the court for good cause shown on notice to the adverse party, nor on the judgment of a justice of the peace of this State within eight years after the same is rendered, except in cases where the docket of the justice, or record of such judgment is, or shall be, lost or destroyed.

There is no reason why a party should be harassed by suit after suit, when one judgment can be made just as effective as a hundred. If it is desired to renew the judgment to avoid the statute of limitations, ample time is given.

Chapter 109. Organization of the Supreme Court.

SEC. 2625. So much of this section as applies to fees has been transferred to the chapter on fees. The same has been done with section 2645.

A portion of section 9, chapter 122, 13th G. A., has been added to section 2626.

Section 2627 as amended by section 4, chapter 23, 10th G. A., has been included.

Sections 2628, 2631, 2633, 2634, 2639, 2640, 2642, 2643, and 2644 have been rewritten, and embrace in a concise form all the legislation subsequent to the Revision, but certain amendments are proposed to this chapter.

Substitute for sections 2623 and 2640, section 1, chapter 27, 12th G. A:

1. The Supreme Court shall be held at the capital, at the city of Davenport in the county of Scott, and at the city of Dubuque in the county of Dubuque. But the records shall be kept at the capital, except during the session of the court at Davenport and Dubuque.

Substitute for section 2624 :

2. There shall be two terms a year held at each place : at the capital, commencing on the first Mondays in June and December; at

Davenport on the first Mondays in April and October; and at Dubuque on the third Mondays in April and October.

No reason is seen why the terms at Davenport and Dubuque should not possess all the powers of those at the capital. It is understood that the court, under peculiar circumstances, rendered final judgment in the case of the *State* v. *Thompson*, at the Dubuque term, although the power to do so has been seriously doubted. Several of the proposed amendments seek to accomplish this object only.

Substitute for sections 2642 and 2643; section 1, chapter 14, section 3, chapter 27, section 1, chapter 55, of 12th General Assembly; and section 1, chapter 42, 13th General Assembly; the same to form section 3 of this chapter:

3. Except otherwise provided, all appeals must be taken to the terms at the capital; but causes from the following counties shall be taken to Davenport: Clinton, Scott, Johnson, Iowa, Cedar, Muscatine, Louisa, and Washington; and from the following counties to Dubuque: Clayton, Dubuque, Allamakee, Floyd, Hancock, Winneshiek, Mitchell, Chickasaw, Worth, Cerro Gordo, Tama, Hardin, Bremer, Butler, Grundy, Black Hawk, Buchanan, Delaware, Fayette, Jones, Linn, Benton, Howard, Jackson, Wright, Hamilton, and Franklin. With the consent of the appellee, expressed in writing, on the notice of appeal, causes may be taken from any county to either place, where it is provided the court shall be held.

Section 2644 to be omitted.

Substitute for section 2628, and section 5, chapter 23, 10th G. A.:

4. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority. Nor shall the same, nor the opinions of the judges therein, be published in the reports.

The rapid increase of the reports seems to render this and two other sections, amendatory of this chapter, desirable.

The following to be added to section 2632, to be made a 6th subdivision:—

5. In equitable causes triable by the first method, an order admitting or excluding testimony.

The following to be added to section 2632:

6. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be designated in writing on the opinion, and the same shall not be included in the reports.

For section 2637, substitute as follows :

7. All dissenting opinions must be written and filed in the same manner, but shall not be included in the reports.

Chapter 111.

The title of this chapter has been changed so as to include circuit courts.

Sections 2653, 2660, 2661, 2662, and 2664 have been rewritten and the circuit court included therein where required by the legislation since the Revision. Section 2663 has been rewritten, and includes that portion of section 2, chapter 153, 13th G. A., as pertains to the jurisdiction of the district court. Section 4, chapter 86, 12th G. A., has been included in this chapter, there having been added thereto so much of section 2, chapter 153, 13th G. A., as pertains to jurisdiction of circuit courts. That portion of section 6, chapter 86, 12th G. A., which provides for transfer of criminal cases to circuit courts has been included, but its omission is recommended. That portion of section 9 which makes the circuit courts courts of record, and section 11 of chapter 86, 11th G. A., has been included. Section 3, chapter 41, 13th G. A., has been transferred to this chapter. Sections 2654 and 2655 to be omitted because obsolete. Section 2659 to be omitted; an amendment to chapter 112 more fully provides for the subject matter of this section.

Substitute for section 2653, and section 3, chapter 41, 13th G. A:

1. The district and circuit judges of each judicial district, now or hereafter established, shall, on the first day of July, A. D. 1872, or at such other time as may be provided by law, fix the time of holding the courts in their respective districts and circuits, and may change the same, if deemed advisable, every two years thereafter in the manner herein provided. Said judges shall, by an order signed by them or a majority thereof, designate : 1st. The time of holding such courts ; 2d. The number of copies of the order that shall be sent to each county in their district ; and shall transmit such order to the Secretary of State, who shall file and preserve the same in his office, and shall cause a sufficient number of copies of the same to be published. When so published, such Secretary shall cause the same to

be distributed as follows : One copy to the Clerk of the Supreme Court, Attorney-General, State Librarian, law department of the State University, and each clerk of the district court, who shall file and preserve the same in their respective offices or departments ; and such Secretary shall transmit to each clerk of the district court, in such district, for distribution, the number of copies directed by the order to be sent to each county. The time of holding the courts shall remain as at present fixed, until changed as herein provided.

The district judges now fix the terms of the circuit court—why not give the judges the power to fix terms of all courts ? They can arrange the time to suit the convenience of all interested better than any other power. Much time is taken up in every General Assembly in fixing these terms, which should be devoted to other purposes. If it is of sufficient importance to have a court held at a place other than the county seat, the whole county should bear the expense.

Substitute for section 4, chapter 86, 12th G. A., and a portion of section 2, chapter 153, 13th G. A., being section 2663 "A" of this chapter :—

2. The circuit court shall have and exercise general original jurisdiction, concurrent with the district court, in all civil actions and special proceedings where not otherwise provided. Such court shall have exclusive jurisdiction in all appeals and writs of error from all inferior courts, tribunals, or officers, and a general supervision thereof in all civil matters, to prevent and correct abuses where no other remedy is provided.

This enlarges and simplifies the jurisdiction of this court, and embraces all the jurisdiction of the court except in relation to probate matters, which, it is suggested, should be contained in the chapter on that subject. As the law now stands, this court may try the most difficult and important equitable causes if set up as an equitable answer to an ordinary action, but cannot entertain original jurisdiction of such a cause. No good reason is seen for this distinction.

Chapter 110.

This chapter has been transferred to Part I, as being the more appropriate place.

Chapter 112.

Section 2674 has been rewritten, and includes section 14, chapter 86, 12th G. A. Sections 2676, 2679 and 2685, have been so changed as to make same applicable to circuit courts and judges.

For section 2678, substitute as follows :

1. They shall receive for their services such compensation as the General Assembly may provide.

This is in accordance with the action of the 13th G. A., and will, it is believed, make the commission more effective.

Substitute for sections 2679, 2680, and 2681 :

2. The judges of the district and circuit courts in any district may provide by general rule : 1. That the time of filing pleadings or motions shall be other than that provided in this code ; 2. That issues in all or a part of the counties in such district shall be made up in vacation ; 3. Prescribe penalties that shall follow the overruling or sustaining a motion or demurrer ; 4. Adopt such other provisions as they may deem necessary or expedient, not inconsistent with this code. Such rules shall be signed by such judges, or a majority thereof, and such number published as they deem expedient, and shall be distributed by the district judge as follows : One copy to the Secretary of State, Attorney-General, Clerk of the Supreme Court, State Library, and law department of the State University, who shall file and preserve the same in their respective offices or departments, and shall distribute the residue to the clerks of the district court in each county composing such district in such proportion as such judge deems proper. The expense of publishing and distributing such rules shall be paid by the counties composing the district, as the judges may direct. Such judges may revise and change such rules as often as they deem expedient, which shall be published and distributed in the same manner.

3. The present rules and practice of the courts in civil actions inconsistent with this code are abrogated, but where consistent they shall remain in force, subject to the power of the judges to modify the same as provided in this code.

In some parts of the State there seems to be an earnest desire that issues should be made up in vacation, that penalties should follow and be enforced for defective pleading, and that copies of all pleadings should be served. In other portions of the State, especially in sparsely settled counties, it would be of doubtful expediency to enac these provisions in a statute. By giving the power to the judges,

who in all instances would undoubtedly consult the bar, the desired objects can be best accomplished.

To be added to section 2686 :—

4. And such other acts as are provided by law.

This is consistent with those provisions which allow executions, attachments, and writs of replevin to be issued and served on Sunday in certain cases.

Substitute for section 2687:—

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

What is meant by "common consent" in the original is, to say the least, liable to different constructions.

New section to be added to this chapter :

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

This is in accordance with the practice, except that there is no provision for entry of judgment in vacation. They are usually entered as of the previous term, although the decision may not have been made until months afterward. The effect is to endanger the right of appeal, and stay, and seriously the question of lien.

Chapter 114.

Section 2700 has been rewritten, and includes chapter 21, 13th G. A.

Section 2702, 2710, and 2716, have been rewritten and include the circuit court.

The following amendments are proposed :

Substitute for sections 2700, 2701, and 2703.

1. Any person twenty-one years of age, who is an inhabitant of this State, who satisfies any court of record that he possesses the

requisite learning, and that he is of good moral character, may by such court be licensed to practice as an attorney and counselor in all the courts of this State, upon taking the following oath : You do solemnly swear (or affirm) 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 the courts of this State according to the best of your ability.

Contains substance of existing law, somewhat condensed.

New section to be inserted after 2700 as amended :—

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

Substitute for sub-division 1, section 2706 :—

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

It is doubtful whether existing law gives an attorney the power to execute a bond in attachment or replevin—the latter, at least, cannot be commenced until a bond is given. It is also doubted whether he can execute for his client a bond to indemnify a sheriff for proceeding to levy under execution.

Substitute for section 2708, as amended by section 2, chapter 167, 13th G. A.:—

4. An attorney has a lien for a general balance of compensation upon—1. Any papers belonging to his client which have come into his hands in the course of his professional employment ; 2. Money in his hands belonging to his client ; 3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and in general terms for what services.

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

Section 2708, as printed, is very defective.

For section 2709, substitute as follows :

5. Any person interested may release such lien by executing a bond in a sum equal to the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by action on such bond.

New section after 2709 :

6. Such lien will be released unless the attorney within three days after demand therefor furnishes any party interested, a full and complete bill of particulars of the services, and amount claimed for each item.

The attorney, by claiming more than is in fact due, may render the giving of a bond impossible ; hence, the provision that a judge may fix the amount. The amendment more carefully guards, it is thought, the rights of all.

Chapter 115.

Section 2723 has been rewritten and now includes such part of section 3, chapter 167, 13th G. A., as was not included in section 2724.

Section 2725 has been so changed as to require the auditor to perform the duties heretofore incumbent on the clerk.

Section 2727 has been so changed as to require the lists to be returned to the auditor.

New section, to be inserted next after section 2723, has been written and includes only so much of section 6, chapter 86, 12th G. A., as relates to a grand jury for the circuit court, and section 1, chapter 153, 13th G. A.

The following amendments are proposed to this chapter :

For section 2729, substitute :—

1. Grand jurors shall be selected for the first term in the year at which jurors are required commencing next after the first day of January in each year, and shall serve for one year.

Petit jurors shall be selected for each term wherein they are required, but no person shall be required to attend as a petit juror more

than two terms of court in the same year, and in counties containing a population of more than five thousand inhabitants, it shall be a cause of challenge that the person has served on a jury in a court of record within one year.

Section 2729, as amended by section 5, chapter 167, 13th G. A., has failed to accomplish the object intended. It is believed the substitute will remedy the evil—exclusion of professional jurors.

Section 2730, substitute :—

2. At least twenty days previous to the first day of any term at which a jury is to be selected, the auditor or his deputy must write out the names on the lists aforesaid, which have been previously drawn as jurors during the year, on separate ballots, and the clerk of district court and sheriff, having compared said ballots with the lists, and corrected the same if necessary, shall place the ballots in a box provided for that purpose.

As the lists are returned to the auditor, he should write out and prepare the ballots for the drawing. That the deputy may act is in accord with chapter 5, 9th G. A.

The provisions of section 1, chapter 5, 9th G. A., have been incorporated into this chapter.

Chapter 116.

Section 13, chapter 148, 9th G. A., has been transferred to this chapter; and the following amendments are proposed :

Section 2740 : Substitute for first sub-division—

1. Actions founded on injuries to the person or reputation, whether based on contract or tort, or for a statute penalty, within two years.

All doubt as to the proper construction is removed. See *Sherman* v. *Western Stage Company*, 22 and 24 Iowa.

Substitute for section 13, chapter 148, 9th G. A.—

2. The provisions of this chapter shall not be applicable to any action brought or to be brought on any contract for any part of the school-fund.

The original is defective in the reference made to the Revision.

Substitute for 2747 :

3. If a person entitled to bring an action referred to in this chapter, except for a penalty or forfeiture, is, at the time the cause of action accrues, either—1st. A minor, as defined in this code ; or, 2d. Has been judicially found insane, the time of such disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be commenced shall not be extended longer than one year after the disability ceases.

Should there not be some protection to the class of persons mentioned in all actions, instead of being confined to those for the recovery of real property ?

Section 2752 : substitute :

4. A set-off or counter-claim may be plead as a defense to any cause or action, notwithstanding the same is barred by the provisions of this chapter, if such claim, so pleaded, was the property of the party pleading it at the time it became barred ; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading the same.

If the claim is actually barred, the party should only be allowed to defend. If the action is on a note, which is barred in ten years, the set-off may be on an account, which is barred in five years. If the latter is more than the former, no judgment should be rendered except for costs, because the party owning such set-off is in fault for not bringing his action before it became barred. Secs. 2753 and 2756, chap. 113, 9th G. A., and chapter 11, extra session, 9th G. A., to be omitted, for the reason that the same are obsolete.

New sections to come in at end of chapter :

5. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action.

6. No person can avail himself of a disability unless it existed at the time his cause of action accrued.

The substance of above is found in the statutes of other States. The last provides for cases about which the decisions of the courts are believed to be in conflict.

Chapter 117. Parties to Actions.

The following amendments are suggested to this chapter :

Section 2760, substitute :

1. In case of the assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off, defense, or cause of action, whether matured or not, if matured when plead, existing in favor of the defendant and against the assignor before notice of the assignment; but this section shall not apply to negotiable instruments transferred in good faith and upon valuable consideration before due.

Parties may have claims against each other but not connected with or growing out of the same transaction. One may assign and become insolvent; in an action by the assignee, the other party cannot bring in his claims as a defense. The substitute provides a remedy, and will do much to prevent the transfer of any but negotiable paper before due. None other should be protected.

For sections 2771 and 2772, substitute as follows :

2. A married woman may in all cases sue and be sued without joining her husband with her, to the same extent as if she were unmarried, and an attachment or judgment in such action shall be enforced by or against her as if she were a single woman.

Why limit the right as in the original, if the cause of action exists against both husband and wife ? Let plaintiff sue one or both to the same extent he may other persons.

Section 2779, substitute therefor :

3. The appointment cannot be made until after service of the notice in the action as directed in this code, and may then be made by the court or judge thereof, or during vacation by the clerk ; but the court shall have the power to remove such guardian when the interests of the infant require such change. If made by the judge or clerk it shall be done by indorsing the name of the person appointed, and the time thereof, on the petition in the action.

For section 2780, substitute the following:

4. The appointment may be made upon the application of the infant if he is of the age of fourteen years, and applies at or before the time he is required to appear and defend. If he does not so apply, or is under that age, the appointment may be made on the application of any friend of the infant, or on that of the plaintiff in the action.

The expression in the original, "at or before the term to which the notice is served," is somewhat indefinite.

For section 2781, substitute as follows:

5. The action of a person judicially found to be of unsound mind must be brought by his guardian, or, if he have none, by his next friend. When brought by his next friend the action is subject to the power of the court in the same manner as the action of an infant so brought.

By whom or where is it to be determined, under the original, that the person is of unsound mind?

Section 2782, substitute for:

6. The defense of an action against a person judicially found to be of unsound mind, or a person confined in any State lunatic asylum, who, by the certificate of the physician in charge, appears to be of unsound mind, must be by his guardian, or a guardian appointed by the court to defend for him. Such appointment may be made upon the application of any friend of the defendant, or on that of the plaintiff, but not until service has been made as directed in this code, and no judgment can be rendered against him until defense has been made as herein provided.

Section 2783, amendment in place of the first line :

7. Where a party is judicially found to be of unsound mind, or is confined in any State lunatic asylum, and by the certificate of the physician in charge appears to be of unsound mind during—

Section 2785, substitute as follows :

8. A partnership may sue or be sued in the partnership name, or in the individual names of the members thereof. When sued in the partnership name, and on the judgment rendered therein, the partnership property, and the individual property of such members who have been served with notice, shall alone be liable. But an action may be brought against those members not served on the original cause of action, or on the judgment in which judgment shall be rendered against such individual members, unless they show cause to the contrary.

Two objects are gained by the substitute. *Scire facias* is abolished by name, and yet the substantial benefits of that remedy retained. The individual property of the members served with notice is made liable without resorting to another action. Any one who

has had opportunity to defend should be entitled to no further delay.

Section 2787, substitute for :

9. When a bond, or other instrument given to the State, or to any officer or person, is intended for the security of the public generally, or of particular individuals, suit may be brought thereon in the name of any person intended to be thus secured, who has sustained any injury in consequence of a breach thereof, or by such person in the name of the obligee, and, in case a motion is allowable, such party may in the same manner make such motion.

The omitted portion seems useless and of doubtful meaning.

Section 2794, substitute as follows :

10. No action shall abate by the transfer of any interest therein during its pendency.

Having recommended in another part of this report that no cause of action shall abate by death, and that all causes of action are assignable, the foregoing is all that is necessary. In case of marriage of a female party, the action would be continued in the name assumed after marriage. In case of a transfer the action would be continued in the name of the transferee. Section 2977 is sufficient to authorize this to be done.

Chapter 118.

Section 8, Chapter 169, 9th G. A., has been transferred to this chapter.

Amendments are proposed as follows:

New section to be inserted next after 2797:

1. An action, other than those mentioned in the first or second section of this chapter, against a person confined in prison, or a State lunatic, insane, deaf and dumb, or blind asylum, must be brought in the county in which he resided prior to his confinement.

To be inserted next after section 2800 :

2. Where an action embraced in the preceding section is against several defendants, some of whom are residents and others non-residents of the county, and the action is dismissed as to the residents, or judgment is rendered in their favor, or there is a failure to obtain judgment against such residents, no judgment shall be ren-

dered against such non-residents unless they, having appeared to the action, fail to object before judgment is rendered against them.

It is usual, in practice, to bring suit against a party who is a resident, but against whom no cause of action whatever exists, and join with such person a non-resident who is the real party, and, after the latter has appeared, dismiss as to the resident or let judgment go in his favor. This is a legal fraud, which the substitute seeks to remedy.

Substitute for section 2801, and section 8, chapter 169, 9th G. A.:

3. When a corporation, company, or individual has an office or agency in any county for the transaction of business, any suits growing out of or connected with the business of that office or agency may be brought in any county where such office or agency is located. But suits against a railroad company, or the lessees thereof, may be brought in any county through which such road pssses.

Such portion of section 8, chapter 169, 9th G. A., as provides upon whom notice can be served, has been incorporated in chapter 120.

To be inserted after section 2801:

4. If, after the commencement of an action in the county of the defendant's residence, he remove therefrom, the service of notice upon him in any other county shall have the same effect as if it had been made in the county from which he removed.

Chapter 119. Change of Venue.

Sec. 7, of Chapter 86, 12th General Assembly, is transferred to this chapter, but that section and 2810 should be omitted by reason of amendments to other sections, including those.

Substitute for section 2803, as amended by section 13, Chapter 167, 13th General Assembly :

1. A change of venue in any civil action may be had in any of the following cases :

1st. Where the county in which the action is pending is a party thereto, if the motion is made by the party adversely interested, and the issue be triable by jury.

2d. Where the judge is a party, or is directly interested in the action, or is connected by blood or affinity with any person so interested, nearer than the fourth degree.

3d. Where either party files an affidavit verified by himself and three disinterested persons, not related to the party making the motion nearer than the fourth degree, nor standing in the relation of servant, agent, or employee of such party, stating that the inhabitants of the county, or the judge, is so prejudiced against him, or that the adverse party or his attorney has such an undue influence over the inhabitants of the county, that he cannot obtain a fair trial.

4th. By the written agreement of the parties, or their attorneys.

5th. If the issue is one triable by jury, and it is made apparent to the court or judge that a jury cannot be obtained in the county where the action is pending, then, upon the application of either party, a change of venue shall be granted to the nearest county in which a jury can be obtained.

Section 2805, amended by section 14, chapter 167, 13th G. A. :—

2. The venue shall be changed to some other county in the same district or circuit, unless the objections are to the judge, or the objections made exist as to all the other counties in the district or circuit, and shall be to the most convenient county to which no objection is made. Whenever the change shall be granted on account of the prejudice or disability of the judge, the action shall be transferred to the district or circuit of the same county unless objections exist as to both the judges, in which case it shall be transferred to the most convenient county in some other district or circuit.

Section 2806, substitute :—

3. If an application for the change is made in vacation, five days' notice of the same, with a copy of the affidavit, shall be served on the adverse party or his attorney ; and if the judge grant the change he shall forthwith transmit his order to the clerk, together with all the papers used before him.

Section 2807, substitute :—

4. If the order for the change is granted in vacation, and the same not perfected by noon of the second day after the order is received by the clerk, and if granted during term time, the same must be perfected by the morning of the second day thereafter, or before the cause is reached for trial, if sooner reached, or such change of venue, whether granted in term or vaction, will be deemed waived, and the cause tried as though no such order had been granted. When the change has been perfected, or agreed to by the parties, the clerk must forthwith transmit to the clerk of the proper court, strongly enveloped and sealed, a transcript of the record and proceedings, with all the original papers, having first made out and filed in his office authenticated copies of such original papers ; but, if less than all of several plaintiffs or defendants take such change, the original papers

shall not be so transmitted, but a copy thereof. And as to those who take no change, the cause shall proceed as if none had been taken—except that if the venue is changed to a court in the same county, no transcript or copies shall be made out, but the original papers shall be transmitted.

Section 2809, substitute :

5. Unless the change be granted under sub-division 2, 4, or 5, of section —, all costs caused thereby, or that are rendered useless by reason thereof, shall be paid by the applicant, and the court or judge, at the time of making the order, shall designate in general terms such costs, and no change of venue shall be deemed perfected until such costs are paid.

The objects of the amendments to this chapter are :

1st. To render changes of venue more difficult to obtain. Under the present practice, such changes are most frequently taken for delay, or some reason other than an honest one.

2d. To permit parties to agree to a change.

3d. To prevent a county from taking one from itself, or any other party, where a county is a party, unless the issue be one triable by jury.

4th. To compel the payment of all costs, instead of as now compelling the party only to pay or secure the costs of the transcript.

5th. The chapter is somewhat abbreviated.

Chapter 120.

Section 2811 has been rewritten so as to include all courts of record. Section 2812 has a portion stricken out for same purpose. Section 2825, as rewritten, includes part of section 15, chapter 167, 13th General Assembly, and part of section 8, chapter 169, 9th General Assembly.

For section 2829, substitute :

1. Where a defendant has been judicially declared to be of unsound mind, or who is confined in any State lunatic asylum, service must be made on him and his guardian—if there be no guardian, upon his wife, the keeper of such asylum, or the person having him in charge, or with whom he lives.

Section 50, chapter 109, 13th General Assembly, is transferred to this chapter, and this substitute proposed :

2. When it becomes necessary, in any proceeding in any court, to serve personally with a notice, or process of any kind, a person who is confined in any State lunatic asylum, the superintendent thereof shall acknowledge service of the same for and on behalf of such person, whenever in the opinion of such superintendent personal service would injuriously affect such person, which shall be stated in the acknowledgment of service. Such service shall be deemed a personal service on the person so confined.

The change is rendered necessary by reason of the transposition of the section.

For section 2831, subdivision 8, substitute :

3. Where the action is for a divorce, if the defendant is a non-resident of the United States, or his residence is unknown.

New section, to be inserted after 2831:

4. Before service can be made by publication in an action for a divorce, the plaintiff shall make an affidavit stating:

1st. That the defendant is a non-resident of the United States, and his means of knowledge ; or,

2d. That the residence of the defendant is unknown, and his last place of known residence, the plaintiff's means of knowledge, and the efforts made constituting diligence to ascertain the defendant's present place of residence; which affidavit shall be presented to a judge, who, if satisfied that personal service cannot be made on the defendant in the United States, or that his residence is unknown, and that due diligence has been used to ascertain the same, may in his discretion make an order that service be made by publication, which order shall be indorsed on the affidavit and filed with the clerk.

If it be possible to obtain personal service in this class of cases, it should be required. In other cases of service by publication, the party may have the same set aside as of course at any time within two years; not so in divorce cases if the plaintiff has married again. This amendment will tend greatly to prevent so many fraudulent divorces.

Substitute for sections 2832 and 2833, as amended by section 2, chapter 174, 9th G. A. :

5. Before service by publication can be made, an affidavit must be

filed that personal service of notice can not be made within this State on the defendant to be served by publication, and may be done by publishing the notice required four consecutive weeks, the last publication to be at least ten days before the next term of court, in some newspaper issued, at least weekly, and printed in the county where the petition is filed ; if there be none printed in the county, then in such a paper printed at the next nearest county of this State, which paper shall in either case be determined by the plaintiff or his attorney.

For section 2834, substitute:

6. Service by publication shall be deemed complete when the affidavit is filed, and the notice published in the manner and for the time prescribed in the preceding section and the defendant held to appear at the next term. But no default can be taken until proof of publication has been made, which may be done by affidavit made by any person knowing the fact.

The reference in the original to sections 2812 and 2832 has been avoided, and the rule laid down therein stated, in the substitutes in briefer terms.

Substitute for sub-divisions 1 and 2 of section 2841:

7. If the action be against defendants jointly, or jointly and severally, or severally liable only, he may, without prejudice to his rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if he recover against those jointly liable only, he may take judgment against all thus liable, which may be enforced against the joint property and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property.

No substantial change—does away with action of *scire facias* by name only, and states the rule in briefer terms.

Substitute for section 2843 :

8. When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with a constructive notice of the pendency of the action, file with the clerk of the district court of such county, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, and from the time of such filing only, shall the pendency of the action be

constructive notice to subsequent vendees or incumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if a party to the action, and the clerk of such county must immediately, on receipt of such notice, index and record the same in the incumbrance book. And within two months after the determination of such action there shall be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same in the same manner as though rendered in that county, or such notice of pendency shall cease to be constructive notice.

It is thought that the original section, with the amendment made by the 13th G. A., is the better provision.

Chapter 122.

Section 1, chapter 174, 9th General Assembly; section 17, chapter 167, 13th General Assembly; section 1, chapter 75, 9th General Assemby; section 18, chapter 167, 13th General Assembly; section 1, chapter 28, 9th General Assembly; and section 19, chapter 167, 13th General Assembly, have been placed in the appropriate places in this chapter.

Amendments and changes in this chapter are recommended as follows:

Section 2849, substitute:

1. The defendant shall in any action commenced in a court of record demur, answer, or do both, as to the original petition, before noon of the second day of the term.

Section 2850, substitute:

2. Each party shall demur, answer, or reply to all subsequent pleadings, including amendments thereto and substitutes therefor, before noon of the day succeeding that on which the pleading is filed. But all pleadings must be filed by the time the cause is reached for trial.

Sections 2851, 2852, 2853, and 2854 to be omitted.

For section 2856, as amended by section 17, chapter 167, 13th General Assembly, substitute:

3. The appearance term shall not be the trial term for equitable actions triable by the first method, except where the answer is a mere denial, and the proof documentary only.

The object is to make the time of filing pleadings in all actions alike. If more time is required in equitable actions, the court will undoubtedly grant it. But the opportunity should be given all parties to force an issue and trial at the earliest day consistent with justice.

Section 2858 to be omitted, being included in foregoing amendments.

For section 2859, substitute:

4. The court may extend the time of filing any pleading beyond the time herein fixed, but shall do so with due regard to making up the issues at the earliest day possible.

The part omitted has proved practically useless.

Section 2860 to be omitted, because it has never been enforced.

For section 2861, substitute:

5. Sham and irrevelant answers and defenses may be stricken out on motion, and upon such terms as the court in its discretion may impose.

The original has never been enforced—been practically useless. Something on this subject may be required, and the substitute is taken from the New York Code, and gives the court all necessary power.

Sections 2862 and 2863 to be omitted for the reasons above stated.

For section 2864, substitute:

6. All motions assailing any pleading shall be in writing, must be filed before a demurrer, answer, or reply has been filed to the pleading assailed, shall specify the causes on which such motion is founded, and none other shall be argued or considered.

Section 2865 to be omitted. The foregoing substitute covers the whole ground.

For section 2867, substitute:

7. A demurrer or motion assailing any pleading, or count thereof, suspends the necessity of filing any other pleading, to such pleading or count, until the same has been determined, and the next pleading shall be filed by the morning of the day succeeding such determination.

Under the present practice, no default can be taken when a motion or demurrer is overruled, unless the court has directed when the next pleading should be filed and that time has elapsed. The substitute lays down a rule for such cases, without calling in aid any action of the court.

Section 2868 to be omitted.

For section 2869, substitute:

8. All motions and demurrers shall be argued and submitted when filed, unless the adverse party desire time, in which case it may be extended until the morning of the succeeding day, but must be so argued and submitted at or before the cause is reached for trial.

There is no reason why the party filing a motion or demurrer should not be prepared at all times to submit it to the court.

Section 2870, all after the word "court" in the third line to be omitted.

For section 2871, substitute:

9. The filing of a pleading or motion in the clerk's office during a term and a memorandum of such filing made in the appearance docket, within the time allowed, shall be equivalent to filing the same in open court.

Section 2876, amendment, being substitute for sub-division 6, of this section:

10. Any pleading is subject to demurrer which on its face shows that the claim is barred by the statute of limitations, or fails to show it to be in writing where it should be so evidenced, or, if founded on an account or writing as evidence of indebtedness, and neither of such writings, account, or copy thereof is incorporated into or attached to such pleading or a sufficient reason stated for not doing so.

Includes part of sections 2918 and 2920, and all of 2961, '63, and '64, and on the whole much abbreviates the chapter. The reference to other sections as in the original should be obviated whenever it can be done.

For section 2877, substitute:

11. A demurrer must specify and number the grounds of objection to the pleading, or it shall be disregarded; and it shall not be sufficient

to state the objection in the terms of the preceding section, except that a demurrer to an equitable petition for the fifth reason of said section may be stated in the terms thereof.

For section 2878, substitute:

12. When any of the matters enumerated as grounds of demurrer do not appear on the face of the petition, the objection may be taken by answer. If no such objection is taken, it shall be deemed waived, except only that the petition does not state facts sufficient to constitute a cause of action, which may be taken advantage of by motion in arrest of judgment, if same is made before judgment is entered.

The original fails to lay down any rule indicating how the defective pleading can be assailed after verdict, and leaves the whole question open for each practitioner to adopt one of his own. Section 3119 provides for an amendment in such cases.

Section 2881 to be omitted—practically useless. Section 2894 to be omitted ; see new section to be inserted after section 2900.

For section 2895, substitute:

13. There shall be no reply except,
1st. Where a set-off, counter-claim, or cross-demand is alleged; or,
2d. Where some matter is alleged in the answer to which the plaintiff claims to have a defense, by reason of the existence of some fact which avoids the matter alleged in the answer.

Suppose suit is brought and defendant pleads a release. Under the original no reply was necessary, yet the plaintiff could show on the trial the release was procured by fraud, or some other such defense, without any notice whatever to the defendant. This is wrong ; there is nothing of fairness in such a rule. It is true the defendant might apply for and possibly obtain a continuance on the ground of surprise, but he should not be driven to run the risk.

For section 2896, substitute:

14. When a reply must be filed, it shall consist of,
1st. A general or special denial of each allegation controverted, or any knowledge or information thereof sufficient to form a belief as in case of the answer; or,
2d. Any new matter not inconsistent with the petition stated in concise and ordinary language constituting a defense to the matter alleged in the answer; or the matter in the answer may be confessed,

and any new matter alleged not inconsistent with the petition which avoids the same.

The following is proposed as a new section to come in after section 2898:

15. A plaintiff, who has a cause of action against a co-plaintiff or other person growing out of or connected with the subject-matter of set-off, counter-claim, or cross-demand set up in the answer, may either by amended petition or in the reply, set forth such cause of action as in a cross-petition, and introduce any new parties that may, be necessary to an adjudication thereof, and the same shall be prosecuted in the manner provided in relation to cross-petitions by a defendant.

The policy of the code is to settle if possible all controversies growing out of or connected with the subject matter of the action in the one suit. Why not then give the plaintiff the same right as is accorded to defendant in section 2892 ? The substance of this substitute has been introduced by amendment to the Kentucky Code.

Section 2899 to be omitted.

New section to be inserted after 2900, and as a substitute for 2894 and 2899:

16. When the facts stated in the answer or reply, or any division thereof, are not sufficient to constitute a defense or cause of action, the adverse party may demur and shall be held to the same certainty in the statement of his grounds thereof as obtains in a demurrer to a petition, and all objections not stated shall be deemed waived, except as obtains in a demurrer to a petition.

Section 2901 to be omitted—practically useless.

For section 2903, substitute:

17. If a pleading is not divided into counts, divisions, or paragraphs, or if more than one cause of action or defense is stated in any count, division, or paragraph, the party so pleading may, on motion, be compelled to divide and number, or such pleading may be struck out.

More concisely stated than in the original, contains substantially the same matter except that where a pleading is double it may be struck out instead of compelling an election, which it is submitted is the better rule. An amendment can then be filed, purged of the objectionable matter, and the record left in much better shape.

For section 2908 and 2909, substitute:

18. If the statements of a pleading are known to any person other than the party, such person may make the affidavit, which shall also contain averments showing affiant competent to make the same.

For section 2910, substitute:

19. The verification shall not be required to the pleading of a guardian, infant, prisoner, or person, who has been judicially found to be of unsound mind.

Amend section 2911 by striking out "or" between "petition" and "answer" in second line, and inserting after "answer" the words :

20. "Or reply."

For section 2913, substitute :

21. The verification may be made before any person, either within or without this State, who is qualified by the provisions of this code to take depositions, and shall be signed by the person making the same ; and the person before whom the same is taken shall certify that it was signed in his presence by the affiant, (naming him) and by him before such person sworn to or affirmed ; which certificate shall be presumptive evidence that its statements are true.

It is submitted that this is the simpler and better rule, and occupies about half the space of the original.

For section 2917, substitute :

22. Every material allegation in a pleading, not controverted by a subsequent pleading, shall, for the purposes of the action, be deemed true. But the allegations of the answer, not relating to a set-off, counter-claim, or cross-demand, and of the reply, are to be deemed controverted. But an allegation of value, or amount of damage, shall not be deemed true by a failure to controvert it. A party desiring to admit any allegations, which by this section would be deemed controverted, may, at any time, file a written admission thereof.

It has already been provided that a denial of knowledge or information sufficient to form a belief is sufficient—why repeat it here ? The original is quite prolix, the substitute brief, and yet contains all of the original that is essential.

For Section 2918, substitute :

23. If a pleading is founded on an account, a bill of particulars thereof must be incorporated into or attached to such pleading, verified as the pleading, and deemed a portion thereof, subject to be made more specific on motion, and shall define and limit the proof, but may be amended, as other pleadings. The items of such bill of particulars shall be consecutively numbered.

All that is essential or of value practically in the original is retained and the prolixity avoided :

Section 2919 to be omitted—useless.

For section 2920, substitute :

24. If the pleading is founded on any writing as evidence of indebtedness, the original, or a copy thereof, must be incorporated in or annexed thereto, or a sufficient reason stated for not so doing.

It having been provided, by amendment to section 2876, that if the original, or a copy of the writing, is not incorporated in or attached to the pleading, it is demurrable, the necessity of even the substitute is not clearly perceived, and the whole might be omitted; but clearly the substitute contains all of the original section that is essential.

Section 2924 to be omitted. Without this, every material averment not controverted is admitted. Section 2917, or substitute therefor, so provides. Certainly an averment of corporate or other capacity in which a party sues is a material allegation.

For section 2925, substitute :

25. If either of the allegations contemplated in the three preceding sections is controverted, it shall not be sufficient to do so in terms contradictory of the allegation, but the facts relied on shall be specifically stated.

Contains substance of the original, some useless words only omitted.

Section 2933, to be omitted—because obsolete.

Sections 2935 and 2936, to be omitted—because practically useless.

Of section 2937, all after the words "reply" to be omitted.

Section 2938, to be omitted. It is thought, such would undoubtedly be the rule without this section.

Section 2941, to be omitted. The difficulty in understanding this section makes it necessary to strike it out.

Section 2943, to be omitted.

For section 2944, substitute :

26. Under a mere denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove.

What has a proposition of law to do here ? The original contains more words than necessary. In fact, the original and substitute might with safety be omitted, as the courts would hold the rule to be as stated in the substitute.

Section 2945 to be omitted. Such would be the rule without this.

Section 2946, all after word "pleadings" to be omitted, because never enforced.

For section 2948, substitute :

27. When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may on motion require it to be made more definite and certain. No pleading which recites or refers to a contract shall be deemed sufficiently specific unless it states whether it is in writing or not. Such motion shall point out wherein the pleading is not sufficiently specific or it shall be disregarded, and if the reason for such demand exists outside of the pleadings, the motion must state the same and be supported by affidavit.

The original contains more words than is essential.

Section 2953 to be omitted. Such would be the rule without this.

Section 2961 to be omitted. See amendment to 2876.

Section 2963 and 2964 to be omitted for same reason.

Section 2965 to be omitted because all fictions are abolished.

For sections 2966, substitute as follows :

28. A party shall not be compelled to prove more than is necessary to entitle him to the relief asked for, or any lower degree included therein ; nor more than sufficient to sustain his defense.

Substitute for section 2967, as amended by chapter 28, 9th G. A., and section 19, of chapter 167, of 13th G. A.

29. When a written instrument is referred to in a pleading, and the same or a copy thereof is incorporated in or attached to such pleading, the signature thereto and to any indorsement thereon shall be deemed genuine and admitted, unless the person whose signature the same purports to be shall in a pleading or writing filed within the time allowed for pleading deny the genuineness of such signature under oath. If such instrument purport to be executed by a person not a party to the proceeding, the signature thereto shall not be deemed genuine or admitted—if a party to the proceeding, in the manner and within the time before mentioned, state under oath that he has no sufficient knowledge or information sufficient to enable him to form a belief as to the genuineness of such signature. The person whose signature purports to be signed to such instrument shall on demand be entitled to an inspection thereof.

These sections taken together, are quite prolix, and section 19, chapter 167, 13th G. A., does not seem sufficiently guarded. An exhibit may be attached to a pleading, or referred to therein which is not signed by a party to the action, should he be required to positively deny the same under oath, or the instrument be deemed genuine? To obtain the benefits of that section a party must attach to the pleading the original instrument. This is seldom advisable or safe. The substitute as it is submitted remedies these objections, and covers the whole ground, and is more concise than the originals.

Section 2971 to be omitted. There is no such schedule.

For section 2972, substitute :

30. No variance between the allegations of a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his predjudice in maintaining his action or defense on the merits. Wherever it is claimed a party has been so misled such fact must be shown to the satisfaction of the court, and in what respect he has been so misled, and the court may order the pleading amended upon such terms as may be just.

The substance of the original retained some unnecessary words only omitted.

For section 2977, substitute:

31. The court may, on motion of either, at any time in furtherance of justice, and on such terms as may be proper, permit such

party to amend any pleadings or proceedings by adding or striking out the name of a party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or when the amendment does not change substantially the claim or defense by conforming the pleadings or proceedings to the facts proved.

The second clause of the original is substantially the same as section 2859. There is no necessity of repeating it. And no necessity is seen for the last clause.

For section 2987, substitute :

32. The interrogatories shall be answered at the same time the pleading to which they are annexed is answered or replied to.

Chapter 123.

For section 2994, and 2995, substitute :

1. An issue of fact arises upon a material allegation in a pleading which is controverted by a subsequent pleading, or operation of law. Any other issue is one of law.

Brevity is one merit of the substitute. It is doubtful whether the definition of an issue at law in the original is sufficiently comprehensive. An issue of law may arise on a motion as well as a demurrer.

For section 2996, substitute :

2. Issues of law must be first tried; but if a party proceed to trial on an issue of fact, without objection, he will be deemed to have waived his demurrer.

Section 2879, provides that issues of law may arise upon different parts of the pleadings—why repeat it here ?

For section 2998, substitute :

3. Issues of law must be tried by the court, unless referred. Issues of fact in an action in an ordinary proceeding for the recovery of money, or specific real or personal property, must be tried by jury, unless the same is waived. All other issues of fact shall be tried by the court, unless the court otherwise orders, or a reference thereof is made.

Substantially taken from Ohio and Kentucky codes, the original gives a jury trial in all actions by ordinary proceedings, such as application for a new trial by petition, mandamus, and possibly informations under chapter 151.

Substitute for sub-divisions 1, 2, and 3, of section 2999 :

4. First. In all cases tried according to the first method the evidence shall be in writing, while those tried by the second method it shall be as in ordinary actions.

Second. In a trial by the first method, the issues shall be tried by the court, who may, however, order the whole issue, or any part thereof, or any specific question of fact involved therein, to be tried by a jury ; or may refer the same, and may in either case accept or reject the finding, and may, with or without a statement of any finding of facts, render such judgment as is equitable. In a trial by the second method, either party shall be entitled to have the whole issue, or any part thereof, or any question of fact involved therein, tried by a jury, as in ordinary proceedings.

Third. On appeal taken in a case tried by the first method, all the evidence shall go to the Supreme Court, which shall try the case on both the law and fact, as apparent of record. Cases tried by the second method, on appeal to the Supreme Court, shall be tried on errors of law only, as in ordinary actions, and the record shall be prepared in the same manner.

Brevity has been consulted. The omitted portion is unnecessary —unless it be to render that obscure which is otherwise clear.

For section 3000, substitute :

5. The first method shall obtain in all equitable cases, except :

First. For divorce.

Second. For foreclosure of mortgages and other instruments in writing whereby a lien or charge on property is created.

Third. In default cases.

Fourth. When the parties or their attorneys agree to try by the second method.

The foreclosure of tax titles is obsolete.

Sections 3001, 3002, and 3003, to be omitted. If the cause is tried by the second method, without objection, the parties would be estopped from saying they had not consented in the manner pointed out in these sections.

For section 3005, substitute :

6. The clerk shall keep a calendar of all causes pending in his court, arranging, in one part thereof, in the order of their commencement, criminal causes ; in another, ordinary and equitable actions triable by the second method ; and in another, all other equitable actions and special proceedings ; and shall, under the direction of the court or judge, apportion the same to as many days, as is believed necessary, and at the request of any party to a cause, or his attorney, issue subpœnas accordingly. The clerk shall furnish the court and bar with a sufficient number of copies of such calendar.

Abbreviated somewhat, the only change in substance being that equitable actions triable by the second method are to be placed on the calendar with ordinary actions, in the order of their commencement.

Section 3006 to be omitted. The effect would be to leave the whole matter to the court. This section is directory merely ; no error could be successfully assigned if the court should adopt some other order of trial.

For section 3007, as amended by section 20, chapter 167, 13th G. A., substitute as follows :

7. Except where otherwise provided, causes shall be tried at the first term, after legal and timely service has been made.

Sections 3008–3113 make provision for continuances. The change otherwise made is rendered necessary by reason of amendments to chapter on pleadings. It having been in that chapter provided that equitable causes, tried by first method, shall not, except in special cases, be tried at the first term.

Substitute for sections 3012 and 3013 :

8. If the application is insufficient, it shall be overruled ; if held sufficient, the cause shall be continued, unless the adverse party will admit that the witness if present would testify to the facts therein stated, in which event the cause shall not be continued, but the party may read as evidence of such witness the facts held sufficiently stated.

No substantial change. Brevity is the only merit.

Section 3018 to be omitted—provided for in substitute for section 2871.

Section 3021 to be omitted—obsolete.

For section 3027, substitute :

9. A challenge is an objection made to the trial jurors, and is either peremptory or for cause.

There is no reason why a challenge to the panel should be allowed. If allowed and exercised, the practice would be no doubt to re-summon the same persons ; but it is doubted if the right has been attempted to be exercised since the adoption of the Revision.

Section 3029–3033, to be omitted, for the reason above stated, the latter section being covered by substitute for 3027.

For section 3037, substitute :

10. After each challenge the vacancy shall be filled before further challenges are made, and any new juror thus introduced may be challenged. A challenge for cause is an objection to a juror, and is—

First. A conviction for felony.

Second. A want of any of the qualifications prescribed by a statute to render a person a competent juror.

Third. Inability to understand the English language, unsoundness of mind, or such defects in the faculties of the mind or organs of the body as render him incapable of performing the duties of a juror.

Fourth. Consanguinity or affinity within the ninth degree to the adverse party.

Fifth. 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, or in the employment of the adverse party.

Sixth. Being a party adverse to the challenging party in a civil action, or having complained against, or been accused by him in a criminal prosecution.

Seventh. Having already sat upon the trial of the same issues.

Eighth. Having served as a grand or petit juror in a criminal case based on the same transaction.

Ninth. When it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows such a state of mind as will preclude him from rendering a just verdict.

All causes of challenge are retained, but the distinction between actual and implied bias is stricken out, same being of no practicable value.

Section 3038, 3040, to be omitted.

Section 3050, to be omitted. This matter can be well trusted to the discretion of the Court.

For section 3051, substitute:

11. When the argument is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the Court. All instructions asked, and the charge of the Court, shall be in writing.

The omitted part is directory, and never followed in practice.

Section 3052 to be omitted. This section is directory, never followed in practice, and had better be left to the Court to regulate.

Substitute for section 3057 and 3058:

12. After argument, the court may also on its own motion charge the jury, which and all instructions asked shall be in paragraphs and numbered.

The omitted portion of 3057 is rendered unnecessary by reason of substitute for 3051.

Amendment to be added to section 3059:

13. Or may be done by a general exception to the whole written at the conclusion thereof, without any ground or reason being stated therein.

The practice is understood to be in accord with this. Counsel cannot point out each portion or paragraph to which exception is taken without they can have time to examine the charge. To do this would cause delay. If the course suggested by the amendment is unfair to the court, the motion for a new trial would point out the particular objection taken, and the court be thus advised. However, this may be, the principle should be adopted of allowing Counsel a fair opportunity to examine the instructions.

Amendment to section 3079 as follows:

14. In all actions, the jury in their discretion may render a general or special verdict: and in any case in which they render a general verdict, they may be required by the court, and must be so required, on the request of any party to the action, to find specially upon any particular questions of fact to be stated to them in writing, which

questions of fact shall be submitted to the attorneys before the argument to the jury is commenced.

It is not just that particular questions should be submitted to the jury after argument, or, as it is sometimes done in practice,—one party submits questions to the court to be propounded to the jury ; makes his argument, knowing they were to be put, but the adverse party knows nothing about them until they are submitted at the close of the charge.

Section 3083—amendment:

15. Where there are several plaintiffs or defendants, whether the pleadings are joint or several, the verdicts shall be moulded according to the facts and to suit the exigencies of the case.

Section 3121, sufficiently provides for judgments. Substitute includes plaintiffs, is more comprehensive :

To section 3106, the following to be added :

16. But no exception is necessary or shall be required in causes tried by the first method.

Substitute for so much of section 3112 as precedes the subdivisions thereof :—

17. A new trial is a re-examination in the same court of an issue of fact or some part or portions thereof, after verdict by a jury, report of a reference, or a decision by the court. The former report, verdict, or decision, or some part or portion thereof, shall be vacated, and a new trial granted, on the application of the party aggrieved for any of the following causes affecting materially the substantial rights of such party :

Doubts have been expressed whether under the original, the court can grant a new trial, as to a part, and refuse it as to another part, whether the new trial must be granted on the whole case for some error which had no effect whatever on some distinct issue. So many different issues may arise under our system of pleadings in the same case, that the power suggested should not be left in doubt, but be expressly granted.

For section 3113, substitute :

18. A new trial shall not be granted on account of the smallness of

damages in an action for an injury to the person or reputation, where the damages equal the actual pecuniary injury sustained.

The omitted words render the original obscure and difficult of construction. Section 15, Indiana, 246.

For sections 3114–3116, substitute as follows :

For 3114 and 3115 :

19. The application must be made at the term and within three days after the verdict, report, or decision is rendered, except for the cause of newly discovered evidence, must be by motion upon written grounds, and if for the causes enumerated in sub-divisions, two, three, and seven of section may be sustained and controverted by affidavits.

For 3116 :

20. Where reasonable diligence has been used, and the causes for a new trial have not been discovered until after the term, the application may be made by petition filed as in other cases, not later than one year after the decision. The adverse party shall be notified, and held to appear as in other actions, the same shall be tried as in ordinary proceedings. But the facts in the petition shall be deemed denied, without answer.

The substitutes contain substance of the original, stated in more concise terms.

Amendment to first two lines of section 3119 :

21. Upon any motion made for a new trial, in arrest for judgment, not withstanding the verdict, etc.

Having provided expressly for an arrest of judgment in certain cases, the amendment becomes necessary.

Section 3155, to be omitted—has become obsolete. A party can swear to his pleadings, which must be denied under oath.

Chapter 124.

Section 1 and 2, chapter 161, and section 21, chapter 167, 13th G. A. ; chapter 14, 10th G. A. ; section 22, chapter 167, and section 23, chapter 167, and section 24, chapter 167, 13th G. A.; and chapter 133, 10th G. A., have been transferred to, and placed in appropriate places in this chapter.

Section 4129 has also been so transferred.

The following amendments and changes in this chapter are proposed:

Section 3177, 3199, and 3202 have been so changed as to make the same applicable to the circuit court and judge.

Section 3174. Amendment providing for additional causes of attachment as follows: or,

1. Ninth. That he is about to remove his property or a part thereof, out of the county with intent to defraud his creditors ; or,

Tenth. That he is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors ; or,

Eleventh. Has property or rights in action which he conceals.

Our legislation on collection laws as a rule, discriminate against the creditor. Any reasonable amendment thereto, that would to some extent obviate the injustice done in this respect, should be adopted. Whoever conceals his property, or attempts to place it beyond the reach of his creditor, should be liable to attachment.

2. Where the petition states, in addition to the other facts required, that the plaintiff will lose his claim unless the writ issues and is served on Sunday, it may be issued and served on that day.

Section 3181, substitute as follows:

3. When the ground of the attachment is that the defendant is a foreign corporation, or acting as such, or a non-resident of the State, the writ may issue without any bond ; in all other cases, before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred and fifty dollars in a court of record, nor less than fifty dollars if in a justice's court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing-out of the attachment.

If the defendant is a non-resident of the State, he can only be sued by attachment, and there is no justice in requiring a bond in such a case.

"Two clear" to be struck out of section 3182 and "three" inserted in place thereof.

For section 3183, substitute:

4. In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained ; but, if it be shown, such attachment was sued out maliciously and with design to vex, harrass and oppress, and with no honest motive or intent, he may recover vindictive damages, nor need he wait until the principal suit is determined before suing on the bond.

If the attachment was sued out with an honest motive, vindictive damages should not be recovered. It is probable the courts would, in the absence of the change herein made, hold the law to be as laid down in the substitute. If so, why not declare it by statute, 10 Iowa, 141; 24 Iowa, 171.

For section 3184, substitute:

5. Writs of attachment may be issued from courts of record to different counties, and several such writs may, at the option of the plaintiff, be issued at the same time, or in succession, and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court ; and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus.

The section had to be rewritten, so as to include the circuit court—no other substantial change.

For section 3190, substitute, consisting of two sections, as follows :

6. In executing a writ of attachment against a person who owns property, jointly or in common with another, or who is a member of a partnership, the officer may take possession of such property so owned jointly, in common, or in partnership, sufficiently to enable him to inventory and appraise the same ; and for that purpose shall call to his assistance three disinterested persons—which inventory and appraisement shall be returned by the officer with the writ of attachment, and such return shall state who claims to own such property.

7. The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after he obtains judgment in the action in which the attachment issued, commence an action by

equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien ; and if deemed necessary or proper, the court or judge may appoint a receiver under the circumstances and conditions provided in chapter 133.

The original allows property held jointly with another to be taken possession of under certain conditions by the officer on attachment against one joint owner. This should not be permitted. The true principle is that the creditor has only a lien on the interest of the debtor. This he should have, and be protected in to the utmost extent possible, without unduly infringing on the rights of others.

For sections 3191, and 4129, the following substitute is proposed to take the place of both :

8. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties to be approved by the officer having the attachment, or after the return thereof by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action.

The officer or clerk is much better qualified to approve the bond than the court or judge.

Section 3192, to be omitted, being provided for in above :

For section 3208, substitute :

9. When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert the same by pleading by him filed, and issue may be joined and the same tried in the usual manner. The answer of the garnishee shall be competent testimony on such trial.

Had to be rewritten—no change in substance.

" Two clear " to be struck out of section 3222, and " three " put in place thereof.

For section 3242, substitute:

10. This chapter shall be liberally construed, and the plaintiff at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding ; and no attachment shall be quashed, dismissed, or the property attached released, if the defect in any of the proceedings

has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings, the causes for attachment shall not be stated in the alternative.

All pleadings may be amended except the "statements of cause of attachment." Why this distinction? The principle is clearly recognized that a party shall not be deprived of the benefits resulting from a given right or remedy, through any mistake or oversight. The rights to, or benefits accruing from, an attachment should be governed by the same principle. The substitutes requires that the cause should have existed at the time the writ was issued.

Chapter 125.

Section 10, chapter 174, 9th G. A.; section 26, chapter 167, and chapter 43, 13th G. A., chapter 91, 11th G. A.; section 27, chapter 167, 13th G. A., section 28, chapter 167, 13th G. A.; section 29, chapter 167, 13th G. A., and sections 1 and 2, chapter 150, 13th G. A.; section 30, chapter 167, 13th G. A.; sections 1 and 2, chapter 51, 10th G.A., have been transferred to this chapter, and the following amendments and changes are proposed:

For section 3248, substitute as follows:

1. Executions from a court of record may be issued into any county which the party ordering them may direct.

The original does not include Supreme or circuit court.

For section 3249, substitute:

2. In case execution is issued to a county other than that in which the judgment is rendered, a transcript of such judgment must be filed in the office of the clerk of the district court of such county, who shall make an entry thereof in the judgment docket of such court; and the officer having such execution shall return a copy thereof, with his return and doings indorsed thereon, to such clerk, who shall make entries thereof in the same manner and extent as if such judgment had been entered in and execution issued from such court.

The term "clerk" in the original is indefinite. It requires no entry of the judgment to be made in any judgment docket, but only

that the copy of the execution shall be treated as if issued from his county.

Section 3256, to be omitted, being obsolete.

For section 3274, substitute :

3. Public buildings owned by the State, or any county, city school district, or other public corporation, or 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 on to pay the debt of a public corporation.

The term civil corporation used in the original is thought to include a class not intended—hence the change to public corporations.

For section 3277, substitute as follows :

4. An officer is bound to levy an execution on any personal property in the possession of, or that he has reason to believe belongs to the defendant, or on which the plaintiff directs him to levy, unless he has received notice in writing from some other person, his agent or attorney, that such property belongs to him ; or if after levy he receives such notice, such officer may release the property, unless a bond is given, as provided in the next section ; but the officer shall be protected from all liability by reason of such levy until he receives such written notice.

5. When the officer receives such notice he may forthwith give the plaintiff, his agent, or attorney, notice that an indemnifying bond is required. Bond may, thereupon, be given, by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property, such estate or interest therein as is sold ; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the district court of the county, in which the levy is made.

Under the original, bonds are required unnecessarily. Officers demand them for every imaginary reason, and without just cause. If the officer makes a levy without notice from any one, he should be protected from liability if the plaintiff upon being notified refuses to indemnify him for such levy.

The substitute suggested for 3277 renders a substitute for 3278 necessary, as follows :

6. If such bond is not given, the officer may refuse to levy, or if he has done so and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged.

Sections 3281, 3282, 3283, 3284, and 3285, to be omitted.

The commissioners have no knowledge that these sections have ever been used, or the right given thereunder claimed.

The usual and better remedy, it is thought, is replevin or detinue. In that case, the claimant has to swear the property is his. Under these sections, he has only to "claim it." This seems unjust to the plaintiff in execution. In replevin or detinue, who is plaintiff or defendant is determined by law. Under these sections, it is unknown who is plaintiff until the court determines this question, and directs how the issues are to be tried.

The striking out of the above named sections renders a part of 3286 useless, therefore the following is proposed as a substitute :

7. The provisions of the preceding sections as to bonds shall apply to proceedings upon executions issued by justices of the peace. Indemnifying bonds shall be returned in such cases with the executions under which they are taken.

For sections 3287, 3288, 3289, 3290, 3291, and 3292, substitute as follows:

8. When an officer has an execution against a person who owns property jointly, in common, or in partnership with another, such officer may levy on and take possession of the property owned jointly, in common, or in partnership, sufficiently to enable him to appraise and inventory the same, and for that purpose shall call to his assistance three disinterested persons, which inventory and appraisement shall be returned by the officer with the execution, and shall state in his return who claims to own such property.

9. The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest, and to enforce the lien; and if deemed necessary or proper, the court or judge may appoint a receiver under the circumstances provided in chapter 133.

Substantially identical with amendments on this same subject proposed to the chapter on attachments. The principle involved is the same. The power to appoint a receiver is a safer and better provision than that in 3292. By that, the joint property must be taken possession of unless a bond be given upon the filing an affidavit. The receiver can only be appointed after a hearing by the court or judge, and when it is for the best interests of all concerned. The rights of the creditor are protected to the full extent they can be under the acknowledged principles of law, in respect to joint or partnership property being liable for the separate debts of one joint owner.

For section 3293, substitute as follows :

10. On all judgments for the recovery of money, except those rendered in any court on an appeal or writ of error thereto, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution if the defendant therein shall procure one or more sufficient freehold sureties to enter into a bond acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs, from the time of rendering judgment until paid, as follows :

If the sum for which judgment was rendered, inclusive of costs, does not exceed five dollars, one month.

If such sum and costs exceed five, but not twenty dollars, two months.

If such sum and costs exceed twenty, but not forty dollars, three months.

If such sum and costs exceed forty, but not sixty dollars, four months.

If such sum and costs exceed sixty, but not one hundred dollars, six months.

If such sum and costs exceed one hundred, but not one hundred and fifty dollars, nine months.

If such sum and costs exceed one hundred and fifty dollars, twelve months.

By allowing a stay of execution after appeal, parties will frequently appeal when they would not otherwise.

Delay is thus obtained, frequently all that is desired or at least expected. It encourages parties to appeal and take a risk they would

not otherwise. The substitute will have a tendency to relieve all appellate courts.

For section 3295, substitute:

11. The surety for stay of execution may be taken and approved by the clerk and the bond shall be entered of record and have the force and effect of a judgment confessed, from the date thereof, against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket, as in case of other judgments.

Section 3298 to be omitted.

Same being embraced in this substitute. The term recognizance does not seem proper here, therefore bond is substituted. Many clerks do not make the entries as required by this substitute. The spirit of the law as it now stands requires it, however.

For section 3317, substitute:

12. When property is unsold for want of bidders the levy still holds good; and if there be sufficient time it may again be advertised; or the execution returned and one issued commanding the officer to sell the property (describing it) previously levied on, to which a clause may added, that if such property does not produce a sum sufficient to satisfy such execution the officer shall proceed to make an additional levy, on which he shall proceed as on other executions, or the plaintiff may in writing filed with the clerk or justice abandon such levy upon paying the costs thereof. In which case execution may issue with the same effect as if none had ever been issued.

It is thought best that statutes should be written in the English language whenever, at least, the legal idea or term can be thus expressed. The execution is issued and levy made in the interest of the plaintiff—it is a lien on that particular property; why should he not have the power to release such lien? See *McWilliams* v. *Myers*, 10 Iowa 325.

Sections 3360 to 3374 inclusive, to be omitted.

Stay of execution and redemption being allowed, appraisement should not be. The expense attending it, renders it in many instances a burden instead of benefit to the debtor. At the same time, however, it operates as an injury to the creditor. On principle, the creditor should not be required to take property in payment at more than its market value.

Chapter 126.

For section 3377, substitute:

1. Such order may be made by the district or circuit court of the county in which the judgment was rendered, or to which execution has been issued, or in vacation by a judge thereof. And the debtor may be required to appear and answer before either of such courts or judges, or before a referee appointed for that purpose by the court or judge who issued the order.

Changed only so as to make it applicable to the present system of courts.

New sections proposed to come in at end of chapter.

2. If, after execution has been returned, as provided in the first section of this chapter, the plaintiff in execution files a petition in the district or circuit court of the county of the debtor's residence, supported by affidavit stating that such debtor has property, rights, or credits, which he conceals or unjustly refuses to apply toward the satisfaction of the judgment, such debtor shall be deemed guilty of fraud, and the court in which the petition is filed, or in vacation, the judge thereof shall issue an order for his arrest and commission to jail, unless he gives bond in a sum to be fixed by such court or judge, with sureties to be approved by the officer making the arrest, conditioned for his appearance to answer such petition, and to comply with any order or judgment that may be made in the premises by the court.

3. Such petition shall describe with reasonable certainty the property, rights, or credits, and the value thereof, and in what manner concealed or unjustly withheld. Issue may be joined on such petition in the usual manner, and the same tried as in the ordinary proceedings, either party may amend the pleadings, and, if necessary, bring in other parties, as in other cases, and have the right of trial by jury.

4. The finding of the court or jury shall describe the property, rights, or credit concealed, or which the debtor or any other person unjustly refuses to apply to the satisfaction of the judgment, and the value thereof. If such property is found to be in the possession, or under the control of any person other than the debtor, who has been made a party, the court shall order the same to be delivered to the proper officer, to be levied upon and disposed of as in other cases, or in default thereof shall enter judgment against such person for the value thereof, to the extent of the plaintiff's interest therein.

5. If such property is found to be in the possession of, or under the control of the debtor, the court shall order the same delivered to the proper officer, to be dealt with as provided in the preceding section, and if such order is not complied with, a judgment shall be

entered against such debtor, and surety in the bond for the value of the property, to the extent of the plaintiff's interest therein.

6. If when arrested, the debtor so desires, the officer shall take him before the judge who issued the order, who shall at the same time notify the plaintiff or his attorney, of such fact. If such debtor shall submit to an examination before such judge as provided in the preceding sections of this chapter, and if upon such examination it is made satisfactorily to appear that such debtor, has not in his possession, or under his control, nor in the possession or under the control of others, any property, rights, or credits which he conceals or unjustly refuses to apply in satisfaction of such judgment, or if he surrenders the property that may be so found to be in his possession, he may be discharged from arrest.

The object of these sections it to provide for such cases as that referred to in "*Ex parte*" Grace, 12 Iowa.

Chapter 127.

For section 3391 :

1. At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the judgment debtor, or holding any property or money, in which such debtor has any interest, or the evidences or securities for the same, may be made defendants.

Why go through the form of issuing execution, and having it returned ? The creditor will never adopt this mode if there is any other way to make his money.

Amendment to be added to 3392 :

2. Or upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require.

Ample power should be given in such cases, as in the most of them there is a fraudulent disposition of property. It is at least possible, since *Ex parte* Grace, 12th Iowa, that a party refusing to answer may not be punishable as for a contempt.

For section 3393, substitute :

3. In the cases contemplated in this chapter, a lien shall be

created on the property of the judgment debtor, or his interest therein, in the hands of any defendant or under his control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein.

Why issue an attachment? The property can be described in the petition as well as attached.

Section 3396 to be omitted. It is believed such would be the rule without this section.

Chapter 129. Offer to Confess.

Section 3404 has been so changed as to strike out "two clear days," and "three days" inserted.

Chapter 130. Offer to Compromise.

Section 3406 has been also changed as above.

Chapter 132. Deposits.

Amendment to be added to section 3416, as follows:

1. Or the court may order such money to be deposited in a bank created by the laws of the United States, or in a savings bank, to the credit of the court in which the action is pending, which money shall be paid out by such bank only upon the check of the clerk, annexed to the certified order of the court directing such payment.

Chapter 133. Receivers.

For section 3419, substitute:

1. On the petition, and such notice to the adverse party as the court, or in vacation, the judge deems reasonable, of either party to a civil action or proceeding, wherein he shows that he has a probable right to or interest in any property which is the subject of the controversy, and that such property, or its rents or profits are in danger of being lost or materially injured or impaired, the court, or, in vacation, the judge thereof, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property, under its direction, during the pendency of the action, and may order and coerce the delivery of it to him. Upon the hearing of the application, affidavits and such other proof as the court or judge deems proper, may be introduced, and upon the

whole case such order made as will be for the best interest of all parties concerned.

The main object of the change was to provide for notice, as the practice has been to appoint receivers without any notice.

Chapter 135. Motions or orders.

For section 3429, substitute:

1. A party who has appeared in an action, or who has been served with the original notice in such action, in any manner provided by this code, shall take notice of all motions filed during term time upon the same being filed by the clerk and entered in the appearance docket. All motions filed in vacation shall be entered on such docket, and served as herein required.

Contains substance of original expressed in more concise terms. Appearance docket substituted for "notice books," as required by legislation since adoption of original.

For section 3430, substitute:

2. When notice of a motion is required to be served, it shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, and the place where and the day on which it will be heard, and if affidavits are to be used on the hearing, the notice shall state that fact, and shall be served such length of time before the hearing as the court or judge deems reasonable.

Section 3428 defines that a motion is a written application; hence it is unnecessary to again require it to be in writing. The requirement that it be served ten days before the hearing, in the original, is unnecessarily long. By leaving this to the discretion of the court or judge substantial justice will be more nearly obtained.

For section 3440, substitute:

3. Testimony to sustain or resist a motion may be in the form of affidavits, or in such other form as the parties may agree or the court or judge direct. If by affidavit, the person making the same may be required to appear by the court or judge, and submit to a cross-examination.

Section 3441 to be omitted.

The motions described are all regulated, either in the chapter on pleading, or in the previous sections of this chapter.

Chapter 137. Costs.

Section 3450. To be omitted—obsolete—never has been enforced.
Section 3462. Been so changed as to include circuit court.

Chapter 138. (*As amended by chapter 174, 9th G. A.*) *Survivor and revivor of actions.*

For section 3467, substitute:

1. All causes of actions shall survive, and may be brought, notwithstanding the death of the person entitled or liable to the same.

Under the expression, "if from the legal nature of the case the cause of the action can survive or continue," in the original, it is understood the courts have decided substantially that all causes of action survive—at least that is the tendency of the decisions. Besides this, the original in this respect is indefinite, liable to doubt and different constructions. If damages are given as compensation for the injury, why, on principle, should either party, or their personal representatives, escape paying or receiving such damages by death of the principal?

Sections 4110 and 4111 are transferred to this chapter.

Substitute for section 4111:

2. When a wrongful act produces death, the perpetrator is civilly liable for the injury. The damages shall be disposed of as personal property belonging to the estate of the deceased, except that if the deceased leaves a husband, wife, child or parent, it shall not be liable for the payment of debts.

3. The actions contemplated in this chapter may be brought, or the court on motion allow, the action to be continued, by or against the legal representatives or successor in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the same time it did to the deceased if he had survived. If such is continued against the legal representatives of a defendant, a notice shall be served on him, as provided for service of original notices.

Whether the cause of action which certainly accrued to the deceased at the time of the injury, and which accrued to the legal representatives at the death, should, as against the latter, be barred, when the requisite time had elapsed from the former, or the latter is doubtful, and should be settled.

Chapter 139. Revivor of Judgments.

This chapter to be transferred, and added to chapter 125.

Section 3481. To be omitted, being a repetition of Section 3246.

Chapter 140. Writ of Certiorari.

For section 3488, substitute :

1. The writ may be granted by the district or circuit court, or, in vacation, by a judge or clerk thereof, but if to be directed to either of such courts or judges, then by the Supreme Court, or, in vacation, by a judge thereof, and shall command the defendant therein to certify fully to the court from which the same issues, at a specified time and place, a transcript of the records and proceedings, as well as the facts in the case describing or referring to them, or any of them, with convenient certainty, and also to have then and there the writ.

For section 3489 :

2. If a stay of proceedings is sought, the writ can only be issued by a court or judge, who may require a bond and fix the penalty and conditions thereof; the sureties thereon may be approved by the judge granting, or clerk who issues, the writ.

For section 3490 :

3. The petition for the writ must state facts constituting a case wherein the writ may issue, and must be verified by affidavit, and the Supreme Court or judge may require notice of the application to be given the adverse party, or may grant the writ without notice. If a stay of proceedings is sought, the writ can only be granted on reasonable notice of the time, place, and court or judge before whom the application will be made.

If no stay of proceedings is sought, the writ should issue as of course, by the clerk, like writs of error to justices of the peace. If to be directed to a district or circuit court, as to whether it should issue with or without notice, can be well left to the discretion of the

Supreme Court or judge. Notice should be required in all cases where proceedings are to be stayed.

For section 3493 substitute:

4. When full return has been made, the court must proceed to hear the parties, or such of them as may attend for that purpose, on the record, proceedings, and facts as certified, and such other testimony, oral or written, as either party may introduce, pertinent to the issue, and may give judgment affirming or annulling the proceedings in whole or in part, or in its discretion correcting the same and prescribing the manner in which the defendant shall further proceed.

The power to hear testimony will render the writ more effective. In certain cases it is an important provision. Its effect in case the writ is used to correct proceedings of the board of supervisors, where erroneous assessments have been made, will be, it is thought, very beneficial.

For section 3494, substitute :

5. The action shall be prosecuted by ordinary proceedings, so far as applicable, and from the decision of the district or circuit court an appeal lies as in other ordinary actions, and the record shall be prepared in the same manner.

New section :

6. No writ shall be granted after six months have elapsed from the time the inferior court, tribunal, board or officer has, as alleged, exceeded his proper jurisdiction, or has otherwise acted illegally.

Some limit should be fixed, and, as appeals are to be taken to the Supreme Court in six months, that time has been selected.

Chapter 141. Proceedings to reverse, vacate, or modify judgments.

Sections 3495 and 3499, so changed as to make the same applicable to the circuit court.

In section 3499, sub-division 5, and section 3501, "married women" struck out.

Section 3507, so changed as to make the same applicable to the district and circuit court, and requiring appeals to be taken in six months, in accordance with section 2, chapter 41, 13th G. A., and

have stricken out of this section the saving clause as being inconsistent with section 2, chapter 41, 13th G. A.

Sections 1 and 2. chapter 49, 11th G. A., and sections 2 and 4, chapter 41, 13th G. A., transferred to this chapter and to be inserted after section 3507. Section 2, chapter 49, has been so changed as to make the same applicable to the circuit court.

It is recommended that the provisions taken from chapter 41, 13th G. A. be omitted as being obsolete. The provision that appeals be taken in six months having been incorporated into section 3507.

For sections 1 and 2, of chapter 43, 11th G. A. this substitute therefor is recommended :

1. The Supreme Court may review and reverse, on appeal, any judgment or order of the district or circuit court, although no motion for a new trial was made in such courts.

2. Where a cause is tried by the court, it shall not be necessary, in order to secure a review of the same in the Supreme Court, that there should have been any finding of facts or conclusions of law stated in the record, but the Supreme Court shall hear and determine the same, whenever it shall appear from a certificate of the judge, agreement of parties, or their attorneys, or, in case the evidence consists wholly of written testimony, from the certificate of the clerk, that the transcript contains all the evidence introduced by the parties on the trial in the court below.

For section 3508, substitute :

3. The party taking the appeal shall be known as the appellant, and the other party the appellee.

The omitted portion unnecessary. See section 2949.

Section 3509 has been so changed as to make it applicable to the circuit court.

For section 3513, substitute :

4. The notice of appeal must be served at least thirty days, and the cause filed and docketed at least ten days before the first day of the next term of the Supreme Court, or the same shall not then be tried. If the appeal is taken less than thirty days before the term, it must be so filed and docketed before the next succeeding term.

For section 3514, substitute :

5. If the appellant fails to file a transcript and have the cause

docketed, as provided in the preceding section, or fails to file, at the time the transcript should be filed, the certificate of the clerk of the inferior court, stating when he was served with notice, and that he has not had sufficient time to prepare the transcript, the appellee may file a certified copy of the judgment or order appealed from, and of the notice served on such clerk, and on motion have the appeal dismissed, or the judgment or order appealed from affirmed.

For section 3516, substitute :

6. If, the transcipt being filed, errors are not assigned and filed with the clerk of the Supreme Court, or the same served on the appellee, or his attorney, ten days before the first day of the trial term, the appellee may have the appeal dismissed, or the judgment or order affirmed, unless good cause for the failure be shown by affidavit.

The object in these and another amendment is that the court may know, at least on the first day of the term, what is for trial, so the clerk can more nearly apportion the causes for a time, during which they can be tried; and so the appellee may have a reasonable notice of the errors relied on.

Sections 3520, 3523, 3524, 3525, 3526, and 3529, have been so changed as to make same applicable to the circuit court.

For section 3535, substitute :

7. The clerk shall docket the causes as the same are filed in his office, and shall arrange and set a proper number for trial for each day of the term, placing together those from the same judicial district, and shall cause notice of the manner he has set such causes to be published and distributed in such manner as the court may direct.

Sections 3536, 3540, 3551, and 3552, so changed as to make same applicable to the circuit court.

Chapter 142.

So much of chapter 14, 10th G. A., as applies to replevin, incorporated into section 3553.

Sections 4175 and 4176 have been transferred to this chapter.

Chapter 144.

New section, as follows, to be inserted after section 3570:

1. The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book the same appears of record. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor. No evidence of title shall be introduced on the trial, unless it has been sufficiently referred to in such abstract, which, on motion may be made more specific, and may be amended as pcovided in section ——.

Either party should exhibit his proofs of title, being in his possession it is easy to do so, the case can be more intelligently tried, and justice more nearly obtained.

Section 3573. Strike out, "and need state nothing more than this," same being surplusage.

Section 3584. As amended by section 31, chapter 167, 13th G. A., has been put in its proper place.

For section 3600, substitute:

2. The plaintiff shall have judgment for rent which accrues after judgment, and before delivery of the possession, by motion in the court in which judgment was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal, and bond given to suspend judgment, in which case it may be made after affirmance thereof.

Made applicable to circuit court, and some useless words omitted.

Section 4177. Transferred to this chapter, and following substitute proposed:

3. Actions provided for in this chapter shall be by ordinary proceedings, and there shall be no joinder, except as herein contemplated, and of a like action. There shall be no set-off, counter claim, or cross demand, except as provided in this chapter.

Chapter 145. Partition.

For section 3613, substitute as follows :

1. The plaintiff shall attach to his petition, and the defendant to his answer if he controverts the allegations of the petition, an abstract of his title as provided in section ——— the provisions of which in like causes shall constitute the rule which shall govern in proceedings under this chapter unless otherwise provided.

Section 3614, to be omitted. Why make a provision like this, when the chapter on pleadings applies to all causes and so completely covers the whole ground?

Section 3616, amended:

2. Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares, or if it is apparent, or the parties so agree, that the property cannot be equitably, divided into the requisite number of shares, a sale may be ordered.

If the parties are capable of agreeing that the property cannot be divided, why put the case off or incur the expense of a useless proceeding ? Or if the same thing is apparent to the court, should not the same rule be adopted ?

For section 3620, substitute :

3. Before proceeding to sell, the referees shall give a bond in a penalty to be fixed by the court, payable to the parties who are entitled to the proceeds, with sureties to be approved by the clerk, conditioned for the faithful discharge of their duties. At any time thereafter, the court may require farther and additional security, and upon failure of the referees to comply with such order they may be removed by the court and others appointed; and the court may, at any time, for satisfactory reasons, remove such referees and appoint others.

It is inconvenient to have the court or judge approve the bond, and the power to remove and appoint should be expressly given.

Section 4178 has been transferred to this chapter, and the following suggested in place thereof :

4. Actions contemplated in this chapter shall be by ordinary proceedings, and no joinder of any other action shall be allowed.

Chapter 146. Foreclosure of Mortgages.

For section 3649, substitute :

1. Any mortgage of personal property to secure the payment of money only, and where the time of payment is therein fixed, may be foreclosed by notice and sale, as hereinafter provided, unless a stipulation to the contrary has been agreed upon by the parties, or may be foreclosed by action in the proper court.

It is perhaps doubtful whether the class of mortgages described can be foreclosed by action. The right to do so has been denied by a district court. If a party choses to adopt it, such a course should be open to him.

Section 3658, amended as follows :

2. Sales made in accordance with the above requirements are valid in the hands of a purchaser in good faith, whatever may be the equities between the mortgagor and mortgagee.

Sections 3659 and 3660 so changed as to be made applicable to circuit court.

The amendment to section 3673, made by chapter 116, 11th G. A., appears in its proper place, but the following substitute for the section, as thus amended, is proposed :

3. Deeds of trust of real or personal property may be executed as securities for the performance of contracts; and sales made in accordance with their terms are valid—or they may be treated as mortgages and foreclosed by action in the same manner.

On principle, parties should be permitted to make their own contracts. As the law now stands, parties have been unable to borrow money for legitimate purposes for the reason that they do not possess the power here given.

For section 3671, substitute :

4. In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not the essence of the contract, such vendor may file his petition asking the court to require the purchaser to perform his contract or to foreclose and sell his interest in the property.

In another part of this report it is recommended that a vendor of real estate shall not be entitled to a lien. This substitute has been prepared to meet such a change and prevent doubt and confusion.

New section :

5. When any instrument, whereby a lien or charge has been created on real estate, has been foreclosed by action in court, and the judgment has been satisfied, the clerk, on demand, shall give any party interested a certificate to that effect, which being presented to the recorder shall be by him filed and preserved in his office, and he shall enter such mortgage satisfied on the record thereof.

Section 3674, to be omitted—same being useless and unnecessary.

Chapter 148.

For Section 3693, substitute as follows :

1. In an action brought against the owners of any boat to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for work and labor done, in, about, or upon such boat, or for materials furnished in building, repairing, fitting out, furnishing, or equipping the same, or to recover for the non-performance of any contract relative to the transportation of persons or property thereon made by any of the persons aforementioned, or to recover injuries to person or property by such boat, or the officers or the crew thereof, done in connection with the business of such boat, a warrant may issue for the seizure of such boat, as hereinafter provided.

Sections 3694, 3695, 3696, and 3697, to be omitted.

Sections 3698, 3699, and 3700, to be placed at end of the chapter, after section 3712.

For section 3703, substitute :

2. It shall be sufficient service of the original notice in such an action to serve it on the defendant or on the master agent, clerk, or consignee of such boat ; and if none of them can be found, the notice may be served by posting up a copy thereof on some conspicuous part of the boat. The warrant shall be served according to the direction it contains.

For section 3700 substitute :

3. The action may be brought directly against the raft, and the same rules shall govern, and the same process shall be had in such

action, as are in this chapter prescribed for actions against owners of boats.

Section 4130 has been transferred to foot of this chapter, and the following is proposed in place thereof:

4. The execution, by or for the owner of such boat or raft, of a bond whereby possession of the same is obtained or retained, by him, shall be an appearance of such owner as a defendant to the action.

These changes have been suggested in view of the decision of the Supreme Court of the United States.

Chapter 149. Nuisance, Waste, and Trespass:

Chapter 154, 9th G. A., as amended by chapter 93, 10th G. A., has been added to this chapter; but it is recommended that the same be omitted, and the following amendments to other sections be adopted in place thereof.

For section 3716, substitute:

1. If a guardian, tenant for life or years, joint tenant, or tenant in-common of real property, commit waste thereon, or the same be committed on any real property that has been sold for taxes, the person so committing waste is liable to pay three times the damages which have resulted from such waste to the person entitled to sue therefor, which may be the owner of the treasurer's certificate of purchase of lands sold for taxes.

Amendment to be added to section 3619:

2. Which may be the owner of the treasurer's certificate of lands sold for taxes.

Substitute for section 2 of said chapter 154, to come in at end of chapter 149, Revision:

3. Moneys collected for waste or trespass on lands sold for taxes under provisions of this chapter, shall be paid by the officer collecting the same to the Auditor of the county in which such lands are situate, and the same shall be held by such Auditor and an entry thereof made by him in a book kept for that purpose, until such lands are redeemed, or a treasurer's deed therefor shall have been executed to the holder of said certificate. If redemption be made, the money shall be paid to the owner of the land, and if not redeemed, to the person to whom such deed is executed.

Chapter 151. Informations.

Section 3737 been so changed as to make it applicable to circuit court.

Amendment as follows to be added to section 3732:

1. And there shall be no joinder of any other cause of action, nor any set-off, counter-claim, or cross demand.

Section 4180 has been added to the foot of this chapter, but it should be omitted, and above added to section 3732, it being the most appropriate place.

Chapter 152.

Chapter 152 to be omitted. The revision in terms does not allow this remedy, except where other provisions have been proposed as amendments—preserving the remedy, but leaving out the name, and providing the mode for its enforcement.

Chapter 153.

For section 3761, substitute as follows :

1. The action of mandamus shall be prosecuted by ordinary proceedings, and when it is brought by a private person, there may be joined therewith the injunction of chapter 155 ; but there shall be no joinder therewith, except as provided in this chapter, nor shall there be a set-off, counter-claim, or cross-demand, by ordinary proceedings, allowed. The writ of mandamus is an order of a court of competent jurisdiction, and issues from the district or circuit court, commanding an inferior tribunal, corporation, board, or person, to do or not to do an act, the performance or omission of which the law specially enjoins as a duty, resulting from an office, trust, or station, and is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the State, or on the petition of the State by the district attorney, where the public interest is concerned, and is in the name of such private party, or of the State, as the case may in fact be brought.

Section 4181 has been transferred to this chapter. This substitute, however, includes that section, and it is recommended that it be adopted, and section 4181 omitted as a separate section.

Section 3754 has been changed, so as to include the circuit court.

For section 3775, substitute as follows:

Chapter 154. Injunction.

1. Where it appears by the petition therefor, which must be supported by affidavit, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission, or continuance, of some act which would produce great or irreparable injury to the plaintiff; or where, during litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

It may also be granted in any case where it is specially authorized by statute.

New section to follow above :

The injunction may be granted—

1. By the court or judge thereof in which the action is pending or is to be brought.

2. By any judge of the district or circuit court of such district.

3. By any judge of the Supreme, or a judge of any other district or circuit court.

2. But in cases where an action is pending, and it is applied for to effect the subject matter of such action, it can only be granted by the court, or judge thereof, in which such action is pending. Nor shall it be granted by any judge mentioned in the second subdivision hereof, unless it satisfactorily appears by affidavit that the court or judge thereof in which the action is to be brought, cannot, for want of time, sickness, or other disability, hear the same, or that the residence of the judge is inconvenient, or that it is for some sufficient reason impracticable to make the application to him. Nor shall it be granted by any judge mentioned in the third subdivision hereof, unless it be made satisfactorily to appear to such judge, by affidavit, that the application therefor cannot, for some sufficient reason, be made to either of the courts or judges mentioned in the first or second subdivision of this section.

New section to follow above :

3. An injunction shall not be granted against a defendant who has answered, unless he has had notice of the application.

New section to follow above :

4. An injunction to stop the general and ordinary business of a corporation, or the operations of a railroad, or of a municipal corporation, or the erection of any building or other work, or the board of supervisors of any county, or to restrain a nuisance, can only be

granted upon reasonable notice of the time and place of the application to the party to be enjoined.

New section to follow above.

5. No injunction shall be granted by a judge after the application therefor has been overruled by the court; nor by a court or judge when it has been refused by the court or judge thereof in which the action is to be brought. A judge refusing an injunction, shall, if requested by either party, give him a certificate thereof.

New section to follow above.

6. No motion to dissolve or modify an injunction can be made before answer, except the same be based alone on the insufficiency of the allegations of the petition.

The codes of many of the states contain provisions substantially like the foregoing. The remedy by injunction is being more used every day, and more seems to be left to the discretion of the officer granting it than in any other remedy provided for in the revision. In view of the facility with which it is granted, by the courts of some other States at least, it is believed that the foregoing provisions are not too restrictive.

For section 3777, substitute :

7. In the cases contemplated in the preceding sections, 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 proper court in a penalty to be therein fixed, with sureties to be approved by such clerk, and conditioned for the payment of all damages which may be adjudged against petitioner by reason of such injunction.

This being rendered necessary by amendments aforesaid—substance of original retained.

For section 3778, substitute :

8. When proceedings in a civil action, or on a judgment or final order, are sought to be enjoined, the suit must be brought in the county and court in which such action is pending or the judgment or order was obtained. The bond must also in that case be farther conditioned to pay such judgment or comply with such final order if the injunction is not made perpetual, or to pay any judgment that may be ultimately recovered against the party obtaining the injunction on the cause of action enjoined.

When the original was drafted, there was but one court or judge who could grant injunctions in such cases. If the amendments increasing the jurisdiction of the circuit court are adopted, there will be two courts of equal jurisdiction in the matters contemplated in this chapter, in each county. The object of the substitute is to prevent one from interfering with the other by injunction, thereby preventing some of the evils experienced in some other States in these proceedings.

Substitute for section 3783 :

9. Such application must be with notice to the plaintiff and may rest upon the ground that the order was improperly granted, or it may be founded on the answer of defendant and affidavits. In the latter case the plaintiff may fortify his application by counter affidavits, and have reasonable time therefor.

This is rendered necessary by reason of an amendment heretofore proposed.

So much of section 1, chapter 66, 9th G. A., as applies to injunctions has been added to this chapter. As it was evidently enacted to cover some special case, its omission is recommended.

For Section 3803, substitute, as follows:

Chapter 156.

1. The writ may be allowed by the Supreme, district, or circuit court or by any judge thereof, any may be served in any part of the State.

Section 3804 to be omitted:

Section 3805 so changed as to include circuit courts and judges.

For section 3828, substitute:

2. The court or judge allowing the writ, may in his descretion, in case the same is applied for by, or on behalf of a person charged with a crime, cause the proper district attorney to be informed of the issuing of the writ and the time and place the same will be heard, and may postpone such hearing a reasonable time to enable such officer to be present, or may appoint an attorney to represent and appear for the State, in which case a reasonable fee for such attorney shall be allowed by the court or judge in the order discharging or recommitting the person whose discharge is sought, which allowance shall be paid by the proper county, which shall also be designated in the order.

For sections 3829 and 4182, which has been added to this chapter, substitute, as follows:

3. The defendant in his answer must state, plainly and unequivocally, whether he then has, or at any time has had, the person whose discharge is sought under his control or restraint, and if so the cause thereof. No verification shall be required to such answer, or to the reply.

In section 3833, that portion referring to the judge of the county court is stricken out.

Chapter 157. Changing names.

Section 3844 has been so changed as to confer jurisdiction on the the circuit court.

Chapter 158.

The following amendments to the revision have been incorporated in this chapter in their appropriate places:

Section 3851—12th G. A., chapter 149.
Section 3590—Section 6, chapter 174, 9th G. A.
Section 3952—Section 7, chapter 174, 9th G. A.
Section 3973—Section 8, chapter 174, 9th G. A.
Section 3969—Chapter 188, 13th G. A.

The following sections have been so changed as to make the same alone applicable to the circuit court: Sections 3858, 3860, 3872, 3890, 3899, 3909, 3911, 3917, 3919, 3925, 3936, 3927, 3928, 3929, 3933, 3936, 3937, 3938, 3943, 3944, 3945, 3948, 3951, 3966, and 3910. It was necessary to make the most of these changes and it was thought best the chapter should be uniform in this respect.

For section 3877, substitute as follows:

1. If the title to real property be put in issue by the pleadings supported by affidavit, or shall manifestly appear from the proof on the trial of the issue, the justice shall without further proceedings certify the cause and papers with transcript of his docket, showing the reason of such transfer to the circuit court, where the same shall be tried on the merits. No cause so transferred shall be dismissed, because the justice erred in transferring the same.

Section 3878 to be omitted.

Amendment to be added to section 3910.

And no execution can thereafter be issued by the justice on the judgment.

For section 3911, substitute:

Executions for the enforcement of judgments in a justice's court may be issued, as provided in this chapter, at any time within ten years from the entry of the judgment, but not afterward.

Consistent with 2740 and 3246.

For section 3922, substitute:

3. The appeal shall in no case be allowed until a bond in the following form or its equivalent is taken and filed in the office of the justice, or clerk as above provided, in an amount sufficient to secure the judgment and costs of appeal.

The undersigned acknowledge ourselves indebted to..... in the sum of..... dollars unon the following condition: Whereas..... has appealed from the judgment of....., a justice of the peace in an action between..... as plaintiff and.....defendant.

Now, if said appellant pays whatever amount is legally adjudged against him in the further progress of this cause, then this bond to be void.

Approved.
E—— F——, *justice.*

A—— B——, *principal,*
C—— D——, *surety.*

If the judgment be affirmed, or if on a new trial the appellee recovers, or if the appeal be withdrawn or dismissed, judgment shall be rendered against the principal and surety in said bond.

New section, to be inserted after section 3937:

5. If the appeal be taken from a judgment by default, the defendant may file in the circuit court, and the plaintiff reply thereto, any pleadings necessary to properly set forth any defense he may have to the action. In such case, the costs of the trial before the justice shall be taxed to the defendant.

For section 3968, substitute:

6. If his office becomes vacant by death, removal from the township, or otherwise, before his successor is elected, the said docket and papers shall be placed in the hands of the county auditor, to be by him turned over to the successor of the justice when elected and qualified.

For section 3970 and 3971, substitute:

7. When two or more justices are equally entitled to be deemed the successor in office of any justice as aforesaid, the county auditor shall determine by lot which is the successor, and certify accordingly, such certificate shall be in duplicate, one copy of which shall be filed in the office of such auditor, and the other given to such successor.

This chapter has been in force since 1861, and it has been thought best not to make any radical changes. So far as known there is no serious objection made to the chapter. The amendment in relation to appeals from defaults is understood to be in accord with the decisions of the Supreme Court. The provisions in relation to the bond are intended to meet the case where the appellant withdraw or dismisses his appeal. The practice in some courts is not is such cases to render judgment on the bond. Hence appeals are taken, delay obtained, execution must issue from justices' court, and if it becomes necessary to look to the surety, bring suit on the bond, with perhaps but little prospect of success, owing to the provisions of the bond.

Chapter 53, 11th G. A., has been added to the foot of this chapter.

Chapter 159.

For section 3980, substitute as follows :

1. No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter.

New section to follow above.

2. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination, deceased, insane, or lunatic, against the executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, survivor, or guardian, shall be

examined on his own behalf, or as to which the testimony of such deceased or insane person or lunatic, shall be given in evidence.

These two sections are taken from the New York Code of Civil Procedure as amended in 1869. It is believed similar amendments have been made in several other States. The fact that a person is deceased should not exclude the testimony of a party to the action, unless such deceased person could have testified about the transaction, if living. If the testimony given has reference to a transaction about which the deceased knew nothing, why exclude it? On the other hand, the heir-at-law, or next of kin, can testify in his own behalf in an action when he is a party, and to a personal transaction with the deceased in a suit against another party, other than an executor. The true rule is thought to be as above stated. That no interested party shall be permitted to testify to any personal transaction or communication between him and a deceased person—as the mouth of one is closed, the other should be.

New section to come in next after above:

3. In any trial or inquiry in any suit, action, or proceeding in any court or before any person having by law or consent of parties authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action, or proceeding is brought, prosecuted, opposed, or defended, shall, except as hereinafter stated, be competent and compellable to give evidence, the same as any other witness on behalf of any party to such suit, action, or proceeding.

Section 3983 and 3984 to follow above, and the provisions of 3986 to be transferred or added to 3985. The new section above is taken from the New York Code. The true principle is, that the facts—the truth—should be obtained from any and all sources. If the husband or wife know a fact not obtained in a communication from the other, why should not they be compelled to testify to it, just the same as a son or daughter? Would it be more likely to disturb the family relations in the one case than in the other?

Substitute for section 3981, to be inserted next after the foregoing:

4. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or

offenses, and in all proceedings in the nature of criminal proceedings in any and all courts, and before any and all officers and persons acting judicially, the person so charged shall at his own request, but not otherwise, be deemed a competent witness ; but the neglect or refusal of such person to testify shall not create any presumption against him.

Taken from amendment to New York Code passed in 1869. The danger of perjury in permitting parties charged with crime to testify is not much greater than where reputation, or even a pecuniary claim, is at stake. If a party be innocent, he should be permitted to testify, or whether innocent or not, if his testimony would cause a verdict of not guilty, such testimony should be heard ; some persons would no doubt be benefitted by the provision, but as the great majority of persons charged are in fact guilty, few if any such can go on the witness stand and tell a story that will acquit. In fact, but few guilty persons will avail themselves of the privilege.

For sections 3985 and 3986, substitute as follows:

5. No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination, shall be allowed in giving testimony to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the party in whose favor the same are made waives the rights conferred.

Section 4120 transferred to this chapter.

Sections 4014 and 4260 made applicable to circuit court.

Section 4025, to be omitted—being obsolete.

Section 4045, made applicable to clerk of the circuit court, and 4048, to board of supervisors, instead of county judge.

For section 4067, substitute:

6. The deposition of a witness residing out of the county, may be taken before one or more commissioners on written interrogatories.

For section 4071, substitute as follows:

7. Reasonable notice must be given the adverse party of a time when a commission will be sued out of the office of the clerk of the court in which the action is pending, if such action is in an inferior court,

then from the office of the clerk of the circuit court, for taking the deposition of the witness (naming him) which notice must be accompanied with a copy of the interrogatories to be asked such witness.

Chapter 96, 10th G. A., has been omitted—same being obsolete.

For section 4078, substitute:

8. The commission issues in the name of the court and under its seal. It must be signed by the clerk, and need contain nothing but the authority conferred upon the commissioner, instructions to guide him, and a statement of the cause and court in which the testimony is to be used, and a copy of the interrogatories on each side appended.

The adoption of the two foregoing sections renders 4092 unnecessary, and it should be omitted.

For sections 4088 and 4089, substituted as follows :

9. No exception to depositions, other than for incompetency or irrelevancy, shall be regarded unless made by motion filed by the morning of the second day of the first term held after the depositions have been filed by the clerk. If the depositions are afterwards received during such term, such motion shall be filed on the morning of the day after the same are filed. All motions to suppress depositions must be filed before the cause is reached for trial.

For section 4093, substitute :

10. Depositions taken to be used in a justices' court shall be transferred to the court to which the cause is appealed, and used on the trial of such appeal in the same manner as if regularly taken therein.

Section 4093, changed to make it applicable alone to the circuit court, but as there are cases in which an appeal may be taken to district court, the substitute is proposed.

Section 4095, made to include circuit court. The latter part of section 8, chap. 86, 12 G. A. has been added to this chapter.

Chapter 160.

Section 4105, made to include circuit court.

Chapter 161.

Sections 4110 and 4111, transferred to chapter 138.

Sections 4112, 4127 and 4128, transferred to chapter 108.

Sections 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4121, 4124, 4125 and 4126, transferred to parts 1 and 2.

Section 4120, transfered to chapter 159.

Section 4129, transferred to chapter 124.

Section 4130, transferred to chapter 148.

Sections 4122 and 4123, to be omitted.

This disposes of the chapter, but as this may not be approved, the chapter is placed in its appropriate place.

Revision 162.

This chapter has been enlarged by placing in it the various provisions of the different session laws on the subject of salaries and compensation to all officers, and, wherever it could be conveniently done, bringing into it all specific fees. The following sections of the Revision are included : 4131, 4132, 4133, 4134, 4135, 4167, 4166, 4165, 4164, 4161, 4157, 4160, 4159, 4158, 4170, 4169, 4168, 839, 872, 877, 2645, (part) 4156, 4153, 4154, 4149, 4150, 351, 352, 4152, 4151, 4155, 4148, 4146, 4145, 4143, 431, 353, 354, 355, 356, 433, 432, 430.

The following session laws have been included :

Chapter 1, Eighth General Assembly, Ex.

Section 2, chapter 66, Ninth General Assembly.

Section 1, chapter 66, Ninth General Assembly.

Sections 10, 14, 15, 22, and 23, chapter 102, Ninth General Assembly.

Section 3, chapter 173, Ninth General Assembly.

Chapter 90, Ninth General Assembly.

Chapter 165, Ninth General Assembly.

Chapter 15, Ninth General Assembly.

Chapter 52, Ninth General Assembly.

Section 3, chapter 25, Ninth General Assembly.

Sections 1 and 2, chapter 71, Ninth General Assembly.

Chapter 137, Ninth General Assembly;

Chapter 92, Tenth General Assembly;

Section 6, chapter 129, Tenth General Assembly;

Chapter 68, Tenth General Assembly;

Chapter 88, Tenth General Assembly;

Chapter 17, Tenth General Assembly;
Chapter 38, Tenth General Assembly;
Section 5, chapter 22, Tenth General Assembly;
Chapter 109, Eleventh General Assembly;
Chapter 75, Eleventh General Assembly;
Chapter 57, Eleventh General Assembly;
Joint Resolution No. 21, Twelfth General Assembly;
Chapter 141, Twelfth General Assembly;
Sections 3 and 6, chapter 160, Twelfth General Assembly;
Section 15, chapter 86, Twelfth General Assembly;
Section 1, chapter 134, Twelfth General Assembly;
Chapter 52, Twelfth General Assembly;
Chapter 53, Twelfth General Assembly;
Section 5, chapter 27, Twelfth General Assembly;
Chapter 175, Thirteenth General Assembly;
Chapter 152, Thirteenth General Assembly;
Chapter 166, Thirteenth General Assembly;
Chapter 112, Thirteenth General Assembly.

The following sections of the chapter have been omitted : Secs. 4136, 4137, 4138, 4139, 4140, 4141, 4142, 4144, 4147, 4156, 4162, 4163, for the reason the same have either been repealed or become obsolete ; and the following amendments are proposed to this chapter :

1. No officer, or other person mentioned in this chapter, is entitled to any of the fees mentioned herein in advance, where the same grows out of any criminal prosecution. But in all other cases, except where the fees or compensation is payable by the State or county, the officer performing any of the services named in this chapter, is entitled to his fees in advance, if he demand them.

This is designed as a provision covering all cases.

Substitute for, and to take the place of sec. 4161 :

2. In all cases where fees or compensation, as distinguished from a certain and fixed salary, is by the provisions of this chapter to be paid any officer or other person, out of the county or State Treasury, no part of the same shall be audited or paid until a particular account has been filed in the Auditor's office of the county or State, verified by affidavit, and showing clearly for what services such fees or compensation is claimed, and when the same was rendered.

Heretofore, a provision somewhat like this, has been made applicable to a certain officer, or class of services. It is thought a general rule would be preferable.

Chapter 163.

Sections 4171, 4172, 4174, 4186, and 4187, to be omitted.

Sections 4175 and 4176, transferred to chapter 142.

Section 4177, transferred to chapter 144.

Section 4178, transferred to chapter 145.

Sections 4179, 4173, 4184, 4185, and 4183, transferred to chapter 108.

Section 4180, transferred to chapter 151.

Section 4181, transferred to chapter 153.

Section 4182, transferred to chapter 156.

This disposes of the chapter, if approved. If not the chapter will be found in its appropriate place for such action as may be deemed proper.

PART FOURTH.

Chapter 165. Of Crimes and Punishment, and Criminal Procedure.

Instead of section 4199, the following is proposed:

SECTION 4199. Any person guilty of the crime of manslaughter shall be punished by imprisonment in the penitentiary not exceeding eight years, and by fine not exceeding one thousand dollars.

Note.—This leaves the minimum of the punishment to the discretion of the court, instead of the minimum of one year now fixed by law.

Chapter 166.

Instead of section 4228, the following is proposed:

SECTION 4228. If any person willfully and maliciously burn, or otherwise injure or destroy, any pile or parcel of wood, boards, timber, or lumber; or any fence, bars or gate, or any grain, hay, or other vegetable product severed from the soil, or any standing tree, grain, grass, or other standing product of the soil, the property of another, he shall be punished by imprisonment in the penitentiary not more than five years; or by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding one year.

Note.—It is questionable whether a conviction could now be had under section 4228, as it stands for burning, &c., grain &c., severed from the soil and not stacked; and to provide for such a case a change is made in this section.

Instead of section 4232, the following is proposed:

Section 4232. If any person break and enter any dwelling-house in the night-time, with intent to commit any public offense; or, after having entered with such intent, break any such dwelling-house in the night-time; he shall be deemed guilty of burglary, and shall be punished according to the aggravation of the offense, as is provided in the next two sections.

Note.—This covers the breaking of a dwelling-house with intent to commit any crime. The law now is that the breaking must be done with intent to commit a felony.

Instead of section 4235, the following is proposed:

Section 4235. If any person with intent to commit any public offense, in the day-time, break and enter, or in the night-time enter without breaking, any dwelling-house; or at any time break and enter any office, shop, store, warehouse, railroad-car, boat, or vessel, or any buildings in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be punished by imprisonment in the Penitentiaay not more than ten years, or by fine not exceeding one hundred dollars, and imprisonment in the county jail not more than one year.

Note.—The change made in the striking out of the words "a felony," and inserting the word "any public offense," so that whoever breaks, etc., as provided, may be published, if the breaking etc., was done with intent to commit any offense, notwithstanding the offense attempted to be committed may be of a less grade than a felony.

Instead of section 4236, the following is proposed:

Section 4236. If any mortgagor of personal property, while his mortgage of it remains unsatisfied, willfully destroy, conceal, sell, or in any manner dispose of the property covered by such mortgage without the consent of the then holder of such mortgage, he shall be deemed guilty of larceny and be punished accordingly.

Note.—This makes the punishment depend on the value of the property sold, etc., as in larceny, and this is the only change made in the existing law.

Instead of section 4236*a*, the following is proposed:

Section 4236*a*. If any person drive off, or knowingly suffer or permit to be driven off, any horned or other stock of another to a distance exceeding five miles from the residence of the owner, or of his agent having charge of such stock, or the range in which such stock is usually in the habit of running, without the consent of such owner or agent, he shall be punished by fine not exceeding one hundred dollars; or by imprisonment in the county jail not exceeding thirty days; and any justice of the peace in any county through which the stock thus driven off shall pass, or in which it may be found shall have jurisdiction of the offense.

Note.—The civil rights of the parties will be sufficiently protected by law without a special provision here; hence we omit that portion of the original section regulating these rights.

Chapter 167.

As a substitute for section 4240, the following is proposed:

SECTION 4240. If any person commit the crime of larceny, by stealing from any building on fire; or, by stealing any property removed in consequence of an alarm caused by fire; or, by stealing from the person of another, he shall be punished by imprisonment in the penitentiary not exceeding fifteen years.

Note.—The only alteration proposed, is to leave the *minium* of the punishment discretionary with the court. As the law now is, the punishment cannot be less than imprisonment for one year in the penitentiary.

As a substitute for section 4243, the following is proposed:

SECTION 4243. If any State, county township, school, municipal, or other public 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 of any kind of property, or loan without the authority of law any portion of the public money entrusted to him for collection, safe keeping, transfer, or disbursement, every such act is an embezzlement of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years and fined in a sum equal to the amount of money embezzled, and moreover he is forever after disqualified from holding any office under the laws or constitution of this State.

Note.—It is questionable whether under section 4243, as it now reads, it is broad enough to cover the case of an embezzlement by a municipal officer. To make the section extend to such a case is the object of the amendment.

As a substitute for section 4244, the following is proposed:

SECTION 4244. (2619.) If any officer, agent, clerk or servant of any incorporated company; or, if any clerk, agent or servant of a copartnership; or, if any person over the age of sixteen years, embezzle and fraudulently convert to his own use, or take and secrete with

intent to convert to his own use, without the consent of his employer or master, any money or property of another which has come to his possession or is under his care by virtue of such employment, he is guilty of larceny and shall be punished accordingly.

Note.—The only change made is the word "of" to the word "if," which is necessary to make this section effective.

As a substitute for section 4246, the following is proposed :

SECTION 4246. If any person buy, receive, or aid in concealing any stolen money, goods, or any property, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, he shall be punished, when the value of the property so bought, received, or concealed by him exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year ; and when the value of the property so bought, received, or concealed by him does not exceed the sum of twenty dollars, by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Note.—The absence of the word "stolen" from section 4246, as it now reads, leaves it doubtful whether we have now any law punishing receivers of stolen goods. To remedy this the amendment is proposed.

We recommend the repeal of section 4247. Practically, it is useless, and, besides, the limit of the imprisonment allowed for larceny is fixed at five years; to which extent the court can sentence the offender, and it is to be presumed will do so whenever it appears, from his prior commission of the same offense, or otherwise, that the case requires it.

Chapter 169.

Instead of section 4290, the following is proposed :

SECTION 4290. If any jailor or other officer voluntarily suffer any prisoner in his custody, upon charge or conviction of any public offense, to escape, he shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the penitentiary not exceeding five years.

Instead of section 4293, the following is proposed:

SECTION 4293. Every person who aids or assists any prisoner in escaping or attempting to escape from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer, or person, who has the lawful charge of such prisoner upon any criminal charge, shall be punished by fine not exceeding one thousand dollars, and imprisonment in the penitentiary not exceeding five years.

Instead of section 4304, the following is proposed:

SECTION 4304. If any public officer fraudulently make or give false entries or false returns or false certificates or receipts in cases where entries, returns, certificates or receipts are authorized by law, he shall be punished by fine not exceeding one thousand dollars and imprisonment in the penitentiary not exceeding five years.

Sections 4307, 4311, 4312, 4313, 4316, and 4317 are omitted as unnecessary.

Note.—The change made in sections 4290, 4293, and 4304, is merely to increase the punishment which is now inadequate.

Chapter 172.

As an additional section to this chapter, the following is proposed:

SECTION —. If an person commit the crime of sodomy, or the crime against nature, either with mankind or with any beast, he shall be punished by imprisonment in the penitentiary not less than one year nor more than five years.

Chapter 179.

The repeal of this chapter is recommended. It is unnecessary.

Chapter 180.

The repeal of sections 4427, 4432, 4433, 4434, 4435, 4436, 4437, and 4438 is recommended; they are unnecessary.

Chapter 181.

Instead of section 4439, the following is proposed:

SECTION 4439. Any judge of the supreme, district, or circuit courts, and judge of any city court, any justice of the peace, any mayor of any incorporated city, or town, any police, or other special justice of such city, or town, is authorized to receive complaints and

preliminary informations, to issue warrants, order arrests, require security to keep the peace, make commitments and take bail in the manner directed by this code. They are designated under the general term, *magistrate*, and may exercise the jurisdiction hereby conferred upon them as follows:

1. Judges of the supreme, district, and circuit courts throughout the State, in any county in which they may be at the time of complaint made.

2. Judges of city courts, justices of the peace, mayors of incorporated cities and towns, and police and other special justices of such cities and towns within their respective counties.

Note.—This is the law as it now stands; the latter part of the section proposed being transposed from chapter 184, as it seems more proper that the extent of the magistrates' jurisdiction should appear in the chapter defining who are magistrates than in a chapter on an independent subject.

An additional section is proposed to this chapter, as follows:

SECTION 4441 *a*. A complaint or preliminary information is a statement in writing, under oath or affirmation, made before a magistrate, of the commission or threatened commission of a public offense, and accusing some one thereof.

Note.—This is the law, substantially as it now is; the section proposed is brought into this chapter as its most appropriate place.

Chapter 183. Revision 1860.

The repeal of this chapter is recommended. Its subject is otherwise sufficiently provided for, and it is unnecessary.

Chapter 184.

The repeal of section 4447 is recommended, its subject being provided for in our amendment to section 4439, chapter 181.

Instead of sections 4448, 4449, 4450, 4451, 4452, 4453, and 4454, the following is proposed:

SECTION —. Whenever complaint is made before a magistrate, that any person has threatened to commit any public offense, punishable by the laws of this State, and such magistrate is satisfied that there is reason to fear the commission of such offense, he may issue a warrant for the arrest of the person complained of; and the officer to

whom the same shall be delivered for service, shall forthwith arrest and bring the accused before such magistrate ; or, in case of his absence or inability to act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the State; *Provided*, That when issued by a magistrate other than a judge of the Supreme, district, or circuit courts, it cannot be served in any county other than that in which it is issued, unless authenticated as is required in case of a warrant of arrest issued on a preliminary information.

Note.—This amendment is substantially the law as it now is, and is merely an abbreviation of the eight sections for which it is intended as a substitute.

The repeal of section 4464 is recommended, its subject being provided for by section 4460.

Instead of section 4466, the following is proposed:

SECTION 4466. If the principal in the undertaking appear, and the complainant does not appear, or if neither of the parties appear, the court shall enter an order discharging the undertaking; but if both parties appear, the court shall hear their proofs and may require a new undertaking in such sum as it shall prescribe, for a period not exceeding one year; and may commit the defendant until the same be given. Judgment shall be entered against the party held to keep the peace for all the costs of the proceeding; but if it is made to appear to the court that the proceeding was instituted without probable cause, the court may render judgment against the complainant for such costs.

Note.—This settles the question as to who is liable for costs in this proceeding, The practice is now very unsettled on this point. In some districts the courts hold that the principal *and* his sureties are liable; while in others it is held that the principal alone is liable; the latter we believe to be the better rule, hence we adopt it.

Chapter 185.

Instead of section 4479, the following is proposed:

SECTION 4479. The district court to which the papers are returned, shall, on demand of the defendant, impannel a jury to

inquire into and determine the truth of the charge made against him; and the rules and regulations of law governing said court in the trials of misdemeanors shall be applicable to and govern it in the trial herein contemplated; *provided*, that on such trial the record of conviction by the magistrate shall be presumptive evidence of the facts therein contained.

Note.—It is questionable whether chapter 185, as it now stands, is constitutional; it not being so provided in it that the alleged vagrant can have the fact of his alleged guilt inquired of by a jury. To remove the doubt on this point the substitute is proposed.

Instead of section 4480, the following is proposed:

SECTION 4480. If no jury be demanded, the district court may revise such conviction and discharge such vagrant from the undertaking or confinement absolutely, or upon sureties for good behavior, in its discretion. Or such court may, in its discretion, authorize the judge of the county court of the county to bind out such vagrants as shall be minors, in some lawful calling, as servants or apprentices, or otherwise, until they shall be of full age respectively; or to contract for the services of such vagrants as shall be of full age with any suitable person, as laborers or servants, for any time not exceeding one year, which binding out and contracts shall be as valid and effectual as the indenture of any apprentice with his own consent and the consent of his parents, and shall subject the person so bound out or contracted for, to the same control of their masters respectively, and of such court, as if they were bound apprentices.

Note.—The substitute is section 4480, as it now stands, with a slight alteration to make it conform to the change made in the preceding section.

Section 4485 is repealed by chapter 109, laws of 1870, and hence should be omitted.

Chapter 186.

The repeal of this chapter is recommended. It is unnecessary.

Chapter 188.

The repeal of this chapter is recommended. The laws creating

the respective courts define their jurisdiction, and there is consequently no necessity for the chapter. The next chapter (189) is all that is required on the subject.

Chapter 195.

The repeal of section 4574 is recommended. Its subject is provided for in the amendment proposed by us to section 4439, chapter 181, and in the amendment proposed by us as the first section of chapter 193 ; hence, section 4574 is unnecessary.

Instead of sections 4583, 4584, 4585, 4586, 4587, and 4588, the following sections are proposed :

SECTION 4583. The magistrate must issue subpœnas for any witnesses required, either by the State or by the defendant, and the witnesses who appear at the examination must be examined in the presence of the defendant.

SECTION 4584. The deposition of a witness who resides out of the county in which the examination is had, may be taken on the order of the magistrate, before any officer authorized to take depositions in civil cases; which order shall not be made until three days after the filing with the magistrate of the written interrogatories to be propounded to the witness; nor until three days after the service of notice on the opposite party, or on the attorney who appears for him, of the filing of such interrogatories.

SECTION 4585. Before the order to take the deposition is made the opposite party may file cross-interrogatories to be propounded to the witness; which shall be answered by him in the deposition.

SECTION 4586. At the expiration of three days from the filing of the interrogatories, and the service of the notice thereof on the opposite party, as above provided, the magistrate may order the testimony of the witness to be taken in answer to the interrogatories, and cross-interrogatories, if any, on file; and the deposition thus taken, may be read as evidence on the examination: nor shall the same be excluded because of any irregularity in the taking of it, if the magistrate is satisfied that the irregularity complained of could work no substantial prejudice to the opposite party.

SECTION 4587. The defendant shall be a competent witness in his own behalf, but he cannot be called to give testimony against himself; nor shall his failure to become a witness be allowed any weight against him on the examination.

SECTION 4588. When the defendant testifies in his own behalf, he shall be subject to a cross-examination as an ordinary witness, provided that in the cross-examination the State shall be strictly confined to the matters testified to in the examination-in-chief.

The repeal of sections 4589 and 4590 is recommended.

Note—The main change sought by the amendments proposed, is to allow depositions to be taken and used in preliminary examinations, and to allow the defendant to be a witness in his own behalf, both of which we think are desirable.

Instead of section 4593, the following is proposed:

SECTION 4593. The magistrate shall, in the minutes of the examination, write out, or cause to be written out, the substance of what was proved on the examination by each witness examined before him, showing the name of the witness, his place of residence, and his business or profession, and the amount to which each witness is entitled for mileage and attendance.

Note—This is the section as it now is, altered to conform to the amendments proposed by us to this chapter.

Instead of section 4594, the following is proposed:

SECTION 4594. After the examination is closed, the magistrate must attach together the complaint, the warrant or order of commitment, if any, under which the defendant was brought before him, the minutes of the examination, including all depositions on file with him and used in the examination, and annex thereto his certificate, which must set forth in substance, the time and place of examination, and that the minutes thereof are true, and the certificate must be signed by the magistrate, with his name of office.

Note—The amendment proposed merely alters this section to conform to our amendments to this chapter.

Instead of section 4595, the following is proposed:

SECTION 4595. If, after hearing the testimony, it appear to the magistrate, either that a public offense has not been committed, or that there is no sufficient reason for believing the defendant guilty thereof, he must order the defendant to be discharged; and such order must be indorsed on the minutes of the examination, or annexed thereto, and signed by the magistrate, to the following effect: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, or of any other offense, I order him to be discharged."

Note—The amendment makes a mere verbal change in the section as it now stands, which is necessary.

Instead of section 4596, the following is proposed:

SECTION 4596. If it appears from the examination that a public offense, triable on indictment, has been committed, and that there is sufficient reason for believing the defendant guilty thereof, the magistrate shall in like manner indorse on or annex to the minutes of the examination, an order signed by him, to the following effect: "It appearing to me by the within minutes that the offense therein mentioned (or any other offense triable on indictment, according to the fact, stating generally the nature thereof,) has been committed, and there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same."

Note—A mere verbal change is made in this section.

The repeal of section 4606 is recommended. It is unnecessary: made so by the changes proposed by us.

Instead of section 4607, the following is proposed:

SECTION 4607. If it appear from the examination that a public offense has been committed, which is not triable on indictment, but on information only, and that there is sufficient reason for believing the defendant guilty thereof, the magistrate shall retain all the papers, and forthwith order an information to be filed against the defendant, before him. If he have jurisdiction to try and determine the same, he shall indorse on, or annex to, the minutes of the examination an order signed by him to the following effect: "It appearing to me by the within minutes that the offense of (here state its name, or nature generally,) has been committed, and that there is sufficient reason for believing the defendant guilty thereof, I order that an information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, and who has jurisdiction, giving his name of office,) and that the defendant be committed to any peace officer to be taken before such magistrate." And the magistrate shall thereupon cause each material witness on the part of the State to enter into a written undertaking, to the effect that he will appear forthwith before the magistrate, before whom the defendant is to be taken, or that he will forfeit the sum of fifty dollars, and deliver the same with all the other papers to a peace officer, who shall forthwith proceed, as directed by the order, and take the defendant before such magistrate, and deliver all the papers with the undertakings of the witnesses to the magistrate directed in the order, and make his return thereto, and sign the same with his name of office, and the magistrate before whom he is taken shall thereupon proceed accordingly.

Note—This is the section as it now is, altered to meet the changes proposed by us in this chapter.

Chapter 196.

Instead of section 4611, the following is proposed:

SECTION 4611. A defendant held to answer for a public offense may challenge any individual juror, and so may the State.

The repeal of section 4612 is recommended.

Note.—The change proposed will result in abolishing the right of the defendant to challenge the *panel* of the grand jury, and secures to the State a right to challenge the individual juror.

Instead of section 4613, the following is proposed:

SECTION 4613. A challenge to an individual juror, by the defendant, may be made for one or more of the following causes only:

1. That he is a minor, insane, or not competent by law to serve as such juror.
2. That he is a prosecutor upon a charge against the defendant.
3. For the existence of such a state of mind on the part of the juror in reference to the case, from which it reasonably appears that he will not act impartially in considering it.

Note.—This is the section as it now stands, with a change in the third subdivision. There is no reason why an individual should be excluded from the jury simply because he may have formed or expressed an opinion, from, perhaps, having read an account of the transaction in a newspaper, as is now the law. The defendant is sufficiently protected by leaving it to the court to determine from the facts as they may appear as to the state of mind of the juror.

Instead of section 4614, tho following is proposed:

SECTION 4614. A challenge to an individual juror may be made by the State, for one or more of the following causes:

1. That he is related, either by affinity or consanguinity, nearer than in the ninth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.
2. That he is bail for any one held to answer for a public offense, whose case may come before the grand jury.

3. That he is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

4. That he is engaged, or interested, in carrying on any business, calling, or employment, the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

Note.—The two sections proposed merely make the chapter conform to the change made by our first amendment to it.

Instead of section 4615, the following is proposed:

SECTION 4615. A challenge to an individual juror must be decided by the court, and on the trial of it the juror challenged shall be sworn and examined, and shall not be excused from answering any question properly pertinent to the examination on the ground that his answer would tend to disgrace him, or subject him to a criminal prosecution; *provided, however*, that his answers shall not afterwards be testimony against him.

The repeal of section 4616 is recommended.

Instead of section 4619, the following is proposed:

SECTION 4619. All challenges must be made and decided before the grand jury is impanneled and sworn for the term.

Note.—These amendments are necessary to make the chapter conform to the first amendments proposed to it by us.

The repeal of section 4624 is recommended. The grand jury has no need of a clerk, and requiring them to appoint one but creates delay; especially as we propose to abolish the taking down of testimony given before the grand jury.

Chap. 197. Rev. 1860.

Instead of section 4627, the following is proposed:

SECTION 4627. An indictment may be found on the minutes of a preliminary examination, including depositions returned by a magistrate; or on *ex-parte* affidavits of witnesses who reside out of the county, or who are too old or infirm to attend before the grand jury, taken and certified by any officer authorized to take depositions; or on oral testimony of witnesses given before the grand jury; or on legal documentary proof.

Note.—The adoption of this section will greatly facilitate the dispatch of business before a grand jury, and save considerable expense and unnecessary delay, without interfering with any substantial right of the accused.

The repeal of section 4629 is recommended. It is unnecessary, and the cause of very great delay.

Chapter 198.

Instead of section 4647 the following is proposed:

SECTION 4647. The names of all witnesses who have been examined before the grand jury; or the minutes of whose testimony or whose depositions or affidavits have been before the grand jury in the case, must be endorsed on the indictment before it is presented to the court.

Note.—This is necessary, in view of our prior amendments abolishing the taking of minutes by the grand jury.

Chapter 198.

As an additional section to this chapter, the following is proposed:

SECTION 4648 *a*. At any time after an indictment is thus found and presented, the court in which it is pending, or the judge thereof in vacation, may, in his discretion, order that any witness whose name appears on the back of the indictment be arrested and detained in the jail of the county wherein the indictment is pending, until the trial of the indictment, or until such witness gives bond with surety, to be approved by the clerk in such sum as shall be prescribed in the order, to the effect that such witness will appear when called as a witness on the trial of the indictment. The order shall be entered of record, and the clerk shall immediately make out and deliver to the sheriff of the county a certified copy thereof whose duty it shall be to carry said order into effect, and in executing the same he may arrest the witness anywhere in the State. A witness detained in jail in default of giving bond as maybe herein required, shall, as to his detention, and removal to any county to which the venue on the indictment may be changed, be subject to the order of the court or judge by whom the original order is made.

Note.—The necessity for a provision of the kind proposed is felt in many cases. Often parties so arrange it that the witnesses

against them keep out of the way until an acquittal is obtained. The object of the amendment is to prevent this.

Chapter 189. Revision 1860.

The repeal of sections 4501, 4503, and 4504 is recommended. They are unnecessary. The jurisdiction of the Senate in the trial of impeachments is sufficiently provided for by the Constitution, hence there is no occasion for section 4501. The jurisdiction of justices of the peace is sufficiently provided for by the chapter regulating proceedings before justices, hence there is no occasion for section 4503. The jurisdiction of police and city courts is sufficiently defined by the laws creating those courts, hence there is no occasion for section 4504.

Instead of section 4502, the following is proposed:

SECTION 4502. The local jurisdiction of the district court, is of offenses committed within the county in which it is held, and of such other cases as are or may be prescribed by law; provided, that the jurisdiction of the district court in counties bordering on either the Mississippi or Missouri rivers shall be co-extensive with the jurisdiction of the State over these rivers.

Note.—The addition made by this amendment is to meet the question raised in the State *vs.* Thompson.

Chapter 190:

Add to it the following Section:

SECTION 4517 *a*. A prosecution for a misdemeanor triable before a justice of the peace must be commenced within one year after the commission thereof, and not after.

Note.—There is now no limitation on misdemeanors. There should be: hence the amendment.

Chapter 192:

The repeal of this chapter is recommended. A prior section (4441 *a*) as proposed, defines an information; and the first section of the next chapter as proposed covers the remainder of this chapter.

Chapter 193:

We recommend the following section to be the first section of this chapter:

SECTION 4533 (a.) When complaint is made before a magistrate of the commission of some designated public offense, triable on indictment in the county in which such magistrate has local jurisdiction, and charging same person with the commission thereof, he may issue a warrant for the arrest of such person.

Note.—The adoption of this amendment does away with the necessity for chapter 192, for in the amendment the substance of chapter 192 is preserved in a much briefer form.

Chapter 200. Revision 1860.

Instead of section 4672, the following is proposed:

SECTION 4672. The process, upon an indictment for the arrest of an individual, shall be a bench warrant.

As an additional section to this chapter, the following is proposed:

SECTION 4672 *a*. The process upon an indictment against a corporation shall be a summons; which shall be issued by the clerk, at any time after the filing of the indictment in his office, on the application of the district-attorney. The summons shall be under the seal of the court, and shall, substantially, notify the defendant of the finding of the indictment, of the nature of the offense charged, and that it must forthwith appear and answer the same. It may be served by any peace officer in any county in the State, on any employee of the defendant, by reading the same to him and leaving with him a copy thereof. It shall be returned to the clerk's office without delay, with proper evidence of its service; and, from and after two days from the time of the making of such service, the defendant shall be considered in court, and thereafter shall be considered to be present to all proceedings had on the indictment.

Note.—The laws of this State now contain no provision looking to the bringing in of a corporation on an indictment. Some provision of the kind is necessary, hence an amendment.

Section 4672 is changed to harmonize the chapter with the addition proposed.

Chapter 201.

Instead of sections 4689 and 4690, the following is proposed:

SECTION 4689. In answer to the arraignment, the defendant may move to set aside the indictment, or he may demur or plead to it.

Note.—This does away with any right a defendant may now have under the doubtful phraseology of section 4689, to claim delay after arraignment and before pleading to the indictment.

Chapter 202.

Instead of sections 4691, 4692, and 4693, the following is proposed:

SECTION 4691. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

1. When it is not endorsed "a true bill," and the indorsement signed by the foreman of the grand jury as prescribed by this code.
2. When the names of all the witnesses examined before the grand jury are not endorsed thereon.
3. When it has not been presented and marked "filed" as prescribed by this code.
4. When any person other than the grand jurors was present before the grand jury, when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required, or permitted by law.

Note.—We omit the 5th ground of a motion to set aside an indictment, now prescribed by sec. 4691, because we do not think it necessary to the protection of a defendant to allow him to investigate the selecting, drawing, etc., of the grand jury. It ought to be sufficient that a grand jury which is one *de facto*, presents the indictment. Indeed, if it could be done constitutionally, we would favor the abolishing of the grand jury system.

Sections 4692 and 4693 are repealed to make the chapter conform to the change we make in it by abolishing challenge to the grand jury.

Instead of section 4694, the following is proposed:

SECTION 4694. After demurring or pleading to an indictment the defendant shall be precluded from moving to set it aside.

Chapter 206.

The repeal of section 4721 is recommended. There is no occasion for it; not to regulate the effect of a judgment on demurrer, for that subject is already fully provided for; not to regulate the effect of on objection to an indictment taken during the trial, for no such objection can be taken; and not to regulate the effect of a variance between the indictment and the proof, for no such regulation is needed. Besides, section 4721 is not very clear in its expression, and as it stands cannot be of much practical benefit.

Chapter 207.

The repeal of this chapter is recommended; we think it better to leave it to the courts in each particular case, in view of its circumstances, to determine when the case should be tried, than to attempt to settle it by a general statute on the subject. Besides, we cannot see why, when the defendant takes a change of venue, he should not be compelled to go to trial in the court to which the venue is changed, until ten days after the transcript is filed in that court, as provided by section 4725. Neither can we see why a defendant should be allowed, absolutely, three clear days after he puts in his plea, before he can be put upon his trial.

When a defendant takes a change of venue, he must necessarily be aware of the situation of his case, and he should be compelled to appear at the other court as soon as the papers can be transmitted, and the case can be there heard. So where he puts in his plea, it is to be presumed that he then can tell whether he can go to trial at that term, or whether he will require a continuance.

The delay allowed by our system interferes, greatly, with the proper enforcement of our criminal law. Our object is to make criminal proceedings as speedy as a proper regard for the rights of the accused will permit; and we do not think we infringe on these rights by recommending the repeal of this chapter.

Chapter 211.

Instead of section 4767, the following is proposed:

SECTION 4767.—A challenge for cause may be made, either by the State or by the defendant; it must distinctly specify the facts constituting the causes of challenge, and may be made for any of the following causes:

1. A previous conviction of the juror of a felony.
2. A want of any of the qualifications prescribed by statute to render a person a competent juror.
3. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body, as render him incapable of performing the duties of a juror.
4. Affinity, or consanguinity within the ninth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.
5. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his employ on wages.
6. Being a party adverse to the defendant in a civil action, or having been the prosecutor against, or accused by him, in a criminal prosecution.
7. Having served on the Grand Jury which found the indictment, or on a coroner's jury which inquired into the death of a person, whose death is the subject of the indictment.
8. Having served on a trial Jury, which has tried another defendant for the offense charged in the indictment.
9. Having been on a Jury formerly sworn to try the same indictment, and whose verdict was set aside, or, which was discharged without a verdict, after the cause was submitted to it.
10. Having served as a Juror, in a civil action brought against the defendant, for the act charged as an offense.
11. The existence of such a state of mind on the part of the juror in reference to the case from which it reasonably appears that he will not act with entire impartiality in considering it.
12. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty:

The repeal of Sections 4768, 4769, 4770, and 4771 is recommended, as is also the repeal of Section 4781.

Note.—The principal change made by this Amendment, is the omission of paragraph 8, § 4771, which allows a challenge merely because the juror may have formed or expressed an opinion, no matter how hastily he may have done so, or however impartial he may be when called into the jury box. In these days of the multiplicity of newspapers, there are few intelligent men who in reading the published account of a crime do not either form or express an opinion regarding it, yet who would be entirely impartial in the investigation of it; and we see no reason why they should be excluded from the jury box. The prisoner is sufficiently protected by paragraph 11, as proposed by us.

Chapter 212.

Instead of section 4809, the following is proposed:

SECTION 4809. The court shall, on the trial of every indictment, when requested by either party, keep, or cause to be kept, by some person for that purpose by it appointed, full and accurate minutes of the testimony of each witness examined on the trial, showing the name of the witness, his place of residence, and his occupation, as well as of any oral evidence introduced, either by the State or defendant, after a plea or verdict of guilty, to be considered by the court in aggravation or alleviation of the punishment in pronouncing sentence against the defendant, which shall be certified to be full and accurate by the judge, and signed by him, and filed with the clerk, and so marked by him, which shall be deemed a part of the record of the cause. The person who acts under such an appointment shall be entitled to such compensation for his services as may be allowed by the court, which shall be paid by the proper county.

Chapter 218.

Instead of sections 4861 and 4868, the following is proposed:

SECTION 4861. Upon the conviction of the defendant, the court may immediately render judgment against him.

Note—We see no occasion for making it imperative on the court to fix a time for sentence. In many districts, this requirement has caused inconvenience. It is of no benefit to the defendant. He cannot be injured by leaving it to the court, as is proposed, to say whether sentence should follow conviction, or be delayed until a future day.

The repeal of section 4864 is recommended. It is unnecessary.

The repeal of section 4875 is recommended. It is unnecessary.

The repeal of section 4876 is recommended. It is unnecessary.

The repeal of section 4877 is recommended. It is unnecessary.

The repeal of sections 4878 and 4879 is recommended. They are unnecessary.

Instead of section 4881, the following is proposed:

SECTION 4881. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is paid.

Note—It is hereafter provided how much *per diem* the defendant shall be entitled to.

Chapter 219.

The repeal of section 4887, is recommended. It is unnecessary.

Chapter 220. Revision 1860.

SECTION 4909. When an appeal is taken, it is the duty of the clerk of the court, in which the judgment was rendered, without unnecessary delay, to make out a full and perfect transcript of all papers in the case on file, in his office, (except the papers returned by the examining magistrate, on the preliminary examination, where there has been one,) and of all entries made in the record book, and certify the same under his hand and the seal of the court, and transmit the same to the clerk of the supreme court.

Note.—We see no reason why the law should require, as it now does, that two transcripts should be made out, one for the defendant and the other for the State. This is useless expense. It is to be presumed that after the trial below the counsel for the defense and for the state sufficiently understand the points for decision by the supreme court, and the two transcripts are not necessary to enlighten them on the subject. At all events the most direct way is to have the record certified direct to the clerk of the Supreme Court as proposed by us, and this is the present practice in some of the districts in the state.

The repeal of section 4910 is recommended. It is unnecessary. Section 4909 is all that is necessary.

Instead of section 4919, the following is proposed:

SECTION 4919. Appeals, in criminal cases, shall be docketed in the Supreme Court for trial, at the commencement of that portion of the term which has been assigned for trying causes from the judicial district, from which the appeal comes. They shall take precedence of all other business, and shall be tried at the term at which the transcript is filed, unless continued for cause, or by consent of the parties, and shall be decided, if practicable, at the same term.

Note.—As the law now stands the defendant cannot be brought to a hearing of his appeal until twenty days after the date of the clerk's certificate to the transcript. The object of the substitute proposed is to do away with this cause of delay. When a defendant takes an appeal, he should be ready to have it heard when the appellate court is ready to hear it. If the defendant has cause for delay, let him make his showing to the appellate court, and if his showing proves to be sufficient, delay will be granted to him.

Chapter 225.

The omission of chapter 225 is recommended. It is unnecessary.

Chapter 226.

The repeal of this chapter is recommended. The taking of bail is sufficiently provided for in the chapters following, and we have transferred section 4966 to chapter 229, where it will be found consolidated with the first section of that chapter, hence, chapter 226 is unnecessary.

Chapter 238.

The repeal of section 5014 is recommended. It is unnecessary.

Chapter 241.

Instead of section 5055, the following is proposed.

SECTION 5055. Justices of the peace in their respective counties have jurisdiction of, and must hear, try and determine, all public offenses less than felony, in which the punishment prescribed by law, does not exceed a fine of one hundred dollars, or imprisonment of thirty days.

Note.—This is a part of section 5055, as it now stands, and is all of it that is necessary.

Instead of section 5086, the following is proposed:

SECTION 5086. When the defendant is acquitted the justice shall, if he is satisfied that the prosecution is malicious or without probable cause, tax the costs against the prosecuting witness and render judgment therefor, from which he may appeal to the district court, by there giving notice to the justice that he claims such appeal, and the fact of the giving of such notice shall be entered on his record by the justice. If notice of appeal is given as herein contemplated, the justice shall without delay, make out, sign, and file in the case a full and true statement of all the testimony admitted on the trial, and on which he bases his finding, that the prosecution was malicious or without probable cause, and shall without delay make out a transcript of his docket entries, and shall file it, together with the statement of the testimony as aforesaid, and all other papers on file in the case, in the clerk's office of the district court of the county. And such appeal shall stand for hearing in said court at the term thereof commencing next after said papers are filed. And said court shall have full power to compel the correction by said justice of any error made apparent in his transcript, said statement of testimony, or in any papers returned by him, or may itself make the necessary correction therein, and may, on the papers in case as they shall be submitted to it, either affirm or reverse the judgment of the justice, or render such judgment as the justice should have rendered in the case.

The repeal of sections 5088 and 5089 is recommended. They are unnecessary.

The repeal of section 5094 is recommended. So far as it provides for an appeal by the State, it is of no effect—is unconstitutional, as has been decided by the Supreme Court, and so far as it provides for an appeal by the defendant, it is unnecessary, for the next section is sufficient for that purpose.

Chapter 244.

The repeal of this chapter is recommended. The subject of it is provided for fully in a preceding part of this code.

Chapter 245.

The repeal of sections 5116, 5117, 5118, and 5119, is recommended. They are unnecessary.