For destruction of clothing and bedding for sanitary reasons, one hundred and thirty-two dollars and forty-two cents.

CLAIMS ALLOWED BY THE AUDITOR FOR THE INTERIOR DEPARTMENT.

Claims allowed by the Auditor for the Interior Department.

For contingent expenses of land offices, twelve dollars and sixty-five cents.

Land offices.

For surveying the public lands, thirteen thousand and seven dollars and eighty-three cents.

Surveying.

Indians: For surveying and allotting Indian reservations, twenty-nine dollars and seventy-three cents.

—Indians.

For surveying a portion of Blackfeet Reservation in Montana, ten dollars.

Pensions: For Army pensions, thirty dollars.

Pensions.

CLAIMS ALLOWED BY THE AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.

Claims allowed by the Auditor for the State, etc., Departments.

DEPARTMENT OF STATE.

Department of State.

For salaries, consular service, thirty-two dollars and fifty cents.

Consular service.

For relief and protection of American seamen, sixteen dollars and thirty cents.

Protecting seamen.

DEPARTMENT OF AGRICULTURE.

Department of Agriculture.

For salaries and expenses, Bureau of Animal Industry, one dollar and nine cents.

Bureau of Animal Industry.

DEPARTMENT OF JUSTICE.

Department of Justice.

For pay of bailiffs, and so forth, United States courts, eighteen dollars.

Bailiffs.

CLAIMS ALLOWED BY THE AUDITOR FOR THE POST-OFFICE DEPARTMENT.

Claims allowed by the Auditor for the Post-Office Department.

For clerk hire, thirty-seven dollars and fifty cents.

Clerk hire.

Approved, June 6, 1900.

CHAP. 786.—An Act Making further provision for a civil government for Alaska, and for other purposes.

June 6, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.

CHAPTER ONE.

SEC. 1. That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Juneau: *Provided*, That the seat of government shall remain at Sitka until suitable grounds and buildings thereon shall be obtained by purchase or otherwise at Juneau.

Alaska.
Provisions for civil government.
Civil and judicial district.
Vol. 23, p. 24, etc.
Seat of government at Juneau.
Proviso.
—to remain temporarily at Sitka.

SEC. 2. There shall be appointed for the district a governor, who shall reside therein during his term of office and be charged with the

Governor to be appointed.

—powers, etc.

interests of the United States Government within the district. To the end aforesaid he shall have authority to see that the laws enacted for the district are enforced and to require the faithful discharge of their duties by the officials appointed to administer the same. He may also grant reprieves for offenses committed against the laws of the district or of the United States until the decision of the President thereon shall be made known. He shall be ex officio commander in chief of the militia of the district, and shall have power to call out the same when necessary to the due execution of the laws and to preserve the peace, and to cause all able-bodied citizens of the United States in the district to enroll and serve as such when the public exigency demands; and he shall perform generally in and over said district such acts as pertain to the office of governor of a Territory, so far as the same may be made or become applicable thereto.

—care of insane.

He shall, subject to the direction and approval of the Secretary of the Interior, advertise for and receive bids and, in behalf of the United States, contract from year to year with the responsible asylum or sanitarium west of the main range of the Rocky Mountains submitting the lowest bid for the care and custody of persons legally adjudged insane in said district of Alaska; the cost of advertising for bids, executing the contract, and caring for the insane to be paid, until otherwise provided by law, by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated, on accounts and vouchers duly approved by the governor and the Secretary of the Interior.

Inquiry as to seal-killing operations.

The governor shall from time to time inquire into the operations of any person, company, association, or corporation authorized by the United States, by contract or otherwise, to kill seal or other fur-bearing animals in the district, and any and all violations by such person, company, association, or corporation of the agreement with the United States under which the operations are being conducted, and shall annually report to Congress the result of such inquiries.

Report of governor.

He shall make an annual report, on the first day of October in each year, to the President of the United States, of his official acts and doings, and of the condition of the district, with reference to its resources, industries, population, and the administration of the civil government thereof. And the President of the United States shall have power to review and to confirm or annul any reprieves granted or other acts done by him.

Notaries public.

The governor may appoint and commission one or more notaries public for the district, and appointments of notaries public heretofore made by him are hereby legalized, and all acts performed by them by virtue of their notarial commissions shall be for all purposes as valid as though the governor had at the time full and complete legal authority to appoint and commission them.

Surveyor-general to be ex officio secretary.

—duties, etc.

Sec. 3. The surveyor-general of the district shall be ex officio secretary thereof, and as such shall be custodian of the district seal, which shall be provided by the Attorney-General. The surveyor-general, as ex officio secretary of the district, shall perform the official duties required by law to be performed by the secretary of a Territory of the United States, in so far as applicable to said district, and such other duties as may be required by law.

District court.

—jurisdiction.

—judges.

Sec. 4. There is hereby established a district court for the district, which shall be a court of general jurisdiction in civil, criminal, equity, and admiralty causes; and three district judges shall be appointed for the district, who shall, during their terms of office, reside in the divisions of the district to which they may be respectively assigned by the President.

Divisions of court.

—terms.

The court shall consist of three divisions. The judge designated to preside over division numbered one shall, during his term of office, reside at Juneau, and shall hold at least four terms of court in the

district each year, two at Juneau and two at Skagway, and the judge shall, as near January first as practicable, designate the time of holding the terms during the current year.

The judge designated to preside over division numbered two shall reside at Saint Michaels during his term of office, and shall hold at least one term of court each year at Saint Michaels, in the district, beginning the third Monday in June.

The judge designated to preside over division numbered three shall reside at Eagle City during his term of office, and shall hold at least one term of court each year at Eagle City, in the district, beginning on the first Monday in July: *Provided*, The Attorney-General may for cause change the place of residence of the judge of either division of the court.

Proviso. Change of place of residence of judge.

Each of the judges is authorized and directed to hold such special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court, at such times and places in the district as they or any of them, respectively, may deem expedient or as the Attorney-General may direct; and each shall have authority to employ interpreters and to make allowances for the necessary expenses of his court, and to employ an official court stenographer under the same terms and conditions as are, or may be, provided for district courts of the United States. At least thirty days' notice shall be given by the judge or the clerk of the time and place of holding special terms of the court.

Special terms of court.

—notice.

SEC. 5. The jurisdiction of each division of the court shall extend over the district of Alaska, but the court in which the action is pending may, on motion, change the place of trial in any action, civil or criminal, from one place to another place in the same division or to a designated place in another division in either of the following cases:

Jurisdiction of divisions, etc.

When place of trial may be changed.

First. When there is reason to believe that an impartial trial can not be had therein;

Second. When the convenience of witnesses and the ends of justice would be promoted by the change;

Third. When from any cause the judge is disqualified from acting; but in such event, if the judge of another division will appear and try the action, no change of place of trial must be made;

Fourth. By the court, on its own motion, when, considering available means of travel, it appears that the defendant will be put to unnecessary expense and inconvenience if summoned to defend in the place or division in which the action has been commenced; and when it appears to the satisfaction of the court, or judge thereof, that an action has been commenced in a place or division remote from the residence of the defendant for the purpose of causing unnecessary expense or inconvenience, the place of trial shall be changed at the cost of the plaintiff, and such costs shall not be recovered from the defendant.

In any criminal prosecution the court shall change the place of trial where it appears to the satisfaction of the court that the defendant will not be prejudiced thereby and that the United States will be put to unnecessary expense in such criminal prosecution if the transfer is not made.

SEC. 6. The respective judges of the court shall appoint, and at pleasure remove, clerks and commissioners in and for the district, who shall have the jurisdiction conferred by law in any part thereof, but who shall, during their terms of office, each reside at the place in the district designated in the respective orders of appointment.

Appointment, etc., of clerks and commissioners.

The commissioners shall be ex officio justices of the peace, recorders, and probate judges, and shall perform all the duties and exercise all the powers, civil and criminal, imposed or conferred on the United States commissioners by the general laws of the United States and the special laws applicable to the district.

Duties of commissioners, etc.

They shall also have power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, which writs shall be made returnable before a district judge, and like proceedings shall be had thereon as if the same had been granted by the judge under the general laws of the United States in such cases. The commissioners shall also have the powers of notaries public, and shall keep a memorandum of all deeds and other instruments of writing acknowledged before them and relating to the title to or transfer of property within the district, which memorandum shall be subject to public inspection.

—records of

And all records of instruments of writing hitherto made by any United States commissioner in the district of Alaska are hereby declared to be public records of such district and shall have the same force and effect as if recorded in conformity with the provisions of this Act.

The commissioners shall also keep a record of all fines and forfeitures received by them, and shall pay over the same quarterly to the clerk of the division of the district court in which they were appointed.

Clerks of courts.

Sec. 7. Three clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and during his term of office reside at the place designated for the residence of the judge of such division.

—duties.

Each clerk shall, in his division of the district, perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the district of Alaska. He shall preserve copies of all laws applicable to the district and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also receive all moneys collected from licenses, fines, forfeitures, or in any other case, except from violations of the customs laws, and shall apply the same to the incidental expenses of the proper division of the district court and the allowance thereof as directed by the judge, and shall account for the same in detail and for any balances on account thereof quarterly to and under the direction of the Secretary of the Treasury. He shall be ex officio recorder of instruments, as hereinafter provided, and also register of wills for the district, and shall establish secure offices where terms of his division of the court are held for the safe-keeping of his official records.

District attorneys.

Sec. 8. Three district attorneys shall be appointed for the district, to be assigned to the divisions thereof, who shall reside during their respective terms of office at the place designated as the residence of the judge of the division of the court to which each of the district attorneys shall be assigned.

Duties.

They shall each perform the duties required to be performed by United States district attorneys in other districts, and such other duties as may be required by law.

Assistants.

Each district attorney may, subject to the approval of the Attorney-General, appoint and at pleasure remove one or more assistant district attorneys, who shall receive such compensation as the Attorney-General may fix, to be paid as other assistant United States district attorneys are paid. In case of the death or disability of a district attorney the judge may appoint a suitable person to fill the office until his successor is appointed and qualified or until the disability is removed.

Marshal.
Deputies.

Sec. 9. A marshal shall be appointed for each division of the district, and each marshal shall have authority and be required to appoint, subject to the approval of the Attorney-General, such deputy marshals as he may deem necessary for the efficient execution of the law and the orders of the court and of the commissioners appointed as herein provided.

Office deputies, clerical assistance, etc.

That when in the opinion of the Attorney-General the public interest requires it, he may, on the recommendation of the marshal, which recommendation shall state the facts as distinguished from conclusions, showing necessity for the same, allow the marshals to employ necessary office

deputies and clerical assistance, upon salaries to be fixed by the Attorney-General, from time to time, and paid as other officers of the court are paid. When any of such office deputies is engaged in the service or attempted service of any writ, process, subpœna, or other order of the court, or when necessarily absent from the place of his regular employment upon official business, he shall be allowed his actual traveling expenses only, and his necessary and actual expenses for lodging and subsistence, not to exceed four dollars per day, and the necessary actual expenses in transporting prisoners, including necessary guard hire; and he shall make and render accounts thereof as provided for.

Powers, etc., of marshals.

Each marshal shall have the general authority and powers and be subject to the obligations of United States marshals in the States and Territories. He shall be the executive officer of the court, and charged with the execution of all processes thereof and with the transportation and custody of prisoners and insane persons, and he shall be ex officio keeper of the jails and penitentiaries of the division of the district to which he may be assigned, and shall be responsible on his official bond for the acts of all deputy marshals appointed by him. In case of the death of a marshal the district judge shall appoint a suitable person to fill the vacancy until his successor is appointed and qualified. The persons so appointed shall give such bonds as the court may require.

—care of insane.

The marshal shall deliver persons duly adjudged insane in the district to the authorities of such asylum or sanitarium as the governor, with the approval of the Secretary of the Interior, may designate, and for the service of process in connection with and the guarding and transportation of the insane he shall be compensated as in the case of prisoners.

Powers of deputy marshals.

The deputy marshals shall be ex officio constables and executive officers of the commissioners herein provided for, and shall have the powers and discharge the duties of United States deputy marshals, and also those of constables, under the laws of the United States applicable to said district.

Appointment of officers, terms, etc.

SEC. 10. The governor, surveyor-general, attorneys, judges, and the marshals provided for in this Act shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause.

The officers so appointed shall severally be entitled to receive annual compensation as follows:

Compensation of officers.

The governor, the sum of five thousand dollars; the surveyor-general and ex officio secretary of the district, as full compensation, four thousand dollars; the judges, each the sum of five thousand dollars; each marshal, the sum of four thousand dollars; the clerks, each the sum of three thousand five hundred dollars; the district attorneys, each three thousand dollars, the salaries payable from the Treasury of the United States, as like officers are paid in other districts.

Clerks' fees.

Each clerk shall collect all money arising from the fees of his office or on any other account authorized by law to be paid to or collected by him, and shall report the same and the disposition thereof in detail, under oath, quarterly, or more frequently if required, to the court, the Attorney-General, and the Secretary of the Treasury, and all public money received by him and his deputies for fees or on any other account shall be paid out by the clerk on the order of the court, duly made and signed by the judge, and any balance remaining in his hands after all payments ordered by the court shall have been made shall be by him covered into the Treasury of the United States at such times and under such rules and regulations as the Secretary of the Treasury may prescribe. The clerk may employ necessary clerical help with the approval and at compensation to be fixed by the court to

Clerical help.

aid him in the expeditious discharge of the business of his office. Any person so employed shall be paid by the clerk on the order of the court, as other court expenses are paid.

Traveling expenses.

The governor, surveyor-general, marshals, judges, clerks of court, and district attorneys shall, in addition to their salaries, be paid their actual traveling and subsistence expenses when traveling in the discharge of their official duties. Accounts for such expenses shall be rendered and paid as are accounts of judges, marshals, clerks, and district attorneys for like expenses in other districts.

Surveyor-general to act in absence of governor.

In case of the death, removal, resignation, or absence of the governor from the district, the surveyor-general as ex officio secretary of the district shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

Accounts of commissioners and deputy marshals.

SEC. 11. An accurate detailed account of all fees received and disbursements made by commissioners and deputy marshals shall be filed quarterly with the clerk for the proper division of the district court and approved by the judge thereof, if found to be in accordance with law; and all net fees received in excess of the sum of three thousand dollars per annum by any commissioner or deputy marshal shall be annually paid to the clerk of the proper division of the court and by him paid into the Treasury of the United States, such payment to be accompanied by a verified detailed statement of such deputy or commissioner.

Clerks' bonds.

SEC. 12. The clerks of the court shall each, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the Secretary of the Treasury, or the court or a judge thereof, in the penalty of twenty thousand dollars, for the faithful performance of his official duties, and file the same with the Attorney-General; and each commissioner shall, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the court, or a judge thereof, in the penalty of one thousand dollars, for the faithful performance of his official duties, and file the same with the clerk, who shall send a certified copy thereof to the Attorney-General.

District divided into three recording divisions.

SEC. 13. The judges of the district, or a majority of them, shall, as soon as practicable after their appointment, meet, and by appropriate order, to be thereafter entered in each division of the court, divide the district into three recording divisions, designate the division of the court to supervise each, and also define the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries of each recording division can be readily determined and become generally known from such description, which order shall be given publicity in such manner by posting, publication, or otherwise as the judges or any division of the court may direct, the necessary expense of the publication of such order and description of the recording divisions to be allowed and paid as other court expenses.

Recording districts.

At any regular or special term an order may be made by the court establishing one or more recording districts within the recording division under the supervision of such division of the court and defining the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries thereof can be readily determined.

—recorder.

The order establishing a recording district shall designate a commissioner to be ex officio recorder thereof, and shall also designate the place where the commissioner shall keep his recording office within the recording district:

Provided, The clerk of the court shall be ex officio recorder of all that portion of the recording division under the supervision of his division of the court not embraced within the limits of a recording district established, bounded, and described therein as authorized by this Act, and when any part of the division for which a clerk has been recording shall be embraced in a recording district, such clerk shall transcribe that portion of his records appertaining to such district and deliver the same to the commissioner designated as recorder thereof.

Proviso. —of what clerk of the court shall be ex officio recorder.

Whenever it appears to the satisfaction of the court that the public interests demand, or that the convenience of the people require, the court may change or modify the boundaries or discontinue a recording district or change the location of the recording office, or remove the commissioner acting as ex officio recorder, and appoint another commissioner to fill the office.

Change of districts, etc.

SEC. 14. The clerk as ex officio recorder must procure such books for records as the business of his office requires and such as may be required by the respective commissioners designated as recorders in his division of the court, but orders for the same must first be obtained from the court or the judge thereof. The respective officers acting as ex officio recorders shall have the custody and must keep all the books, records, maps, and papers deposited in their respective offices, and where a recorder is removed or from any cause becomes unable to act, or a recording district is discontinued, the records and all books, papers, and property relating thereto shall be delivered to the clerk or such officer or person as the court or judge thereof may direct.

Record books, etc.

The record books procured by the clerk, as herein provided, shall be paid for by him, on the order of the court, out of any moneys in his hands, as other court expenses are paid.

SEC. 15. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

What recorded.

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

Second. Certificates of marriage and marriage contracts and births and deaths;

Third. Wills devising real estate admitted to probate;

Fourth. Official bonds;

Fifth. Transcripts of judgments which by law are made liens upon real estate;

Sixth. All orders and judgments made by the district court or the commissioners in probate matters affecting real estate which are required to be recorded;

Seventh. Notices and declaration of water rights;

Eighth. Assignments for the benefit of creditors;

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: *Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

Proviso. Mining claims.

Where instruments recorded.

Accounting for fees for unrecorded instruments.

SEC. 16. Any clerk or commissioner authorized to record any instrument who having collected fees for so doing fails to record such instrument shall account to his successor in office, or to such person as the court may direct, for all the fees received by him for recording any instrument on file and unrecorded at the expiration of his official term, or at the time he is required to transfer his records to another officer under the direction of the court. And any clerk or commissioner who fails, neglects, or refuses to so account for fees received and not actually earned by the recording of instrument shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned for not more than one year, or until the fees received and unearned as aforesaid shall have been properly accounted for and paid over by him, as hereinbefore provided. And in addition such fees may be recovered from such clerk or commissioner or the bondsmen of either, in a civil action which shall be brought by the district attorney, in the name of the United States, to recover the same; and the amount when recovered shall be by the court transferred to the successor in office of such recorder, who shall thereupon proceed to record the unrecorded instruments: *Provided*, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this Act or the general laws of the United States; and nothing in this Act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this Act.

—penalty.

Provisos.
Miners' regulations for recording, etc.

—recorder.

Records at Dyea, etc., legalized.

Notaries public.
—residence.

SEC. 17. Every person appointed as a notary public must at the time of his appointment be a resident of the district and must continue to reside therein during his term of office. Removal from the district vacates his office and is equivalent to resignation.

—terms.

The term of office of a notary public shall be four years from and after the date of his commission, but he may be sooner removed by the governor for misconduct in office.

—duties.

SEC. 18. It shall be the duty of a notary public—

First. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages or by the laws of any State, government, or country may be performed by notaries, and keep a record of such acts.

Second. To take acknowledgment or proof of powers of attorney, deeds, mortgages, grants, transfers, and other instruments of writing executed by any person and to give a certificate of such proof or acknowledgment indorsed or attached to the instrument.

Third. To take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of the office or to be used before any court, judge, or officer.

Fourth. When requested and upon payment of his fees therefor to make and give a certified copy of any record in his office.

Fifth. To provide and keep an official seal, upon which must be engraved the name of the district and the words "Notary Public," with the surname of the notary and at least the initials of his Christian name.

Protests of notaries of bills, etc., weight as evidence.

SEC. 19. The protest of a notary public under his hand and seal of a bill of exchange or promissory note for nonacceptance or nonpayment, stating the presentment for acceptance or payment and the nonacceptance or nonpayment thereof, the service of notice on any and all parties to such bill of exchange or promissory note and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note and of the party to whom same was given and the post-office nearest thereto is prima facie evidence of the facts contained therein.

Notaries' records to be deposited with clerk of court.

SEC. 20. It shall be the duty of every notary public, on his resignation or removal from office or at the expiration of his term and in case of his death of his legal representative, to forthwith deposit all the records kept by him in the office of the clerk of the division of the district court in which he resides, and on failure to do so the person so offending is liable in damages to any person injured thereby.

—duty of clerk.

SEC. 21. It shall be the duty of each clerk aforesaid to receive and safely keep all records and papers of the notary in each case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Bond of notaries.

SEC. 22. Each notary must execute an official bond in the sum of one thousand dollars, which bond must be approved by the clerk of the division of the district court located nearest his residence.

—filing, etc.

SEC. 23. Each notary public, upon approval of his official bond, so soon as he has taken his official oath, must transmit such bond and oath, signed by him with his own proper signature to the office of the secretary of the district, whereupon the governor must issue a commission.

Liability of notary for misconduct.

SEC. 24. For the official misconduct or neglect of a notary public, he and sureties on his offcial bond are liable to the parties injured thereby for all damages sustained.

Continuance in office of existing officials.

SEC. 25. The officers properly qualified and actually discharging official duties in the district at the time of the approval of this Act may continue to act in their respective official capacities until the expiration of the terms for which they were respectively appointed unless sooner removed.

Mining laws.

SEC. 26. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the District of Alaska: *Provided*, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of War authorizing any person or persons, corporation or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold

Provisos.
Gold, etc., explorations on Bering Sea.

—miners' regulations

—not to conflict with federal laws.

Exclusive permits to mine void, etc.

or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation, and the reservation of a roadway sixty feet wide, under the tenth section of the Act of May fourteenth, eighteen hundred and ninety-eight, entitled "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

Provision reserving roadway, etc., not to apply.
Vol. 30, p. 413.

Occupants of school or mission lands not to be disturbed.
—missionary stations.

SEC. 27. The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use or occupation, and the land, at any station not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this Act shall be construed to put in force in the district the general land laws of the United States.

General land laws not to apply.

Education of children.

SEC. 28. The Secretary of the Interior shall make needful and proper provision and regulations for the education of the children of school age in the district of Alaska, without reference to race and their compulsory attendance at school, until such time as permanent provision shall be made for the same.

Use of Army as posse comitatus not applicable to Alaska.
Vol. 30, p. 1325.

SEC. 29. An Act entitled "An Act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," approved March third, eighteen hundred and ninety-nine, be, and is, amended, by adding to section three hundred and sixty-three thereof the following: "*Provided*, Section fifteen of an Act entitled 'An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes,' approved June eighteenth, eighteen hundred and seventy-eight, shall not be construed to apply to the district of Alaska": *Provided further*, That section four hundred and sixty, chapter forty-four, title two, of said first-mentioned Act, be amended to read as follows:

Vol. 20, p. 152.

Tax on business and trades.
Vol. 30, p. 1336.

"SEC. 460. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:

"Abstract offices, fifty dollars per annum.

"Banks, two hundred and fifty dollars per annum.

"Boarding houses having accommodations for ten or more guests, fifteen dollars per annum.

"Brokers (money, bill, note, and stock), one hundred dollars per annum.

"Billiard rooms, fifteen dollars per table per annum.

"Bowling alleys, fifteen dollars per annum.

"Breweries, five hundred dollars per annum.

"Bottling works, two hundred dollars per annum.

"Cigar manufacturers, twenty-five dollars per annum.

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Tax on business and trades.

"Cigar stores or stands, fifteen dollars per annum.

"Drug stores, fifty dollars per annum.

"Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored.

"Electric-light plants, furnishing light or power for sale, three hundred dollars per annum.

"Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

"Freight and passenger transportation lines, propelled by mechanical power registered in the district of Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the district of Alaska, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

"Gas plants, for heat or light, for sale, three hundred dollars per annum.

"Hotels, fifty dollars per annum.

"Halls, public, ten dollars per annum.

"Insurance agents and brokers, twenty-five dollars per annum.

"Jewelers, twenty-five dollars per annum.

"Mines: Quartz mills, three dollars per stamp per year.

"Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

"Meat markets, fifteen dollars per annum.

"Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

"Physicians, itinerant, fifty dollars per annum.

"Planing mills, fifty dollars per annum when not part of a sawmill.

"Pawnbrokers, three hundred dollars per annum.

"Peddlers, twenty-five dollars per annum.

"Patent-medicine venders (not regular druggists), fifty dollars per annum.

"Railroads, one hundred dollars per mile per annum on each mile operated.

"Restaurants, fifteen dollars per annum.

"Real estate dealers and brokers, fifty dollars per annum.

"Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, registered in Alaska or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

"Sawmills, ten cents per thousand feet on the lumber sawed.

"Steam ferries, one hundred dollars per year.

"Toll road or trail, two hundred dollars per annum.

"Tobacconists, fifteen dollars per annum.

"Tramways, ten dollars for each mile or fraction thereof per annum.

"Transfer companies, fifty dollars per annum.

"Taxidermists, ten dollars per annum.

"Theaters, one hundred dollars per annum.

"Waterworks, furnishing water for sale, fifty dollars per annum."

That section four hundred and sixty-three of chapter forty-four, title two, of the above-named Act be, and the same is hereby, amended so as to read as follows:

Clerk district court to issue licenses. Vol. 30, p. 1337.

"Sec. 463. That the licenses provided for in this Act shall be issued by the clerk of the district court or any subdivision thereof in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon: *Provided*, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and all moneys received for licenses by him or them under this Act shall, except as otherwise provided by law, be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe: *And provided further*, That chapter twelve of title one of said first above-mentioned Act be amended by adding after section one hundred and thirty-eight another section to be numbered one hundred and thirty-nine, and to read as follows:

Provisos. Clerks' bond, etc.

Vol. 30, p. 1281.

Protection of eggs of crane, wild duck, etc.

That no person shall break, take from the nest, or have in possession the eggs of any crane, wild duck, brant, or goose; nor shall any person transport or ship out of said Territory the eggs or the contents of the eggs of any crane, wild duck, brant, or goose; nor shall any person, common carrier or other transportation company carry or receive for shipment such eggs or the contents of said eggs, and any person or company who shall have in possession or receive for shipment or transportation any eggs or the contents of any eggs of the crane, wild duck, brant, or goose shall be guilty of a misdemeanor and upon conviction be punished as provided in this section. Any person or company violating the provisions of this section shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding six months."

Penalty.

Fees of officers not otherwise compensated.

Sec. 30. In case the law requires or authorizes any services to be performed or any act to be done by any official or person within the District of Alaska, and provides no compensation therefor, the Attorney-General may prescribe and promulgate a schedule of such fees, mileage, or other compensation as shall be by him deemed proper for each division of the court, and such schedule shall have the force and effect of law; and the Attorney-General may from time to time amend such schedule and promulgate the same as amended, and the schedule as amended and promulgated shall also have the force and effect of law.

Use of public buildings for court rooms, etc.

Construction of jails authorized.

—sites.

Sec. 31. Any of the public buildings in the district not required for the customs service or military purposes may be used for court rooms and offices of the civil government; and the marshals of the district shall, each in his division, be the custodian of such buildings. Any division of the court may, where necessary, order the construction or repair of a jail building at the place or places where terms of the court are held, at a cost not to exceed three thousand dollars for each building, the same to be paid by the clerk as provided for the payment of other allowances for the necessary expenses of the court; and any part or portion of the unappropriated public domain of the United States, embracing not more than four thousand square feet, to be taken in compact form, as near as may be practicable, may be set aside by order of the court as a jail site, which order shall describe the location of the ground selected, where unsurveyed by metes and bounds and by reference to natural objects and permanent monuments, in such manner that its boundaries and its location may be readily determined, a certified copy of which order of the court shall be by the clerk thereof transmitted to the Commissioner of the General Land Office, who shall

cause the same to be noted on the records of his office, and thereafter the ground described shall be reserved from sale or other disposition, unless for good cause the court shall vacate the order of reservation or Congress shall otherwise direct, and the sentence of imprisonment in any criminal case shall be carried out by confinement in the penitentiary or jails herein provided for, or as provided in section fifty-five hundred and forty-six of the Revised Statutes of the United States.

R. S., sec. 5546, p. 1074.

Construction of court building authorized.

Where a suitable court room is not available or can not be obtained at reasonable rental at the place or any of the places where terms of the court are held, the court may enter a like order of reservation and direct the construction of a suitable building where the sessions of the court may be held, the cost of such building not to exceed in any case the sum of five thousand dollars, the same to be paid and proceedings to reserve the land to be as in the case of the reservation of ground and construction of jail, as hereinbefore provided: *Provided*, No court building or jail shall be constructed in any division of the district without authority from the Attorney-General, to whom the clerk shall furnish a verified account in detail of all expenditures made by him for buildings, repairs, or other purposes, together with his authority for each payment made.

—limit.

Proviso.
—limit number of buildings.

Attorneys' admission fees.

SEC. 32. For each certificate issued to a member of the bar, authorizing him to practice law in the district, a fee of ten dollars shall be paid to the clerk of the court, which shall be by him promptly remitted to the secretary of the district, and at the same time the clerk shall advise the governor of such remittance. For each commission issued to a notary public a fee of ten dollars shall be paid to the secretary of the district. The fees received by the secretary under this section and under chapter seventy-four of title two shall be by him retained and kept in a fund to be known as the district historical library fund. The fund thus collected shall be disbursed on the order of the governor for the purpose of establishing and maintaining the district historical library and museum. The same shall embrace copies of all laws relating to the district, and all papers and periodicals published within the district, and such other matter of historical interest as the governor may consider valuable and appropriate for such collection. The collection shall also embrace such curios relating to the aborigines and the settlers as may be by the governor deemed of historical importance. The collection thus made shall be described by the governor in the annual report of the governor to the Secretary of the Interior, and shall be by him kept in a secure place and turned over to his successor in office. The secretary of the district and the governor shall each annually account to the Secretary of the Interior for all receipts and disbursements in connection with such historical library and museum.

Notaries' commissions fees.

Post. p. 447.

—use of fund for district historical library, museum, etc.

Designated depository of publications of the Government.

SEC. 33. The historical library and museum provided for in section thirty-two of this title is hereby made a designated depository of publications of the Government, and shall be supplied with one copy of each of said publications in the same manner as such publications are supplied to other depositories.

TITLE II.

CHAPTER ONE.

OF THE FORMS OF ACTION.

Sec.
1. Only one form of action.
2. Parties thereto, how designated.

Only one form of action.

SEC. 1. The distinction between actions at law and suits in equity, and the forms of all such actions and suits, are abolished, and there

shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which is denominated a civil action.

Parties thereto, how designated.

SEC. 2. In such actions the party complaining shall be known as the plaintiff and the adverse party as the defendant.

CHAPTER TWO.

OF THE TIME OF COMMENCEMENT OF CIVIL ACTIONS.

Sec.
3. Time of commencing actions in general.
4. Within ten years.
5. Within ten years.
6. Within six years.
7. Within three years.
8. Within two years.
9. Within one year.
10. Actions for penalty.
11. Actions not before provided for.
12. When cause of action accrues upon current account.
13. Limitations in actions by public corporations.
14. When action deemed commenced.
15. Exceptions when defendant out of the district.
16. Exceptions in favor of persons under legal disability.
17. Provisions when person entitled dies before time expires.
18. In actions by aliens time of war to be deducted.
19. Time of stay by injunction or statutory prohibition to be deducted.
20. Disability must exist when right of action accrued.
21. When several disabilities limitation does not attach until all removed.
22. Acknowledgment or new promise must be in writing.
23. Limitation to commence from time of last payment.
24. No action barred by statute when cause accrued can be maintained.

Time of commencing actions in general.

SEC. 3. Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer, except as otherwise provided in section fifty-eight.

Within ten years.

SEC. 4. The periods prescribed in section three of this Act for the commencement of actions shall be as follows:

Within ten years actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within ten years before the commencement of the action: *Provided*, In all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within one year from the approval of this Act, an action may be brought on such cause of action within one year from the date of the approval of the Act.

Within ten years.

SEC. 5. Within ten years—

First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

Second. An action upon a sealed instrument.

Within six years.

SEC. 6. Within six years—

First. An action upon a contract or liability, express or implied, excepting those mentioned in section five;

Second. An action upon a liability created by statute, other than a penalty or forfeiture;

Third. An action for waste or trespass upon real property;

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof.

Within three years.

SEC. 7. Within three years—

First. An action against a marshal, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity or in

virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall not apply to an action for an escape;

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except where the statute imposing it prescribes a different limitation.

Within two years.

SEC. 8. Within two years—

First. An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein especially enumerated;

Second. An action upon a statute for a forfeiture or penalty to the United States.

Within one year.

SEC. 9. Within one year—

An action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process.

Actions for penalty.

SEC. 10. An action upon the statute for the penalty given in whole or in part to the person who will prosecute for the same shall be commenced within one year after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the United States, by the district attorney.

Actions not before provided for.

SEC. 11. An action for any cause not hereinbefore provided for shall be commenced within ten years after the cause of action shall have accrued.

When cause of action accrues upon current account.

SEC. 12. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

Limitations in actions by public corporations.

SEC. 13. The limitations prescribed in this chapter shall apply to actions brought in the name of any public corporation in the district, or for its benefit, in the same manner as to actions by private parties.

When action deemed commenced.

SEC. 14. An action shall be deemed commenced when the complaint is filed and the summons issued.

Exceptions when defendant out of the district.

SEC. 15. If, when the cause of action shall accrue against any person who shall be out of the district or concealed therein, such action may be commenced within the terms herein respectively limited, after the return of such person into the district or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this district, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exceptions in favor of persons under legal disability.

SEC. 16. If any person entitled to bring an action mentioned in this chapter, or to recover real property, or for a penalty or forfeiture, or against a marshal or other officer for an escape, be at the time the cause of action accrued, either—

First. Within the age of twenty-one years; or

Second. Insane; or

Third. Imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life.

The time of such disability shall not be a part of the time limited for the commencement of the action, but the period within which the action shall be brought shall not be extended in any case longer than two years after such disability ceases.

Provisions when person entitled dies before time expires.

SEC. 17. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his personal

representatives, after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within six months after the issuing of letters testamentary or of administration.

In actions by aliens time of war to be deducted.

SEC. 18. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Time of stay by injunction or statutory prohibition to be deducted.

SEC. 19. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Disability must exist when right of action accrued.

SEC. 20. No person shall avail himself of a disability unless it existed when his right of action accrued.

When several disabilities, limitation does not attach until all removed.

SEC. 21. When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until all such disabilities are removed.

Acknowledgment or new promise must be in writing.

SEC. 22. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Limitation to commence from time of last payment.

SEC. 23. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

No action barred by statute where cause accrued can be maintained.

SEC. 24. When the cause of action has arisen in any State, Territory, or country between nonresidents of this district, and by the laws of the State, Territory, or country where the cause of action arose an action can not be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this district.

CHAPTER THREE.

OF THE PARTIES TO ACTIONS.

Sec.
25. Action to be prosecuted in the name of the real party in interest.
26. Assignment of a thing in action not to prejudice defense.
27. Executor or trustee may sue without the person beneficially interested.
28. Married women may prosecute and defend as if unmarried.
29. Infant to appear by guardian.
30. Guardian, how appointed.
31. Who may prosecute for injury or death of a child.
32. Who may prosecute for seduction of a daughter or ward.
33. When unmarried female may sue for her own seduction.
34. Parties severally liable on same instrument may be sued together or separately.
35. When action not to abate.
36. When action for wrong not to abate.
37. When third persons may be substituted as defendants.
38. Who may be made parties to action.
39. Who must be made parties to action.
40. When court to decide controversy or order other parties brought in.
41. Who may intervene.

Action to be prosecuted in the name of the real party in interest.

SEC. 25. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section twenty-seven; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract.

Assignment of a thing in action not to prejudice defense.

SEC. 26. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment; but

this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

Executor or trustee may sue without the person beneficially interested.

SEC. 27. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section.

Married women may prosecute and defend as if unmarried.

SEC. 28. A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right, and she may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried.

Infant to appear by guardian.

SEC. 29. Actions may be commenced and prosecuted by infants, either by guardian or next friend, and by conservators on behalf of the persons they represent.

Guardian, how appointed.

SEC. 30. In any action it shall be lawful for the court in which the action is pending to appoint a guardian ad litem to any infant or insane defendant in such action, and to compel the person so appointed to act. By such appointment such person shall not be rendered liable to pay costs of action; and he shall, moreover, be allowed a reasonable sum for his charges as such guardian, to be fixed by the court, and taxed in the bill of costs.

Who may prosecute for the death of a child.

SEC. 31. A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

Who may prosecute for the seduction of a daughter or ward.

SEC. 32. A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

When unmarried female may sue for her own seduction.

SEC. 33. An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the section last preceding, shall be a bar to an action by such unmarried female.

Parties severally liable on same instrument may be sued together or separately.

SEC. 34. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

When action not to abate.

SEC. 35. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

When action for wrong not to abate.

SEC. 36. An action for a wrong shall not abate by the death of any party after the verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

When third persons may be substituted as defendants.

SEC. 37. In any action for the recovery of specific personal property, if a third person demand of the defendant the same property, the court, in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. Such order shall not be made but on the condition that the defendant deliver the property or its value to such person as the court may direct, nor unless it appears from the

affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

Who may be made parties to action.

Sec. 38. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to the complete determination or settlement of the question involved therein.

Who must be made parties to action.

Sec. 39. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined can not be obtained he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or joint interest of many persons, or when the parties are numerous, and it may be impracticable to bring them all into court, one or more may sue or defend for the benefit of the whole.

When court to decide controversy or order other parties brought in.

Sec. 40. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

Who may intervene.

Sec. 41. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint setting forth the ground upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Chapter Four.

OF THE MANNER OF THEIR COMMENCEMENT.

Sec.
42. How actions commenced.
43. Requisites of summons.
44. Summons to contain notice of what plaintiff demands.
45. By whom served and when and where returned.
46. How served and upon whom.
47. When order for publication may be made.
48. Publication, how made; personal service out of the district.
49. When defendant may be allowed to defend after judgment.
50. When the summons is returned not found, how plaintiff may proceed.
51. When the summons not served on all the defendants.
52. Proof of service of summons.
53. When court acquires jurisdiction.

How actions commenced.

Sec. 42. Civil actions shall be commenced by filing a complaint with the clerk of the court, and the provisions of section fourteen shall only apply to this subject for the purpose of determining whether an action has been commenced within the time limited by this title. At any time after the action is commenced the plaintiff may cause a summons to be served on the defendant.

Requisites of summons.

Sec. 43. The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the

title thereof. It shall be issued by the court or the clerk thereof and directed to the defendant, and shall require him to appear and answer the complaint as in this section provided, or judgment for want thereof will be taken against him. The defendant shall appear and answer the complaint within thirty days from the date of the service.

Summons to contain notice of what plaintiff demands.

SEC. 44. There shall also be inserted in the summons a notice in substance as follows:

First. In any action for the recovery of money or damages only that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint;

Second. In other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

By whom served and where and when returned.

SEC. 45. The summons shall be served by the marshal or any deputy, or by a person specially appointed by him or by the court or judge thereof. The summons shall be returned to the court or clerk thereof with whom the complaint is filed within forty days after its delivery to the officer or other person for service, with proof of such service or that the defendant can not be found. The marshal or other person to whom the summons is delivered shall indorse thereon the date of such delivery.

How served and upon whom.

SEC. 46. The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an office in the district, then to any clerk or agent of such corporation who may reside or be found in the district, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent;

Second. If against any incorporated town, school district, or other public corporation in the district, to the clerk of such incorporated town, school district, or other public corporation;

Third. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian, or if there be none within the district, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

Fourth. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and if a guardian has been appointed, to such guardian and to the defendant personally;

Fifth. In all cases, to the defendant personally, or if he be not found, to some person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant.

When order for publication may be made.

SEC. 47. When service of the summons can not be made as prescribed in the last preceding section, and the defendant after due diligence can not be found within the district, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or justice of the peace in an action in a justice's court, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the district, the court or judge thereof, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the district, or the cause of action arose therein;

Second. When the defendant, being a resident of the district, has departed therefrom with intent to defraud his creditors or to avoid the service of the summons, or with like intent keeps himself concealed

therein, or has departed from the district and remained absent therefrom six consecutive weeks;

Third. When the defendant is not a resident of the district, but has property therein, and the court has jurisdiction of the subject of the action;

Fourth. When an action is to have a marriage declared void, or for a divorce in the cases prescribed by law;

Fifth. When the subject of the action is personal property in the district, and the defendant has a claim or lien, of interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

Sixth. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in said district, or satisfy or redeem from the same. The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint.

Publication, how made; personal service out of the district.

Sec. 48. The order shall direct the publication to be made in a newspaper to be designated by the court or judge or clerk as the most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the district shall be equivalent to publication and deposit in the post-office. In either case, the defendant shall appear and answer within thirty days after the completion of such period of publication. In case of personal service out of the district, the summons shall specify the time prescribed in the order for publication.

When defendant may be allowed to defend after judgment.

Sec. 49. The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment and within one year after the entry of such judgment on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith shall not be thereby affected.

When the summons is returned not found, how plaintiff may proceed.

Sec. 50. Whenever it shall appear by the return of the marshal, his deputy, or the person appointed to serve a summons that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until service be had; or the plaintiff may proceed by publication, as in this chapter provided, at his election.

When summons not served on all the defendants.

Sec. 51. When the action is against two or more defendants, and the summons is served on one or more but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

Second. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants; or,

Third. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Proof of service of summons.

SEC. 52. Proof of the service of the summons, or of the deposit thereof in the post-office, shall be as follows:

First. If the service or deposit in the post-office be by the marshal or his deputy, the certificate of such officer; or,

Second. If by any other person, his affidavit thereof; or,

Third. In case of publication, the affidavit of the printer or his foreman, or his principal clerk, showing the same; or,

Fourth. The written admission of the defendant in case of service otherwise than by publication; the certificate, affidavit, or admission must state the time and place of service; and in case of deposit in the post-office, the time and place thereof.

When court acquires jurisdiction.

SEC. 53. From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

CHAPTER FIVE.

OF THE PLEADINGS.

Sec.
54. Forms of pleadings, how determined.
55. Pleadings on the part of plaintiff and defendant.

Forms of pleadings, how determined.

SEC. 54. All the forms of pleading heretofore existing in actions at law and suits in equity and in admiralty are abolished, and hereafter the forms of pleading in courts of record and the rules by which the sufficiency of the pleadings is to be determined shall be those prescribed by this code.

Pleadings on the part of plaintiff.

SEC. 55. The only pleadings on the part of the plaintiff shall be—

First. The complaint;

Second. The demurrer; or,

Third. The reply.

—defendant.

And on the part of the defendant—

First. The demurrer; or,

Second. The answer.

CHAPTER SIX.

OF THE COMPLAINT.

Sec.
56. First pleading to be complaint.
57. What complaint to contain.

First pleading to be complaint.

SEC. 56. The first pleading on the part of the plaintiff shall be the complaint.

What complaint to contain.

SEC. 57. The complaint shall contain—

First. The title of the cause, specifying the name of the court and the names of the parties to the action, plaintiff and defendant.

Second. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded the amount thereof shall be stated.

CHAPTER SEVEN.

OF THE DEMURRER.

Sec.
58. When the defendant may demur, and for what.
59. Demurrer must specify ground of objection.
60. How to proceed if complaint be amended.
61. Objection when taken by answer.
62. Objection when deemed waived.

When defendant may demur, and for what.

SEC. 58. The defendant may demur to the complaint within the time required by law to appear and answer, when it appears upon the face thereof, either—

First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the action has not been commenced within the time limited by this code.

Demurrer must specify ground of objection.

SEC. 59. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint or to any of the alleged causes of action stated therein.

How to proceed if complaint be amended.

SEC. 60. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Objection, when taken by answer.

SEC. 61. When any of the matters enumerated in section fifty-eight do not appear upon the face of the complaint the objection may be taken by answer.

Objection, when deemed waived.

SEC. 62. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

CHAPTER EIGHT.

OF THE ANSWER.

Sec.
63. What the answer shall contain.
64. Nature of counterclaim, and how stated.
65. Defendant may demur to one or more of several causes of action and answer the rest.
66. Sham and irrelevant answers stricken out on motion.

What the answer shall contain.

SEC. 63. The answer of the defendant shall contain—

First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.

Nature of counterclaim, and how stated.

SEC. 64. The counterclaim mentioned in the last preceding section must be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action:

First. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim.

Second. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.

The defendant may demur to one or more of several causes of action and answer the rest.

SEC. 65. The defendant may demur to one or more of several causes of action stated in the complaint and answer the residue.

Sham and irrelevant answers stricken out on motion.

SEC. 66. Sham, frivolous, and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

CHAPTER NINE.

OF THE REPLY.

Sec.
67. Reply, when made, and what to contain.
68. When plaintiff may demur to new matter in answer.
69. When defendant may move for judgment on answer.
70. When defendant may demur to reply.

Reply, when made and what to contain.

SEC. 67. When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

When plaintiff may demur to new matter in answer.

SEC. 68. The plaintiff may demur to an answer containing new matter when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim; or he may, for like cause, demur to one or more of such defenses or counterclaims and reply to the residue.

When defendant may move for judgment on answer.

SEC. 69. If the answer contain a statement of new matter, constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law or rule of the court, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

When defendant may demur to reply.

SEC. 70. The defendant may demur to any new matter contained in the reply when it appears upon the face thereof that such matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defenses.

CHAPTER TEN.

OF THE GENERAL RULES OF PLEADING.

Sec.
71. Verification of pleadings.
72. When verification may be omitted.
73. When pleadings filed, motion to strike out.
74. Manner of pleading an account.
75. How pleadings construed.
76. Irrelevant and redundant matter may be stricken out.
77. Judgments, how pleaded.
78. Conditions precedent, how pleaded.
79. Private statute, how pleaded.
80. City ordinance, how pleaded.
81. Libel or slander, how pleaded.
82. What may be pleaded in answer in such cases.
83. Answer in action to recover the possession of property distrained.
84. What causes of action may be united in same complaint.
85. Material allegation not denied to be deemed true.
86. What is material allegation.

Verification of pleadings.

SEC. 71. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party,

his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one, at least, of such parties, if such parties be within the district and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof upon whom service of a summons might be made, and when the United States, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

When verification may be omitted.

SEC. 72. When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a prosecution for felony, the verification of the answer to such allegation may be omitted.

When pleadings filed.

SEC. 73. The answer or demurrer to the complaint shall be filed with the clerk by the time required to answer, and the demurrer, or reply thereto, as the case may be, must in like manner be filed by the first day of the next term of the court, or within such time as the court may allow after the filing of the answer to the complaint, if the same be filed in term time. A demurrer to a reply must be filed in the manner and within the time required to file a demurrer to an answer. A motion to strike out a pleading for want of verification or subscription, or because several causes of action or defense therein are not pleaded separately, or for other cause, or a sham, frivolous, or irrelevant pleading or redundant matter therein, shall be made within the time for answering such pleading.

—motion to strike out.

Manner of pleading an account.

SEC. 74. A party may set forth in a pleading the items of an account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

How pleadings construed.

SEC. 75. In the construction of a pleading for the purpose of determining its effect, its allegation shall be liberally construed, with a view of substantial justice between the parties.

Irrelevant and redundant matter may be stricken out.

SEC. 76. If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Judgments, how pleaded.

SEC. 77. In pleading a judgment or other determination of a court or officer of special jurisdiction it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Conditions precedent, how pleaded.

SEC. 78. In pleading the performance of a condition precedent in a contract it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted

the party pleading shall be bound to establish on the trial the facts showing such performance.

Private statute, how pleaded.

SEC. 79. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

City ordinance, how pleaded.

SEC. 80. In pleading an ordinance or enactment of any incorporated city, town, or village, or a right derived therefrom; in any action, or proceeding, it shall be sufficient to refer to such ordinance or enactment by its title and the day of its approval, and the court shall thereupon take judicial notice thereof.

Libel or slander, how pleaded.

SEC. 81. In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted the plaintiff shall be bound to establish on trial that it was so published or spoken.

What may be pleaded in answer in such cases.

SEC. 82. In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not he may give in evidence the mitigating circumstances.

Answer in action to recover the possession of property distrained.

SEC. 83. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property.

What causes of action may be united in same complaint.

SEC. 84. The plaintiff may unite several causes of action in the same complaint when they all arise out of—

First. Contract, express or implied; or

Second. Injuries, with or without force, to the person; or

Third. Injuries, with or without force, to property; or

Fourth. Injuries to character; or

Fifth. Claims to recover real property, with or without damages for the withholding thereof; or

Sixth. Claims to recover personal property, with or without damages for the withholding thereof; or

Seventh. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one only of these classes, and must affect all the parties to the action and not require different places of trial, and must be separately stated.

Material allegation not denied to be deemed true.

SEC. 85. Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party as upon a direct denial or the avoidance, as the case may require.

What is material allegation.

SEC. 86. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient as to such claim or defense.

CHAPTER ELEVEN.

OF MISTAKES IN PLEADINGS AND AMENDMENTS.

Sec.
87. When variance deemed material.
88. When variance not material.
89. What deemed a failure of proof.
90. What pleading may be amended of course.
91. Amendments and pleading over after demurrer.
92. Amendments allowed by court before trial or submission.
93. Court may enlarge time to plead, or relieve party from judgment.
94. When defendant may be sued by fictitious name.
95. Amended pleadings before trial to be new pleadings.
96. Pleading not verified, or containing several causes of action or defense not separately stated, may be stricken out.
97. No error to be regarded unless it affect substantial rights.
98. Supplemental pleadings.

When variance deemed material.

SEC. 87. No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

When variance not material.

SEC. 88. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What deemed a failure of proof.

SEC. 89. When, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

What pleading may be amended of course.

SEC. 90. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such case a copy of the amended pleading shall be served on the adverse party before the expiration of said period.

Amendments and pleading over after demurrer.

SEC. 91. After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over, upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to, upon such terms as may be proper.

Amendments allowed by court before trial or submission.

SEC. 92. The court may, at any time before trial, in furtherance of justice, and upon such terms as may be proper, allow any pleading or proceeding to be amended by adding the name of a party, or other allegation material to the cause, and in like manner and for like reasons it may, at any time before the cause is submitted, allow such pleading or proceeding to be amended, by striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or when the amendment does not substantially change the cause of action or defense, by conforming the pleading or proceeding to the facts proved.

Court may enlarge time to plead, or relieve party from judgment.

SEC. 93. The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this code, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

When plaintiff may be sued by fictitious name.

SEC. 94. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding

by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Amended pleadings before trial to be new pleadings.

SEC. 95. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself without reference to the original or any preceding amended one.

Pleading not verified, or containing several causes of action or defense not separately stated, may be stricken out.

SEC. 96. Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading, or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

No error to be regarded unless it affect substantial rights.

SEC. 97. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.

Supplemental pleadings.

SEC. 98. The plaintiff and defendant, respectively, may be allowed on motion to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply. Copies of all pleadings subsequent to the complaint must be served upon the adverse party or his attorney.

CHAPTER TWELVE.

OF ARREST AND BAIL.

Sec.
99. When defendant may be arrested.
100. Proceeding to obtain an arrest.
101. Defendant may be discharged on bail or deposit.
102. Bail, how given.
103. Surrender of defendant.
104. Same subject.
105. Bail, how proceeded against.
106. How exonerated.
107. Delivery of copy of undertaking.
108. Notice of justification of bail.
109. Qualification of bail.
110. Justification of bail.
111. Allowance of bail.
112. Deposit of money in lieu of bail.
113. Payment by marshal of deposit to clerk.
114. Bail may be given and deposit refunded.
115. Deposit, how applied or disposed of.
116. When marshal liable as bail and how discharged from such liability.
117. Judgment against marshal as bail.
118. When bail liable to marshal.
119. Plaintiff liable in the first instance for the maintenance of defendant.
120. When marshal may discharge defendant for nonpayment of maintenance.
121. Motion to vacate writ of arrest.
122. Proceedings thereon.

When defendant may be arrested.

SEC. 99. No person shall be arrested in any civil action at law except as provided in this section. The defendant may be arrested in the following cases:

First. In an action for the recovery of money or damages, when the defendant is about to remove from the district with intent to defraud his creditors, or when the action is for an injury to person, or for wilfully injuring or wrongfully taking, detaining, or converting property.

Second. In an action for a fine or penalty, or for money, or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

Third. In an action to recover the possession of personal property

unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the marshal, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

Fourth. When the defendant has been guilty of a fraud in contracting a debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action except for injury to person, character, or property.

Proceeding to obtain an arrest.

SEC. 100. The mode of proceeding to obtain the arrest of the defendant for any of the causes specified in the section last preceding shall be as provided in this section:

First. At any time after the commencement of an action at law, and before judgment, the plaintiff in such action shall, in the discretion of the court, or the judge thereof be entitled to a writ of arrest for such defendant whenever he shall make and file with the clerk of the court in which such action is commenced, or is at the time pending, an affidavit that the plaintiff has a sufficient cause of action therein, and that the case is one of those mentioned in the section last preceding; and shall also make and file with such clerk an undertaking, with sufficient sureties, in a sum not less than three hundred dollars, and equal to the amount for which the plaintiff prays judgment. Such undertaking shall be conditioned that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest if the same be wrongful or without sufficient cause, not exceeding the amount specified in the undertaking.

Second. The affidavit may be either positive or upon information and belief; but if the latter, it shall state the facts upon which the belief is founded. The plaintiff shall also file with his undertaking the affidavits of the sureties therein, from which it must appear that such sureties are residents of the district, and that they are, taken together, worth double the amount of the sum specified in the undertaking over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest is qualified to become surety in an undertaking for an arrest.

Third. The writ of arrest shall be issued by the court, judge, or commissioner in his or its discretion, and shall require the marshal forthwith to arrest the defendant and hold him to bail in the amount specified in the undertaking, and that in default thereof he keep him in custody until discharged by law, and to return the writ to the court from which it issued, with his doings indorsed thereon, when required by the plaintiff at any time before the defendant may be arrested, or afterwards whenever the defendant shall have been discharged from the arrest on bail or otherwise.

Fourth. The plaintiff shall deliver or cause to be delivered to the marshal with the writ a copy of the affidavit upon which the warrant was issued, subscribed by himself or attorney. The marshal, upon the delivery of the writ, shall indorse thereon the date of the receipt, and upon the arrest of the defendant shall deliver to him a copy of the writ and such copy of the affidavit. The marshal shall execute the writ by arresting the defendant and keeping him in custody until discharged by law.

Defendant may be discharged on bail or deposit.

SEC. 101. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the writ of arrest, as provided in this chapter.

SEC. 102. The defendant may give bail by causing a written undertaking to be executed in favor of the plaintiff by sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section ninety-nine, an undertaking to the same effect as that provided by section one hundred and twenty-seven. Bail, how given.

SEC. 103. At any time before failure to comply with the undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the marshal in the following manner: Surrender of defendant.

First. A certified copy of the undertaking of the bail shall be delivered to the marshal, who shall detain the defendant in his custody thereon as upon a writ of arrest, and shall, by a certificate in writing, acknowledge the surrender.

Second. Upon a production of a copy of the undertaking and marshal's certificate, the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on the application with the clerk of the court where the action is pending they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in the third subdivision of section ninety-nine so far as to discharge the bail from an undertaking given to the effect provided by section one hundred and twenty-eight.

SEC. 104. For the purpose of surrendering the defendant, the bail at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower the marshal or any other person of suitable age and discretion to do so. Same subject.

SEC. 105. In case of the failure to comply with the undertaking, the bail may be proceeded against by action only. Bail, how proceeded against.

SEC. 106. The bail may be exonerated, either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the marshal or any deputy in execution thereof, within twenty days after the commencement of the action against the bail or within such further time as may be granted by the court. How exonerated.

SEC. 107. Within five days after the execution of the undertaking of the bail the marshal or deputy having the defendant in custody shall deliver to the plaintiff or his attorney, or such other person as the plaintiff may direct, a certified copy of the undertaking, with the data of the arrest indorsed thereon. In any other case the marshal may mail such copy within the same time to the plaintiff or his attorney, within the district, or to either of them, as the plaintiff may direct. The plaintiff, within ten days from the delivery of such copy, or fifteen days from the mailing of the same, if sent by mail, may serve upon the marshal or deputy for the defendant in custody a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the marshal shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the court where the action is pending. Delivery of copy of undertaking.

SEC. 108. On the receipt of such notice the marshal or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the district court or clerk of the court where the action is pending, or a commissioner, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case neither the plaintiff nor his attorney reside within one hundred miles from where Notice of justification of bail.

the arrest is made, the notice may be served upon the person, and in the manner provided for serving the copy of the undertaking in the section last preceding. In case other bail be given there shall be a new undertaking, in the form and to the effect prescribed in section one hundred and two.

Qualifications of bail.

SEC. 109. The qualifications of bail shall be as follows:

First. Each of them shall be a resident within the district; but no counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court shall be permitted to become bail in any action.

Second. Each of them shall be worth the amount specified in the writ of arrest, or the amount to which the same may be reduced as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge, clerk, or commissioner on justification may allow more than two sureties to justify severally in amounts less than that expressed in the writ, if the whole justification shall be equivalent to that of two sufficient bail.

Justification of bail.

SEC. 110. For the purpose of justification each of the bail shall attend before the judge, commissioner, or clerk at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge, commissioner, or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

SEC. 111. If the judge, commissioner, or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is pending; and the marshal shall thereupon be exonerated from liability.

Deposit of money in lieu of bail.

SEC. 112. The defendant may, at the time of his arrest, instead of giving bail, deposit with the marshal the amount mentioned in the writ. Thereupon the marshal shall give the defendant a certificate of the deposit made and the defendant shall be discharged out of custody.

Payment by marshal of deposit to clerk.

SEC. 113. The marshal shall, within ten days after the deposit, pay the same into the court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the marshal to collect the sum deposited as in other cases of delinquency.

Bail may be given and deposit refunded.

SEC. 114. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section one hundred and two, at any time before judgment, and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

Deposit, how applied or disposed of.

SEC. 115. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

When marshal liable as bail and how discharged from such liability.

SEC. 116. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the marshal himself shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, as provided in sections one hundred and eight, one hundred and nine, one hundred and ten, and one hundred and eleven, at any time before process against the person of the defendant to enforce an order or judgment in the action.

SEC. 117. If a judgment be recovered against the marshal upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

Judgment against marshal as bail.

SEC. 118. The bail taken upon arrest shall, unless they justify, or other bail be given or justified, be liable to the marshal by action for any damages which he may sustain by reason of such omission.

When bail liable to marshal.

SEC. 119. The fees which shall be allowed to the marshal for the food and maintenance of any defendant arrested under the provisions of this chapter shall be as provided by law, and the plaintiff shall be liable in the first instance for such fees, and if required by the marshal, shall pay the same weekly in advance; and such fees so paid shall be added to the disbursements taxed or accruing in the case, and be collected as other disbursements.

Plaintiff liable in the first instance for the maintenance of defendant.

SEC. 120. If the plaintiff shall neglect to pay such fees for three days after a demand of payment the marshal may discharge the defendant out of custody.

When marshal may discharge defendant for nonpayment of maintenance.

SEC. 121. A defendant arrested may, at any time before judgment, apply on motion to the court or judge thereof in which the action is pending, upon notice to the plaintiff, to vacate the writ of arrest.

Motion to vacate writ of arrest.

SEC. 122. If a motion be made upon affidavits or other proofs on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those upon which the writ was issued. If upon the hearing of such motion it shall satisfactorily appear that there was not sufficient cause to allow the writ, or that there is other good cause which would entitle him to be discharged on habeas corpus the same shall be vacated, or in case he has given bail the court may discharge the same or reduce the amount thereof on good cause shown.

Proceedings thereon.

CHAPTER THIRTEEN.

OF THE RECOVERY OF PERSONAL PROPERTY.

Sec.
123. When delivery may be claimed in an action for the possession of personal property.
124. Affidavit therefor, what it must show.
125. Indorsement thereon, requiring the marshal to take property.
126. Undertaking to marshal on the part of plaintiff.
127. Exception to securities by defendant, proceedings thereon.
128. How and when defendant entitled to redelivery.
129. Justification of sureties on defendant's undertaking.
130. Qualification and justification of sureties.
131. Power of marshal when property concealed in building or inclosure.
132. Property, how kept and when delivered to plaintiff.
133. Proceedings when property claimed by third person.
134. Return of affidavit by marshal.

SEC. 123. In an action to recover possession of personal property the plaintiff, at any time after the action is commenced, and before judgment, may claim the immediate delivery of such property, as provided in this chapter.

When delivery may be claimed in an action for the possession of personal property.

SEC. 124. When a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—

Affidavit therefor, what it must show.

First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

Second. That the property is wrongfully detained by the defendant;

Third. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

Fourth. That the same has not been taken for a tax assessment or

fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

Indorsement thereon, requiring the marshal to take property.

SEC. 125. The plaintiff may thereupon, by an indorsement in writing upon the affidavit, require the marshal to take the property from the defendant and deliver it to the plaintiff.

Undertaking to marshal on the part of plaintiff.

SEC. 126. Upon the receipt of the affidavit and indorsement thereon, with a written undertaking executed by two or more sufficient sureties approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the marshal shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, indorsement thereon, and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post-office directed to the defendant at the post-office nearest to him.

Exception to securities by defendant, proceedings thereon.

SEC. 127. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the marshal shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justified. If the defendant except to the sureties, he can not reclaim the property, as provided in the next section.

How and when defendant entitled to redelivery.

SEC. 128. At any time before the delivery of the property to the plaintiff the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to be approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of a copy of the affidavit and undertaking of a defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and thirty-two.

Justification of sureties on defendant's undertaking.

SEC. 129. The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a judge of the district court or commissioner, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest. Upon such justification the marshal shall deliver the property to the defendant. The marshal shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification and justification of sureties.

SEC. 130. Qualification of sureties and their justification shall be as prescribed by sections one hundred and nine and one hundred and ten in respect to bail upon an order of arrest.

SEC. 131. If the property or any part thereof be concealed in a building or inclosure the marshal shall publicly demand its delivery. If it be not delivered he shall cause the building or inclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of the district.

Power of marshal when property concealed in building or inclosure.

SEC. 132. When the marshal shall have taken the property as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Property, how kept and when delivered to plaintiff.

SEC. 133. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the marshal before the delivery of the property to the plaintiff, the marshal shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, shall indemnify the marshal against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution. And no claim to such property by any other person than the defendant or his agent shall be valid against the marshal unless made as aforesaid; and notwithstanding such claim when so made he may retain the property a reasonable time to demand such indemnity.

Proceedings when property claimed by third person.

SEC. 134. The marshal shall file the affidavit, with his proceedings thereon, including an inventory of the property taken, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein, or he may mail or forward the same to the clerk within that time.

Return of affidavit by marshal.

CHAPTER FOURTEEN.

OF ATTACHMENT.

Sec.
135. When plaintiff may have property of defendant attached.
136. Writ of attachment, by whom issued, and for what causes.
137. Undertaking of plaintiff to be filed before writ issues.
138. Writ, to whom directed, and what it shall require.
139. What property may be attached.
140. Writ, how executed.
141. Effect of attachment as to third persons.
142. When real property attached, certificate of marshal.
143. When third persons must furnish certificate to marshal.
144. Perishable property may be sold.
145. When marshal may deliver property to defendant.
146. Defense to action upon such undertaking.
147. If judgment recovered by plaintiff, marshal to apply property upon execution, remainder to be delivered to defendant.
148. If judgment not recovered by plaintiff, property to be returned to defendant.
149. How defendant may have an order for the return of the property.
150. Undertaking of the defendant upon such order.
151. When the defendant may move to discharge the attachment.
152. When writ to be returned.
153. What order upon garnishee shall require.
154. When plaintiff may serve interrogatories on garnishee.
155. Answer of the garnishee.
156. Plaintiff may have judgment for want of answer, or garnishee may be compelled to answer.
157. Exceptions to answer.
158. Reply to answer, and trial of issue thereon.
159. Judgment against the garnishee upon answer or trial.
160. Execution against garnishee, witnesses on trial.
161. When restraining order may be allowed against garnishee.
162. What proceedings known as provisional remedies.

SEC. 135. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered,

When plaintiff may have property of defendant attached.

unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

First. In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second. In an action upon a contract, express or implied, against a defendant not residing in the district.

Writ of attachment, by whom issued, and for what causes.

SEC. 136. A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing—

First. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract, expressed or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; and

Second. That the sum for which the attachment is asked is an actual, bona fide, existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Undertaking of plaintiff to be filed before writ issues.

SEC. 137. Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issued as soon thereafter as he shall file with the clerk his undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages that he may sustain by reason of the attachment if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified, and that, taken together, they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment.

Writ, to whom directed, and what it shall require.

SEC. 138. The writ shall be directed to the marshal, and shall require him to attach and safely keep all the property of such defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time for delivery to different deputy marshals.

What property may be attached.

SEC. 139. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in the district of such defendant not exempt from execution, shall be liable to be attached. The marshal shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Writ, how executed.

SEC. 140. The marshal or deputy marshal to whom the writ is delivered shall execute the same without delay, as follows:

First. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ certified by the marshal.

Second. Personal property capable of manual delivery to the marshal, and not in the possession of a third person, shall be attached by taking it into his custody.

Third. Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or shares in the stock of an associa-

tion or corporation, or interest or profits thereof, then with such person or officer of such association or corporation as this code authorizes a summons to be served upon.

Effect of attachment as to third persons.

SEC. 141. From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock, or debts be delivered, transferred, or paid to the marshal, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

When real property attached, certificate of marshal.

SEC. 142. If real property be attached, the marshal shall make a certificate containing the title of the cause, the names of the parties, a description of such real property, and a statement that the same has been attached at the action of the plaintiff, and the date thereof. Within ten days from the date of the attachment, the marshal shall deliver such certificate to the commissioner as ex officio recorder of the recording district in which such real property is situated, who shall file the same in his office and record it in a book to be kept for that purpose. When such certificate is so filed for record the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against third persons, from the date of such subsequent filing. Whenever such lien shall be discharged it shall be the duty of the commissioner as ex officio recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that such lien has been discharged in the book mentioned in this section. The commissioner shall also enter on the margin of the page on which the certificate is recorded a minute of the discharge, and the page and book where recorded.

When third persons must furnish certificate to marshal.

SEC. 143. Whenever the marshal, with a writ of attachment against the defendant, shall apply to any person or officer mentioned in subdivision three of section one hundred and forty for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and description of any property in his possession belonging to the defendant, or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court, or judge thereof, where the action is pending to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

Perishable property may be sold.

SEC. 144. If any of the property attached be perishable, the marshal shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Personal property mentioned in subdivision three of section one hundred and forty may be delivered, transferred, or paid to the marshal without an action, and his receipt therefor shall be a sufficient discharge accordingly.

When marshal may deliver property to defendant.

SEC. 145. The marshal may deliver any of the property attached to the defendant, or to any other person claiming it, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to redeliver it or pay the value thereof to the marshal, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Defense to action upon such undertaking.

SEC. 146. If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

If judgment recovered by plaintiff, marshal to apply property upon execution, remainder to be delivered to defendant.

SEC. 147. If judgment be recovered by the plaintiff, and it shall appear that the property has been attached in the action and has not been sold as perishable property or discharged from the attachment as provided by law, the court shall order and adjudge the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the marshal shall apply the property attached by him, or the proceeds thereof, upon the execution, and if there be any such property or proceeds remaining after satisfying such execution, he shall, upon demand, deliver the same to the defendant.

If judgment not recovered by plaintiff, property to be returned to defendant.

SEC. 148. If judgment be not recovered by the plaintiff, all the property attached, or the proceeds thereof, or the undertaking therefor, shall be returned to the defendant upon his serving upon the marshal a certified copy of the order discharging the attachment.

How defendant may have an order for the return of the property.

SEC. 149. Whenever the defendant shall have appeared in the action he may apply upon notice to the plaintiff to the court or judge where the action is pending, or to the clerk of such court, for an order to discharge the attachment upon the execution of the undertaking mentioned in the next section; and if the application be allowed, all the proceeds of sales of property remaining in his hands shall be released from the attachment and delivered to the defendant upon his serving a certified copy of the order on the marshal.

Undertaking of the defendant upon such order.

SEC. 150. Upon such application the defendant shall deliver to the court or judge to whom the application is made an undertaking executed by one or more sureties, to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. If the plaintiff demand it, the sureties shall be required to justify in the same manner as bail upon an arrest.

When the defendant may move to discharge the attachment.

SEC. 151. The defendant may, at any time before judgment, except where the cause of attachment and the cause of action are the same, apply to the court or judge thereof where the action is pending, to discharge the attachment, in the manner and with the effect as provided in sections one hundred and twenty-one and one hundred and twenty-two for the discharge of a defendant from arrest.

When writ to be returned.

SEC. 152. When the writ of attachment shall be fully executed or discharged, the marshal shall return the same, with his proceedings indorsed thereon, to the clerk of the court where the action was commenced.

What order upon garnishee shall require.

SEC. 153. The order provided for in section one hundred and forty-two shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter upon such order such person or association or corporation shall be known as the garnishee.

When plaintiff may serve interrogatories on garnishee.

SEC. 154. After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision three of section one hundred and forty, and to which such garnishee or officer thereof is required to give a certificate as provided in section one hundred and forty-three.

Answer of the garnishee.

SEC. 155. On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge, with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

SEC. 156. If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action, have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

Plaintiff may have judgment for want of answer, or garnishee may be compelled to answer.

SEC. 157. The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same be adjudged insufficient, such garnishee or officer may be allowed to amend his answer on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

Exceptions to answer.

SEC. 158. The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of fact between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

Reply to answer, and trial of issue thereon.

SEC. 159. If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, had any property of the defendant's liable to attachment as provided in subdivision three of section one hundred and forty and as to which such garnishee or officer thereof is required to give a certificate as provided in section one hundred and forty-three beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying, or transferring the property to the marshal.

Judgment against the garnishee upon answer or trial.

SEC. 160. Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. Witnesses, including the defendant and garnishee or officer thereof, may be required to appear and testify upon such proceeding against a garnishee, as upon the trial of an issue of fact.

Execution against garnishee; witnesses on trial.

SEC. 161. The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section one hundred and forty-three and at any time thereafter before judgment against the garnishee, by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as a contempt.

When restraining order may be allowed against garnishee.

SEC. 162. The proceedings provided for in chapters twelve, thirteen, and fourteen of this title shall be known as provisional remedies.

What proceedings known as provisional remedies.

CHAPTER FIFTEEN.

OF ISSUES AND THE MODE OF TRIAL.

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163. The different kinds of issues.
164. Issue of law.
165. Issue of fact.
166. When both issue of law and fact arise, issue of law to be first tried.
167. Trial defined.
168. Issues, how tried.
169. Motion to postpone trial on account of absent evidence.

SEC. 163. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds—

First. Of law; and,

Second. Of fact.

The different kinds of issues.

Issue of law.

SEC. 164. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Issue of fact.

SEC. 165. An issue of fact arises—

First. Upon a material allegation in the complaint controverted by the answer; or,

Second. Upon new matter in the answer controverted by the reply; or,

Third. Upon new matter in the reply, except an issue of law is joined thereon.

When both issue of law and fact arise, issue of law to be first tried.

SEC. 166. Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

Trial defined.

SEC. 167. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Issues, how tried.

SEC. 168. An issue of law shall be tried by the court, unless referred as provided in chapter twenty. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in chapters nineteen and twenty.

Motion to postpone trial on account of absent evidence.

SEC. 169. A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and a statement of facts showing that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

CHAPTER SIXTEEN.

OF THE FORMATION OF THE JURY.

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170. Trial jurors, how selected.
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181. First challenge taken by defendant; when taken.
182. Order of taking challenges.
183. Trial of challenge.
184. Proceedings in evidence on trial of challenge.
185. Challenge may be oral.
186. Oath of jury.

Trial jurors, how selected.

SEC. 170. Jurors for the trial of issues of fact in the district of Alaska shall be selected and summoned in the manner prescribed by the laws of the United States with respect to jurors of the United States district and circuit courts, and shall have the same qualifications and be entitled to the same exemptions as are provided by law in the case of grand juries to serve in the district, it being the true intent and meaning of this section that but one jury shall be summoned for the trial of all actions, civil and criminal, triable by the district court of the district.

Formation of jury.

SEC. 171. Trial juries in civil actions shall be formed as follows: When the action is called for trial, the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders, or the body of the district, as the court may direct, so many qualified persons as may be necessary to complete the jury. Whenever, as in this section provided, the marshal shall summon more than one person

at a time from the bystanders or the body of the district, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term. The jury shall consist of twelve persons, unless the parties consent to a less number. Such consent shall be entered in the journal: *Provided*, That hereafter in trials for misdemeanors six persons shall constitute a legal jury.

No challenge to panel.

SEC. 172. No challenge shall be made or allowed to the panel. A challenge is an objection to a particular juror, and may be either—

First. Peremptory; or,

Second. For cause.

Peremptory challenge defined.

SEC. 173. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Challenge for cause defined.

SEC. 174. A challenge for cause is an objection to a juror, and may be either—

First. General—that the juror is disqualified from serving in any action; or,

Second. Particular—that he is disqualified from serving in the action on trial.

General causes of challenge.

SEC. 175. General causes of challenge are—

First. A conviction for felony;

Second. A want of any of the qualifications prescribed by law for a juror;

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Particular causes of challenge.

SEC. 176. Particular causes of challenge are of two kinds:

First. For such bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias;

Second. For the existence of a state of mind on the part of a juror in reference to the action, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

Challenge for implied bias.

SEC. 177. A challenge for implied bias may be taken for any or all of the following causes, and no other:

First. Consanguinity or affinity within the fourth degree to either party;

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of the adverse party; or being surety or bail in the action called for trial, or otherwise, for the adverse party;

Third. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action against either party upon substantially the same facts or transaction;

Fourth. Interest on the part of the juror in the event of the action on the principal question involved therein.

Challenge for actual bias.

SEC. 178. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section one hundred and seventy-six. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied from all the circumstances that the juror can not disregard such opinion and try the issue impartially.

Exemption from service of jury.

SEC. 179. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Number of challenges.

SEC. 180. A peremptory challenge or a challenge for cause may be taken by either party. When there are two or more parties, plaintiffs or defendants, they must join in the challenge or it can not be taken. Either party shall be entitled to three peremptory challenges and no more.

First challenge taken by defendant; when taken.

SEC. 181. The defendant first and afterwards the plaintiff shall challenge for cause, and when a challenge has been sustained the vacancy shall be filled before further challenge is made, and any new juror may at any time be challenged for cause by either party to the action. When the panel is full, the defendant shall have one peremptory challenge, followed by one by the plaintiff, and so on alternately until each side has exhausted its right to such challenge.

Order of taking challenges.

SEC. 182. The challenges of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. For general disqualification;

Second. For implied bias;

Third. For actual bias;

Fourth. Peremptory; but either party may take peremptory challenge at any time before his right of challenge ceases.

Trial of challenge.

SEC. 183. The challenge may be excepted to by the adverse party for insufficiency; and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party; and if so, the court shall try the issue and determine the law and the fact.

Proceedings in evidence on trial of challenge.

SEC. 184. Upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise it shall be disallowed.

Challenge may be oral.

SEC. 185. The challenge, the exception, and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

Oath of jury.

SEC. 186. As soon as the number of the jury has been completed an oath or affirmation shall be administered to the jurors in substance that they and each of them will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the law and evidence as given them on the trial.

CHAPTER SEVENTEEN.

CONDUCT OF THE TRIAL BY JURY.

Sec.
187. Order of proceedings on the trial.
188. When a view may be ordered.
189. Manner of keeping jury.
190. When juror taken sick, how to proceed.
191. The charge to the jury.
192. How jury kept while deliberating; officer to be sworn.
193. Food and lodging of jurors.
194. What papers jury may take.
195. When jury may return for information.
196. When jury may be discharged without giving verdict.
197. When new trial may be had if jury discharged.
198. Court deemed open until jury gives verdict or is discharged.
199. If juror absent when jury return, jury to be discharged.
200. Manner of giving verdict.
201. Jury may be polled, or insufficient verdict corrected.
202. When verdict complete and jury discharged, verdict to be in writing and entered on the journal.

Order of proceedings on the trial.

SEC. 187. When the jury has been completed and sworn, the trial shall proceed in the order prescribed in this section, unless the court for special reasons otherwise direct.

First. The plaintiff shall state briefly his cause of action, and the issue to be tried; the defendant shall then in like manner state his defense or counterclaim.

Second. The plaintiff shall then introduce the evidence on his part, and when he has concluded the defendant shall do the same.

Third. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason, and in furtherance of justice, permit them to introduce evidence upon the original cause of action, defense, or counterclaim.

Fourth. Not more than two counsel shall be allowed to address the jury on behalf of the plaintiff or defendant unless otherwise allowed by the court; and the court may limit the time to be consumed by counsel in arguing the cause to the jury.

Fifth. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the plaintiff shall commence and conclude the argument to the jury. If the plaintiff waive the opening argument, and the defendant then argue the case to the jury, the plaintiff shall not be permitted to reply to the argument of the defendant.

Sixth. The court shall then charge the jury, and if either party require it, and shall at the commencement of the trial give notice of his intention so to do, the charge of the court, so far as it relates to the law and the facts of the case, shall be reduced to writing and given to the jury by the court as written, without any oral explanation. The charge, when reduced to writing, must be filed with the clerk.

When a view may be ordered.

SEC. 188. Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent no person shall speak to them on any subject connected with the trial.

Manner of keeping jury.

SEC. 189. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

When juror taken sick, how to proceed.

SEC. 190. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial may begin anew; or the jury may be discharged, as the court shall direct, and a new jury then or afterwards formed.

The charge to the jury.

SEC. 191. In charging the jury the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict, but it shall not present the facts of the case, but shall inform the jury that they are the exclusive judges of all questions of fact.

How jury kept while deliberating; officer to be sworn.

SEC. 192. After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by the order of the court, except to

ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberation or the verdict agreed on. Before any officer takes charge of a jury this section shall be read to him, and he shall be then sworn to conduct himself according to its provisions, to the utmost of his ability.

Food and lodging of jurors.

SEC. 193. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the marshal, at the expense of the United States.

What papers jury may take.

SEC. 194. Upon retiring for deliberation the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession). They may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, out none taken by any other person.

When jury may return for information.

SEC. 195. After the jury have retired for deliberation, if they desire to be informed on any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the instruction required shall be given by the court in the presence of or after notice to the parties or their attorneys.

When jury may be discharged without giving verdict.

SEC. 196. Except as provided in sections one hundred and ninety and one hundred and ninety-nine of this title, or in case of some accident or calamity requiring their discharge, the jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, unless by the consent of both parties entered in the journal, or unless at the expiration of such period as the court deem proper it satisfactorily appears that there is no probability of an agreement.

When new trial may be had if jury discharged.

SEC. 197. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

Court deemed open until jury gives verdict or is discharged.

SEC. 198. While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

If juror absent when jury return, jury to be discharged.

SEC. 199. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear the rest shall be discharged without giving a verdict.

Manner of giving verdict.

SEC. 200. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, he shall, on being required, declare the same.

Jury may be polled, or insufficient verdict corrected.

SEC. 201. When a verdict is given and before it is filed, the jury may be polled on the request of either party, for which purpose each shall be asked whether it be his verdict; if any juror answer in the negative, the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

When verdict complete and jury discharged, verdict to be in writing and entered on the journal.

SEC. 202. When the verdict is given, and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete, and the jury

shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

CHAPTER EIGHTEEN.

OF THE VERDICT.

Sec.
203. Definition of verdict general or special.
204. In actions for the recovery of specific personal property.
205. When jury may give general or special verdict.
206. Special verdict to control general.
207. When counterclaim pleaded in the answer.

Definition of verdict general or special.

SEC. 203. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

In actions for the recovery of specific personal property.

SEC. 204. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

When jury may give general or special verdict.

SEC. 205. In every action for the recovery of money only or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing. The special verdict or finding shall be filed with the clerk and entered in the journal, as provided in chapter seventeen.

Special verdict to control general.

SEC. 206. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

When counterclaim pleaded in the answer.

SEC. 207. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

CHAPTER NINETEEN.

TRIAL BY THE COURT.

Sec.
208. Trial by jury, how waived.
209. Decisions of the court, how made and when filed.
210. Order of proceedings, and effect of finding.

Trial by jury, how waived.

SEC. 208. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

First. By failing to appear at the trial;

Second. By written consent, in person or by attorney, filed with the clerk;

Third. By oral consent in open court, entered in the minutes.

Decisions of the court, how made and when filed.

SEC. 209. Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk during the term or within twenty days thereafter. The decision shall state the facts found and the conclusion of law separately, without argument or reason therefor. Such decision shall be entered in the journal and judgment entered thereon accordingly. The court may deliver any argument or reason in support of such decision, either orally or in writing, separate from the decision, and file the same with the clerk.

Order of proceedings, and effect of findings.

SEC. 210. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the fact shall be deemed a verdict, and may be set aside in the same manner and for the same reasons, as far as applicable, and a new trial granted.

CHAPTER TWENTY.

TRIAL BY REFEREES.

Sec.
211. The trial of any issue may be referred by consent.
212. When reference may be ordered by the court.
213. Number of referees, and how chosen.
214. When chosen by the court, qualifications of.
215. Right and mode of challenge to referees when chosen by the court.
216. Proceedings same as in trial by court.
217. What report to contain; evidence to accompany it.
218. Motion to set aside report or for judgment thereon.
219. Proceedings thereon.

The trial of any issue may be referred by consent.

SEC. 211. All or any of the issues in the action, whether of fact or law, or both, may be referred to a referee or referees upon the written consent of the parties.

When reference may be ordered by the court.

SEC. 212. When the parties do not consent in an action at issue and to be tried by the court without a jury, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or,

Second. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

Third. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

Fourth. When it is necessary for the information of the court in a special proceeding.

Number of referees, and how chosen.

SEC. 213. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

When chosen by the court, qualifications of.

SEC. 214. When the appointment of referees is made by the court or judge, each referee shall be—

First. Qualified as a juror as provided by statute;

Second. Competent as a juror between the parties: *Provided*, That in a reference to take and report testimony only, the same may be made to any competent disinterested person, regardless of the foregoing qualifications.

Right and mode of challenge to referees when chosen by the court.

SEC. 215. When the referees are chosen by the court each party shall have the same right of challenge as to such referees, to be made and determined in the same manner and with like effect as in the formation

of juries, except that neither party shall be entitled to a peremptory challenge.

Proceedings same as in trial by court.

SEC. 216. Subject to the limitations and directions prescribed in the order of reference, the trial by referee shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and to punish all violations thereof upon such trial, and to compel the attendance of witnesses and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

What report to contain; evidence to accompany it.

SEC. 217. The report of the referee shall state the facts found, and when the order of reference includes an issue of law it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial, and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

Motion to set aside report or for judgment thereon.

SEC. 218. The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following.

Proceedings thereon.

SEC. 219. The court may affirm or set aside the report either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

CHAPTER TWENTY-ONE.

OF EXCEPTIONS.

Sec.
220. Definition of exception; must be material.
221. Exceptions, how stated and settled.
222. No particular form required.
223. To be signed by the judge and filed. When exceptions need not be taken or allowed.
224. What deemed excepted to.

Definition of exception; must be material.

SEC. 220. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

Exceptions, how stated and settled.

SEC. 221. The point of the exception shall be particularly stated, and may be delivered, in writing, to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth.

No particular form required.

SEC. 222. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more.

To be signed by the judge and filed. When exceptions need not be taken or allowed.

SEC. 223. The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

What deemed excepted to.

SEC. 224. The verdict of the jury, any order or decision, partially or finally determining the rights of the parties, or any of them, or affecting the pleadings, or granting or refusing a continuance, or granting or refusing a new trial, or admitting or rejecting the evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon ex parte application or in the absence of a party, are deemed excepted to without the exception being taken or stated, or entered in the journal.

CHAPTER TWENTY-TWO.

OF NEW TRIAL.

Sec.
225. Definition of new trial.
226. New trial, for what causes granted.
227. Motion for, when filed and determined.
228. Upon trial by the court and decision in vacation.
229. Motion must state grounds thereof; when supported by affidavit.
230. When counter affidavits allowed.

Definition of new trial.

SEC. 225. A new trial is a reexamination of an issue of fact in the same court after a trial and decision or verdict by a court or jury.

New trial, for what causes granted.

SEC. 226. The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

Second. Misconduct of the jury or prevailing party;

Third. Accident or surprise which ordinary prudence could not have guarded against;

Fourth. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

Fifth. Excessive damages, appearing to have been given under the influence of passion or prejudice;

Sixth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

Seventh. Error in law occurring at the trial and excepted to by the party making the application.

Motion for, when filed and determined.

SEC. 227. A motion for a new trial, with the affidavits, if any, in support thereof, shall, except as hereinafter provided, be filed within three days after giving the verdict or other decision sought to be set aside; but the court may, upon satisfactory showing, extend the time for filing such affidavits. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within three days after the filing of the motion. A motion shall be heard and determined during the term unless the court continue the same for advisement or want of time to hear it.

Upon trial by the court and decision in vacation.

SEC. 228. Upon a trial by the court, when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision, except as hereinbefore provided.

Motion must state grounds thereof; when supported by affidavit.

SEC. 229. In all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall

be considered or regarded by the court. When the motion is made for a cause mentioned in subdivisions one, two, three, or four of section two hundred and twenty-six, it shall be upon affidavits setting forth the facts upon which such motion is based, unless they appear of record in the cause.

When counter affidavits allowed.

SEC. 230. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced or good reason shown for their nonproduction; and in the consideration of any motion for a new trial reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

CHAPTER TWENTY-THREE.

OF GENERAL PROVISIONS.

Sec.
231. Questions of law and fact, how submitted and when.
232. Questions of fact to be decided by the jury.
233. Questions of law and what of fact to be decided by the court.

Questions of law and fact, how submitted and when.

SEC. 231. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or, at the option of the court, oral, and entered in the judge's minutes.

Questions of fact to be decided by the jury.

SEC. 232. All questions of fact other than those mentioned in section two hundred and thirty-three shall be decided by the jury, and all evidence thereon addressed to them.

Questions of law and what of fact to be decided by the court.

SEC. 233. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is by this code made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

CHAPTER TWENTY-FOUR.

OF JUDGMENT IN GENERAL.

Sec.
234. Definition of judgment.
235. Judgment may be given for or against any of the parties.
236. When judgment may be given against one or more defendants and action remain pending as to others.

Definition of judgment.

SEC. 234. A judgment is the final determination of the rights of the parties in the action.

Judgment may be be given for or against any of the parties.

SEC. 235. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

When judgment may be given against one or more defendants and action remain pending as to others.

SEC. 236. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

CHAPTER TWENTY-FIVE.

OF JUDGMENT OF NONSUIT.

Sec.
237. When judgment of nonsuit may be given.
238. What is a cause not sufficient to be submitted to the jury.
239. Effect of judgment of nonsuit.

When judgment of nonsuit may be given.

SEC. 237. A judgment of nonsuit may be given against the plaintiff as provided in this chapter—

First. On motion of the plaintiff, at any time before trial, unless a counterclaim has been pleaded as a defense;

Second. On motion of either party, upon the written consent of the other filed with the clerk;

Third. On motion of the defendant, when the action is called for trial and the plaintiff fails to appear, or when, after the trial has begun and before the final submission of the cause, the plaintiff abandons it, or when, upon the trial, the plaintiff fails to prove a cause sufficient to be submitted to the jury.

What is a cause not sufficient to be submitted to the jury.

SEC. 238. A cause not sufficient to be submitted to the jury is one where it appears that if the jury were to find a verdict for the plaintiff upon any or all of the issues to be tried the court ought, if required, to set it aside for want of evidence to support it.

Effect of judgment of nonsuit.

SEC. 239. When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

CHAPTER TWENTY-SIX.

OF JUDGMENT ON FAILURE TO ANSWER.

Sec.
240. When judgment may be given for want of answer.

When judgment may be given for want of answer.

SEC. 240. Judgment may be had upon failure to answer, as follows: When the time for answering the complaint has expired and it appears that the defendant, or one or more of several defendants, in the cases mentioned in section fifty-one, has been duly served with the summons and has failed to answer the complaint, the plaintiff shall be entitled to have judgment against such defendant or defendants—

First. In an action arising upon contract for the recovery of money or damages only; if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the clerk, upon the application of the plaintiff made in writing and filed with the clerk, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs of the defendant, or against one or more of several defendants, in cases provided for in section fifty-one;

Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons or such further time as may have been granted by the court or judge thereof, the clerk shall, upon the written motion of the plaintiff being filed, enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint; and the court shall, upon such demand, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it be necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of

fact, in which case the court may order the entry of judgment to be delayed until such proof be taken. The court may hear the proof itself, or make an order of reference, or order that a jury be called to inquire thereof. The defendant shall not be precluded, by reason of his default, from offering proof in mitigation of damages;

Third. When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto;

Fourth. When in any action the service of the summons appears to have been made by publication, the court may, in its discretion, order the entry of judgment to be delayed until the plaintiff file with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualifications of bail, and justify before the clerk as provided in section one hundred and nine.

CHAPTER TWENTY-SEVEN.

OF JUDGMENT BY CONFESSION.

Sec.
241. Judgment by confession where action pending.
242. Who to make confession.
243. When judgment may be given against several defendants on the confession of one.
244. Confession to be in writing; how judgment given.
245. Judgment by confession without action.
246. How confession made in such cases.
247. Same subject. Execution when judgment for installments.

Judgment by confession where action pending.

SEC. 241. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Who to make confession.

SEC. 242. When the action is against a public corporation or a private corporation, the confession shall be made by the person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him. In all other cases the confession shall be made by the defendant in person.

When judgment may be given against several defendants on the confession of one.

SEC. 243. When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served with the summons or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Confession to be in writing; how judgment given.

SEC. 244. The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds, but such acknowledgment is not required when the parties or their attorneys shall appear in court when the judgment is given, or before the clerk in vacation by whom the judgment is entered. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

Judgment by confession without action.

SEC. 245. On the confession of any person capable by this code of being made a party defendant to an action, judgment may be given against such person without action, in term time or vacation, in favor of anyone, either for money due or to become due, or to secure any

person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

How confession made in such cases.

SEC. 246. The confession shall be made, assented to, and acknowledged, and judgment given in the same manner as a confession in an action pending; besides which, the confession shall be verified by the oath of the party making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the facts out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due.

Same subject. Execution when judgment for installments.

SEC. 247. If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments as they become due.

CHAPTER TWENTY-EIGHT.

OF SUBMITTING CONTROVERSY WITHOUT ACTION.

Sec.
248. Controversy may be submitted without action.
249. Statement of the case and verification thereof.
250. Statement to be filed with the clerk. Jurisdiction of court.

Controversy may be submitted without action.

SEC. 248. Parties to a question in controversy which might be the subject of an action in a court of record, with such parties plaintiffs or defendants, may submit the same to the determination of such court without action, as in this chapter provided.

Statement of the case and verification thereof.

SEC. 249. The parties as plaintiff and defendant shall state, in writing, a case containing the facts upon which the controversy depends, and subscribe the same in person or by their attorneys. Such statement shall be verified by the oaths of the parties, or, where there is more than one plaintiff or defendant, by at least one of each, to the effect that the controversy is real, and the proceeding is taken in good faith to determine the rights of the parties. Where either party to the controversy is a public corporation, or a private corporation, the statement of the case may be subscribed and verified by any person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him.

Statement to be filed with the clerk. Jurisdiction of court.

SEC. 250. The statement shall be filed with the clerk, and from the date of such filing the court shall have jurisdiction of the controversy as if the same were an action pending after a special verdict found, and shall proceed to hear and determine the same accordingly.

CHAPTER TWENTY-NINE.

OF THE MANNER OF GIVING AND ENTERING JUDGMENT.

Sec.
251. Judgment to be entered in journal; manner of entry.
252. If counterclaim exceeds plaintiff's demand, judgment for defendant.
253. Judgment in actions for the recovery of personal property.
254. What entry to state in judgment for want of answer.
255. Judgment on demurrer.
256. When entry of judgment made.
257. Judgment notwithstanding the verdict.
258. When entry of judgment made after motion for new trial decided in vacation.
259. Entry of judgment after the time prescribed.

Judgment to be entered in journal; manner of entry.

SEC. 251. All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. If entered in vacation, the entry shall be entitled and dated substantially as follows:

UNITED STATES OF AMERICA,
District of Alaska.
Precinct ———.

District court for the district of Alaska. In vacation, after the ——— term, A. D. 19——.
——— the ———, A. D. 19——,
as the fact may be, and such entry shall have the same effect as if entered in term time. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

If counterclaim exceeds plaintiff's demand, judgment for defendant.

SEC. 252. If a counterclaim established at the trial exceed the plaintiff's demand so established judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief judgment shall be given accordingly.

Judgment in actions for the recovery of personal property.

SEC. 253. In an action to recover the possession of personal property judgment for the plaintiff may be for the possession, or the value thereof in case a delivery can not be had, and damages for the detention thereof. If the property have been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return can not be had, and damages for taking and withholding the same.

What entry to state in judgment for want of answer.

SEC. 254. When judgment is given for want of answer, the entry shall state substantially that the defendant has been duly served with the summons and has failed to answer the complaint. When judgment is given on confession, with or without action, on the report of referees or on a controversy submitted without action, the entry shall state in like manner the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

Judgment on demurrer.

SEC. 255. When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made be allowed to amend or plead over, judgment shall be given for the plaintiff or defendant, as the case may be, for such amount or relief, or to such effect, as it appears from the pleadings he is entitled to; but if the case is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue be tried or otherwise disposed of.

When entry of judgment made.

SEC. 256. When judgment is given in any of the cases mentioned in the two sections last preceding, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Except as in this section hereinafter provided, when a trial by the court has been had judgment shall be entered by the clerk in conformity with the decision within two days from the time the same is filed; or if the trial be by jury, judgment shall be given by the court in conformity therewith, and entered by the clerk within two days from the time the verdict has been received; and in either case within the term at which such judgment is given.

First. When the court is in doubt what judgment ought to be given, it may order the question to be reserved for argument or further consideration, and thereupon the entry of judgment shall be delayed until judgment be given;

Second. When, within the time allowed to file a motion for new trial, either party shall file a motion for a particular judgment, or for judgment notwithstanding the verdict or decision; or,

Third. When a motion for new trial is filed within the time prescribed, the entry of judgment shall be thereby delayed until the motion is disposed of;

Fourth. When, upon a trial by the court, its decision is filed in vacation, the entry of judgment shall be delayed until the expiration of the time prescribed to file a motion for a new trial.

Judgment, notwithstanding the verdict.

SEC. 257. When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, on motion judgment shall be given for the plaintiff or defendant, as the case may be, notwithstanding the verdict or decision.

When entry of judgment made after motion for new trial decided in vacation.

SEC. 258. When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the verdict, is decided in vacation, the decision shall be in writing and filed with the clerk. Within the day of such filing judgment shall be entered by the clerk in conformity with the decision.

Entry of judgment after the time prescribed.

SEC. 259. When the clerk is unable or omits to enter judgment within the time prescribed in this chapter, if the judgment has been given in vacation, it may be entered at any time thereafter, of the date which it is actually entered; if it has been given in term time, it may be entered at any time during the term, of the day's proceedings on which it should have been entered, or, on motion of the party entitled, at any subsequent term, of the day on which it is actually entered.

CHAPTER THIRTY.

OF LIEN JUDGMENT AND FINAL RECORD.

Sec.
260. Judgment to be lien from time of the docketing.
261. Expiration of lien; when revived.
262. Conveyance; when void as against lien.
263. Clerk must make judgment roll.
264. Final record; in what cases required.

Judgment to be lien from time of the docketing.

SEC. 260. Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the office of the recorder of any recording district that may have been established in said district in accordance with law. Upon the filing of such transcript the recorder shall docket the same in the judgment docket of his office. From the date of docketing a judgment, as in this chapter provided, or the transcript thereof, such judgment shall be a lien upon all the real property of the defendant within the recording district or districts where the same is docketed, or which he may afterwards acquire therein, during the time an execution may issue thereon.

Expiration of lien: when revived.

SEC. 261. Whenever, after the entry of judgment, a period of ten years shall elapse without an execution being issued on such judgment, the lien thereof shall expire. If afterwards leave is given to issue execution thereon, a transcript of the docket of the order allowing the same may be docketed in any other recording district in said district in the same manner as a judgment. From the date of the docketing such order, or a transcript thereof, the lien of the judgment shall begin anew, and continue in all respects as upon the first docketing of the same.

Conveyance: when void as against lien.

SEC. 262. A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be.

Clerk must make judgment roll.

SEC. 263. After docketing the judgment, and before the next regular term of court, the clerk shall prepare and file in his office the judgment roll, as provided in this section.

First. If the complaint has not been answered by any defendant he shall attach together in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry of judgment.

Second. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

Third. In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall indorse the name of the court, the term at which judgment was given, the names of the parties to the action and the title thereof, for whom judgment was given, and the amount or nature thereof, and the date of its entry and docketing.

Final record; in what cases required.

SEC. 264. Instead of the judgment roll prescribed in the section last preceding, there shall be a final record made of the cause, as provided in this section.

First. When in any action it shall appear that the title to real property, or any interest therein, or any easement, franchise, or right in or to the same, is directly determined or affected by the judgment therein, on motion of either party the court shall order that a final record be made of the case and the expense of such record shall be taxed as other disbursements of the action.

Second. In all other actions, on motion of either party, the court shall order that a final record be made of the case at the cost of the party moving for the same.

When a final record is ordered, it shall be made by the clerk within the time prescribed to prepare a judgment roll, by recording the papers and journal entries required in such roll in the order prescribed therefor.

CHAPTER THIRTY-ONE.

OF THE ENFORCEMENT OF JUDGMENT.

Sec.
265. When judgment may be enforced by execution.
266. Different kinds of executions.
267. By whom issued, what to contain and require.
268. How endorsed by marshal and when returnable.
269. When execution issued against the person.
270. How person arrested on execution imprisoned.
271. Execution against property may issue after death of judgment debtor, except.
272. Exemption of homestead from judicial sale.
273. What property liable to execution and what exempt.
274. Execution against property, how executed.
275. Same subject.
276. When garnishee gives marshal certificate, how marshal to proceed.
277. When marshal may leave personal property in possession of judgment debtor.
278. Notice of sale on execution, how given.
279. Sales, where and how made.
280. When marshal may adjourn sale.
281. Bill of sale and delivery by marshal of personal property.
282. When execution not to issue except by leave of the court and how leave obtained.
283. Confirmation of sale of real estate, proceedings thereon.
284. Who liable for purchase money in case of eviction of purchaser.
285. Contribution among joint judgment debtors.
286. Sale of real property, when absolute and when subject to redemption.
287. Who may redeem.
288. When lien creditor may redeem from purchaser.
289. When lien creditor may redeem from redemptioner.
290. When judgment debtor may redeem.
291. Purchaser or redemptioner, when entitled to conveyance.
292. Mode of proceeding to redeem.
293. Court may restrain waste prior to conveyance.
294. Who entitled to possession from time of sale to conveyance.
295. Order to examine judgment debtor.
296. Examination of judgment debtor, proceedings thereon.
297. Restraining order against judgment debtor.
298. When judgment debtor may be arrested.
299. Order to examine garnishee, proceedings thereon.
300. What officers not liable to answer as garnishee.

When judgment may be enforced by execution.

SEC. 265. The person in whose favor a judgment is given which requires the payment of money, the delivery of real or personal prop-

erty, or either of them, may at any time after the entry thereof have a writ of execution issued for its enforcement, as provided in this chapter.

Different kinds of executions.

SEC. 266. There shall be three kinds of execution: One against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

By whom issued, what to contain and require.

SEC. 267. The writ of execution shall be issued by the clerk and directed to the marshal. It shall contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, and, if it be for money, shall state the amount actually due thereon, and shall require the marshal substantially as follows:

First. If it be against the property of the judgment debtor and the judgment directs particular property to be sold, it shall require the marshal to sell such particular property and apply the proceeds as directed by the judgment; otherwise it shall require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property can not be found, then out of the real property belonging to him on the day when the judgment was docketed in the recording district, or at any time thereafter;

Second. If it be issued after the death of the judgment debtor, and be against real or personal property, it shall require the marshal to satisfy the judgment, with interest, out of any property belonging to the deceased debtor in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such;

Third. If it be against the person of the judgment debtor, it shall require the marshal to arrest such debtor and commit him to jail until he shall pay the judgment, with interest, or be discharged according to law.

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the marshal to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the marshal to satisfy any costs, charges, damages, or rents, and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified thereof, if a delivery thereof can not be had; and if sufficient personal property can not be found, then out of the real property, as provided in the first subdivision of this section, and in that respect it is to be deemed an execution against property.

How endorsed by marshal and when returnable.

SEC. 268. The marshal shall indorse upon the writ of execution the time when he received the same, and such execution shall be returnable, within sixty days after its receipt by the marshal, to the clerk's office from whence it issued.

When execution issued against the person.

SEC. 269. If the action be one in which the defendant might have been arrested, as provided by section ninety-nine, an execution against the person of the judgment debtor may be issued after the return of the execution against his property unsatisfied in whole or in part, as follows:

First. When it appears from the record that the cause of action is also a cause of arrest, as prescribed in section ninety-nine, such execution may issue of course;

Second. When no such cause of arrest appears from the record, such execution may issue for any of the causes prescribed in section ninety-nine that may exist at the time of the application therefor, upon leave of the court or judge thereof;

Third. When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either

case the order has not been vacated, such execution may issue of course:

Fourth. When execution is issued against the person of the defendant by leave of the court, it shall be applied for and allowed in the manner provided in section one hundred for allowing a writ of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in sections one hundred and twenty-one and one hundred and twenty-two for the discharge of a defendant who has been provisionally arrested.

How person arrested on execution imprisoned.

SEC. 270. A person arrested on execution shall be imprisoned in jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same manner and to the same extent as prescribed in sections one hundred and eighteen and one hundred and nineteen.

Execution against property may issue after death of judgment debtor, except.

SEC. 271. Notwithstanding the death of a party after judgment, execution thereon against his property or for the delivery of real or personal property may be issued and executed in the same manner and with the same effect as if he were still living, but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party without leave of the commissioner having authority to issue letters testamentary or of administration upon said estate.

Exemption of homestead from judicial sale.

SEC. 272. The homestead of any family, or the proceeds thereof, shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of and owned by such family or some members thereof. It shall not exceed two thousand five hundred dollars in value, nor exceed one hundred and sixty acres in extent if not located in a town or city laid off into blocks or lots, or if located in any such town or city, then it shall not exceed one-fourth of one acre. This Act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife. When any officer shall levy upon such homestead, the owner thereof, or the wife, husband, agent, or attorney of such owner, may notify such officer that he claims such premises as his homestead, describing the same by metes and bounds, lot or block, or legal subdivision of the United States, whereupon such officer shall notify the creditor of such claim, and if such homestead shall exceed the maximum in this section, and he deem it of greater value than two thousand five hundred dollars, then he may direct the marshal to select three disinterested persons, who shall examine and appraise such homestead, under oath, commencing with the twenty acres of lot upon which the dwelling is located, appraising each lot or twenty acres separately; and if the same exceed two thousand five hundred dollars, then the marshal shall proceed to sell all in excess of two thousand five hundred dollars by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor, if he chooses to direct; otherwise he shall sell the same as aforesaid so as to leave the homestead as compact as possible. The homestead aforesaid shall be exempt from sale or any legal process after the death of the person entitled thereto for the collection of any debts for which the same could not have been sold during his lifetime.

What property liable to execution and what exempt.

SEC. 273. All other property, including franchises or rights or interests therein, of the judgment debtor shall be liable to an execution, except as in this section provided. The following property shall be exempt from execution if selected and reserved by the judgment

debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, and not otherwise:

First. The earnings of the judgment debtor, for his personal services rendered at any time within sixty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor;

Second. Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars;

Third. Necessary wearing apparel owned by any person for the use of himself or his family: *Provided*, Watches or jewelry exceeding in value the sum of one hundred dollars shall not be exempt by virtue of this subdivision;

Fourth. The tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living to the value of five hundred dollars; also sufficient quantity of food to support such team, if any, for six months; the word "team" in this subdivision shall not be construed to include more than one yoke of oxen, or a span of horses or mules, or two reindeers, or six dogs, as the case may be;

Fifth. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; household goods, furniture, and utensils to the value of three hundred dollars; also food sufficient to support such animals, if any, for six months, and provisions actually provided for family use and necessary for the support of such person and family for six months;

Sixth. The seat or pew occupied by the head of a family or his family in a place of public worship;

Seventh. All property of any public or municipal corporation;

Eighth. No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price.

Execution against property, how executed.

SEC. 274. When the writ of execution is against the property of the judgment debtor, it shall be executed by the marshal as follows:

First. If property has been attached, he shall indorse on the execution, and pay to the clerk forthwith, the amount, if any, of the proceeds of sales of perishable property, or debts due the defendant received by him, sufficient to satisfy the judgment;

Second. If the judgment is not then satisfied and property has been attached and remains in his custody, he shall sell the same or sufficient thereof to satisfy the judgment;

Third. If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment;

Fourth. Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections one hundred and forty, one hundred and forty-one, and one hundred and forty-three, omitting the filing of the certificate provided for in section one hundred and forty-two;

Fifth. Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the marshal on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day on which the writ is returnable.

Sixth. When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property or the proceeds thereof remain in the custody of the marshal, he shall deliver the same to the judgment debtor.

Same subject.

SEC. 275. In the case of property in the possession of or owing from any garnishee mentioned in section one hundred and forty-three the marshal shall proceed as follows:

First. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor, which is then due, if such debt is not paid by such garnishee to the marshal on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution was against the property of the garnishee. But if such debt be not then due, the marshal shall sell the same according to the certificate, as other property;

Second. If in like manner it appear that the judgment debtor has rights or shares in the stock of the garnishee, as provided in section one hundred and forty-three, the marshal shall sell the same according to the certificate, as other property;

Third. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the marshal on demand he shall levy upon the same wherever he may find it. But if such property is in the possession of such garnishee upon a bailment then unexpired, the marshal shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

When garnishee gives marshal certificate, how marshal to proceed.

SEC. 276. When a marshal with an execution levies upon any of the personal property mentioned in subdivision three of section one hundred and forty, and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnish him the certificate required in section one hundred and forty-three, he shall proceed thereafter in reference to such property as provided in section two hundred and seventy-four of this title. Such property may be delivered, paid, or transferred to the marshal at the time of levy, or sufficient thereof to satisfy the execution, and the marshal's receipt to the person, association, or corporation, as the case may be, shall be a sufficient discharge therefor.

When marshal may leave personal property in possession of judgment debtor.

SEC. 277. When the marshal shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written undertaking to the marshal with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the marshal at the time and place of sale, and for nondelivery thereof an action may be maintained upon such undertaking by the marshal or the plaintiff in the execution; but the marshal shall not thereby be discharged from his liability to the plaintiff for such property.

Notice of sale on execution, how given.

SEC. 278. Before the sale of property on execution, notice thereof shall be given, as follows:

First. In case of personal property, by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to take place, not less than ten days prior to the day of sale; one of said notices shall be posted on the door of the post-office nearest to the place where the sale is to take place;

Second. In case of real property, by posting a similar notice, particularly describing the property, for four weeks prior to the day of

sale, in three public places as provided in the first subdivision of this section and publishing a copy thereof once a week, for the same period, in a newspaper published nearest to the place of sale.

Sales, where and how made.

SEC. 279. All sales of property upon execution shall be made by auction, between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion of it shall be sold separately.

When marshal may adjourn sale.

SEC. 280. If, at the time appointed for the sale, the marshal should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time. The marshal for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ.

Bill of sale and delivery by marshal of personal property.

SEC. 281. When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, shall pay the purchase money, the marshal shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the marshal shall give the purchaser a bill of sale with the like acknowledgment.

When execution not to issue except by leave of the court and how leave obtained.

SEC. 282. Whenever, after the entry of judgment, a period of five years shall elapse without an execution being issued on such judgment, thereafter an execution shall not issue except as in this section provided:

First. The party in whose favor a judgment is given shall file a motion with the clerk of the court where the judgment is entered for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, and the amount claimed to be due thereon, or the particular property of which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action;

Second. At any time after filing such motion the party may cause a summons to be served on the judgment debtor in like manner and with like effect as in an action. In case such judgment debtor be dead, the summons may be served upon his representative by publication as in the case of a nonresident, or by actual service of the summons;

Third. The summons shall be substantially the same as in an action, but instead of a notice therein required it shall state the amount claimed or the property sought to be recovered, in the manner prescribed in subdivision one of this section;

Fourth. The judgment debtor, or, in case of his death, his representatives, may file an answer to such motion within the time allowed to answer a complaint in an action, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur

to the same or to the reply. The pleading shall be subscribed and verified and the proceedings conducted as in an action;

Fifth. The word "representatives" in this section shall be deemed to include any or all of the persons mentioned in subdivision two of section two hundred and sixty-seven in whose possession property of the judgment debtors may be which is liable to be taken and sold or delivered in satisfaction of the execution and not otherwise;

Sixth. The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a roll thereafter prepared and filed, or a final record made of the proceedings, as the case may be, in the same manner as a judgment.

Confirmation of sale of real estate, proceedings thereon.

SEC. 283. Whenever real property is sold on execution the provisions of this section shall apply to the subsequent proceedings.

First. The plaintiff in the writ of execution shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or, in case of his death, his representative, shall file with the clerk ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto;

Second. If such objections be filed, the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date;

Third. Upon the return of the execution the marshal shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale;

Fourth. Upon a resale the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action, or proceeding whatever;

Fifth. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made, upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

Who liable for purchase money in case of eviction of purchaser.

SEC. 284. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with legal interest and the costs and disbursements of the action by which he was evicted, from the plaintiff in the writ of execution.

Contribution among joint judgment debtors.

SEC. 285. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays

without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment he file with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or repayment; upon filing such notice the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

Sale of real property, when absolute and when subject to redemption.

SEC. 286. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the marshal shall give to the purchaser a certificate of the sale containing—

First. A particular description of the property sold;

Second. The price bid for each distinct lot or parcel;

Third. The whole price paid;

Fourth. When subject to redemption, it shall be so stated.

The matters contained in such certificate shall be substantially stated in the marshal's return of his proceedings upon the writ.

Who may redeem.

SEC. 287. Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

First. The judgment debtor, or his successor in interest, in the whole or any part of the property separately sold;

Second. A creditor having a lien by judgment, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.

The persons mentioned in subdivision two of this section, after having redeemed the property, are to be termed redemptioners.

When lien creditor may redeem from purchaser.

SEC. 288. A lien creditor may redeem the property within sixty days from the date of the order confirming the sale, by paying the amount of the purchase money, with interest at the rate of eight per centum per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

When lien creditor may redeem from redemptioner.

SEC. 289. If the property be so redeemed, any other lien creditor may, within sixty days from the last redemption, again redeem it, on paying the sum paid on the last redemption, with interest at the rate of eight per centum per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon, and, unless his lien be prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of eight per centum per annum thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest.

When judgment debtor may redeem.

SEC. 290. The judgment debtor, or his successor in interest, may redeem the property at any time prior to the confirmation of sale, on paying the amount of the purchase money, with interest at the rate of eight per centum per annum thereon from the date of sale, together with the amount of any taxes which the purchaser may have paid

thereon after the purchase. But if the judgment debtor do not redeem until after the confirmation of the sale, thereafter he shall redeem within twelve months from such order of confirmation and not otherwise.

Purchaser or redemptioner, when entitled to conveyance.

SEC. 291. If redemption be not made as prescribed in this Act, or when redemption is made and a period of sixty days shall have elapsed without any other redemption, the purchaser or the redemptioner, as the case may be, shall be entitled to a conveyance from the marshal. If the judgment debtor redeem at any time before the time for redemption expires, the effect of the sale shall terminate and he shall be restored to his estate.

Mode of proceeding to redeem.

SEC. 292. The mode of redeeming shall be as provided in this section.

The person seeking to redeem may redeem by paying to the marshal the sum required. The marshal shall give the person redeeming a certificate, as in case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof and shall at once give notice of such redemption to the party from whom redeemed. A party seeking to redeem shall submit to the marshal the evidence of his right thereto, as follows:

First. If he be a lien creditor, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where such judgment is docketed, or if he seek to redeem upon a mortgage, the certificate of the record thereof;

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent; an affidavit by himself or agent showing the amount then actually due on the judgment or mortgage;

Third. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the marshal the like evidence thereof and of the amount due thereon, or the same may be disregarded.

When two or more persons apply to the marshal to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The marshal shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a marshal shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evidence and the tender of the money to the marshal as herein provided, he may be required by order of the court or judge thereof to allow such redemption.

Court may restrain waste prior to conveyance.

SEC. 293. Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

Who entitled to possession from time of sale to conveyance.

SEC. 294. The purchaser from the day of sale until a resale or a redemption, and a redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

Order to examine judgment debtor.

SEC. 295. After the issuing of an execution against property, and upon proof by the affidavit of the plaintiff in the writ, or otherwise, to the satisfaction of the court or judge thereof that the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same before such court or judge, or before a referee appointed by such court or judge, at a time and place specified in the order.

Examination of judgment debtor, proceedings thereon.

SEC. 296. On the appearance of the judgment debtor, he may be examined on oath concerning his property. His examination, if required by the plaintiff in the writ, shall be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in his behalf, and if by such examination it appear that the judgment debtor has any property liable to execution the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on, by execution, in the manner and with the effect as provided in this chapter, or both, as may seem most likely to effect the object of the proceeding.

Restraining order against judgment debtor.

SEC. 297. At the time of allowing the order prescribed in section two hundred and ninety-six, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any of his property liable to execution pending the proceeding. For disobeying any order or requirement authorized by sections two hundred and ninety-five, two hundred and ninety-six, and two hundred and ninety-seven the judgment debtor may be punished as for a contempt.

When judgment debtor may be arrested.

SEC. 298. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof by affidavit of the party, or otherwise to his satisfaction, that there is danger of the debtor leaving the district, or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the marshal to arrest him and bring him before the court or judge. Upon being brought before the court or judge he may be examined on oath, and if it then appear that there is danger of the debtor leaving the district, and that he has property which he unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking with one or more sureties that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to jail by warrant of the judge.

Order to examine garnishee, proceedings thereon.

SEC. 299. Whenever the marshal, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision three of section one hundred and forty for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the marshal a certificate in the manner prescribed in section one hundred and forty-two. If such person or officer refuse to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in such section against such person or officer. Thereafter the proceeding upon such order shall be conducted in the manner prescribed from section one hundred and fifty-two to section one hundred and sixty-one, inclusive.

What officers not liable to answer as garnishee.

SEC. 300. No public officer shall be liable as garnishee for moneys in his possession as such officer, belonging to or claimed by any judgment debtor.

CHAPTER THIRTY-TWO.

OF ACTIONS TO RECOVER THE POSSESSION OF REAL PROPERTY.

Sec.
301. Who may bring such action, and against whom.
302. When landlord may be made defendant in place of tenant.
303. What to be pleaded in complaint.
304. Defendant not to be allowed to give evidence in certain matters, unless. Judgment, when conclusive against landlord.
305. What the jury shall find by their verdict.
306. What damages may be recovered, and when the value of permanent improvements may be set off against such damages.
307. Verdict when right of possession expires after commencement of action.
308. Order to make survey of the property.
309. Same subject.
310. Action not to be prejudiced by alienation of person in possession.
311. Mortgagee can not maintain action against mortgagor.
312. Action by tenant in common or for dower, what must be shown.
313. Action against lessee on failure to pay rent.
314. When judgment conclusive, and upon whom.
315. Possession not to be affected by order allowing new trial.
316. Admeasurement of dower after judgment.

Who may bring such action, and against whom.

SEC. 301. Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for witholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof.

When landlord may be made defendant in place of tenant.

SEC. 302. A defendant who is in actual possession may, for answer, plead that he is in possession only as tenant of another, naming him and his place of residence; and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the day the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff, he shall be required to appear and answer within twenty days from notice of the pendency of the action and the order making him defendant, or such further time as the court or judge thereof may prescribe.

What to be pleaded in complaint.

SEC. 303. The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that the defendant wrongfully withholds the same from him to his damage in such sum as may be therein claimed. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

Defendant not to be allowed to give evidence in certain matters, unless.

SEC. 304. The defendant shall not be allowed to give in evidence any estate in himself, or another in the property, or any license or right to the possession thereof, unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license, or right to the possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against the landlord who has been made defendant in place of the tenant to the same extent as if the action had been originally commenced against him.

Judgment, when conclusive against landlord.

What the jury shall find by their verdict.

SEC. 305. The jury by their verdict shall find as follows:

First. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature

and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be;

Second. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license or right to the possession of either, established on the trial by the defendant, if any; in effect as the same required to be pleaded.

What damages may be recovered, and when the value of permanent improvements may be set off against such damages.

SEC. 306. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value thereof at the time of trial, not exceeding such damages, shall be allowed as a set-off.

Verdict when right of possession expires after commencement of action.

SEC. 307. If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

Order to make survey of the property.

SEC. 308. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

Same subject.

SEC. 309. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises he shall be liable therefor.

Action not to be prejudiced by alienation of person in possession.

SEC. 310. An action for the recovery of the possession of real property against a person in possession can not be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Mortgagee can not maintain action against mortgagor.

SEC. 311. A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law, and a judgment thereon.

Action by tenant in common or for dower, what must be shown.

SEC. 312. In an action for the recovery of dower before admeasurement, or by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right of possession, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Action against lessee on failure to pay rent.

SEC. 313. When in case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such a failure, and may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if, at any time before judgment in such action, the lessee or his successor in interest as to the whole or a part of the property pay to the plaintiff or bring into court the amount of rent then in arrear, with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

When judgment conclusive, and upon whom.

SEC. 314. In an action to recover the possession of real property the judgment therein shall be conclusive as to the estate in such property

and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given and against all persons claiming from, through, or under such party after the commencement of such action, except as in this section provided. When service of the summons is made by publication and judgment is given for want of answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

Possession not to be affected by order allowing new trial.

SEC. 315. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the section last preceding, such possession shall not be thereby affected in any way, and if judgment be given for the defendant in the new trial he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

Admeasurement of dower after judgment.

SEC. 316. In an action to recover the possession of real property by a tenant in dower or his successor in interest, if such a state in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured, as follows:

First. At any time after the entry of judgment in favor of the plaintiff, he may, upon notice to the adverse party, move the court for the appointment of referees to admeasure the dower out of the real property of which the possession is recovered by the action. The court shall allow such motion unless it appear probable on the hearing that a partition of such property can not be made without prejudice to the interests of the other owners. In the latter case the court shall disallow the motion, and thereafter the plaintiff shall only proceed for partition or sale of such real property as provided in the chapter of this code entitled "Of Actions for the Partition of Real Property;"

Second. If the court allow the motion, thereafter the proceedings shall be conducted as provided in such chapter. At any time after the confirmation of the report of the referees the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement thereof, and for the damages recovered, if any, for withholding the same, if such damages remain unsatisfied;

Third. If the motion for admeasurement be made at the term at which judgment was given, the notice thereof shall be served on the adverse party at such time as the court by general rule or special order may prescribe.

CHAPTER THIRTY-THREE.

OF ACTIONS FOR NUISANCE, WASTE, AND TRESPASS ON REAL PROPERTY.

Sec.
317. Private nuisance, and action therefor; when warrant allowed to abate it.
318. How warrant issued, and mode of proceeding under.
319. When defendant may have stay of warrant.
320. Sureties in undertaking, when to justify.
321. Action for waste, and judgment therein.
322. Actions for trespass in particular cases, and of judgment therein.
323. Same subject.

Private nuisance, and action therefor; when warrant allowed to abate it.

SEC. 317. Any person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages therefor. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allow-

ing a warrant to issue to the marshal to abate such nuisance. Such motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined.

How warrant issued, and mode of proceeding under.

SEC. 318. If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the marshal, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expense of abating the nuisance may be levied by the marshal on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

When defendant may have stay of warrant.

SEC. 319. At any time before the order is made, or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, and to allow the defendant to abate the nuisance himself, upon his giving an undertaking to the plaintiff in a sufficient amount, with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order.

Sureties in undertaking, when to justify.

SEC. 320. If the plaintiff is not notified of the time and place of the application for the order provided for in section three hundred and nineteen, the sureties therein provided for shall justify as bail upon arrest, otherwise such justification may be omitted, unless the plaintiff require it. If such order be made and undertaking given, and the defendant fails to abate such nuisance within the time specified in said order, thereafter, at any time within six months, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

Action for waste, and judgment thereon.

SEC. 321. If a guardian, tenant in severalty or in common for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action for damages therefor against such guardian or tenant, in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

Actions for trespass in particular cases, and of judgment thereon.

SEC. 322. Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of any village, town, or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town, or city against the person committing such trespasses, or any of them, if judgment be given for the plaintiff it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

Same subject.

SEC. 323. If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from unin closed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

CHAPTER THIRTY-FOUR.

ACTIONS ON OFFICIAL UNDERTAKINGS, AND FOR FINES AND FORFEITURES.

Sec.
324. Official undertakings, to whom deemed a security.
325. Who may maintain action thereon.
326. When leave must be obtained before action can be commenced.
327. Judgment no bar to action for another delinquency.
328. Amount of judgment.
329. Who may maintain action for fines and forfeitures.
330. Actions for penalties not to exceed certain amount.
331. Judgment by collusion between plaintiff and defendant.
332. Disposition of fines and forfeitures.

Official undertakings, to whom deemed a security.

SEC. 324. The official undertaking or other security of a public officer to any county, city, town, or other municipal or public corporation of like character therein, shall be deemed a security to the United States, or to such city, town, or other municipal or public corporation as the case may be, and also to all persons severally for the official delinquency against which it is intended to provide.

Who may maintain action thereon.

SEC. 325. When a public officer, by official misconduct or neglect of duty, shall forfeit his official undertaking or other security, or render his sureties therein liable upon such undertaking or other security, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name, against the officer and his sureties, to recover the amount to which he may by reason thereof be entitled.

When leave must be obtained before action can be commenced.

SEC. 326. Before such action can be commenced by a plaintiff other than the United States, or the municipal or public corporation named in the undertaking or other security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or other security, and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matters set forth in the affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant on motion shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment may be given accordingly.

Judgment no bar to action for another delinquency.

SEC. 327. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking, or other security, for another delinquency.

Amount of judgment.

SEC. 328. In an action upon an official undertaking or other security, if judgment has already been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such undertaking or other security, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

Who may maintain action for fines and forfeitures.

SEC. 329. Fines and forfeitures may be recovered by an action in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

Actions for penalties not to exceed certain amount.

SEC. 330. When an action shall be commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

Judgment by collusion between plaintiff and defendant.

SEC. 331. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the

defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or forfeiture is given, wholly or partly, to the person who prosecutes, shall not bar the recovery of the same by another person.

Disposition of fines and forfeitures.

SEC. 332. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid to the clerk of the district court. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the United States, or to any officer for its use, the action for the recovery of such property may be commenced wherever the defendant may be found, or wherever such property may be.

CHAPTER THIRTY-FIVE.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

Sec.
333. How actions may be maintained by public corporations, and for what causes.
334. Actions against public corporations, and what causes.
335. How pleadings of public corporations verified.
336. How judgment against public corporation satisfied.

How actions may be maintained by public corporations, and for what causes.

SEC. 333. An action may be maintained by any incorporated town, school district, or other public corporation of like character in the district in its corporate name, and upon a cause of action accruing to it in its corporate character, and not otherwise, in either of the following cases:

First. Upon a contract made with such public corporation;

Second. Upon a liability prescribed by law in favor of such public corporation;

Third. To recover a penalty or forfeiture given to such public corporation;

Fourth. To recover damages for an injury to the corporate rights or property of such public corporation.

Actions against public corporations, and for what causes.

SEC. 334. An action may be maintained against any of the public corporations in the district mentioned in the last preceding section in its corporate character, and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such public corporation.

How pleadings of public corporations are verified.

SEC. 335. In such actions the pleadings of the public corporation shall be verified by the chief officer representing it in its corporate capacity or by such other officer, agent, or attorney as he may designate, in the same manner as if such officer were a defendant in the action.

How judgment against public corporations satisfied.

SEC. 336. If judgment be given for the recovery of money or damages against a public corporation, no execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

First. The party in whose favor such judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the record thereof to the officer of such public corporation who is authorized to draw orders on the treasurer thereof;

Second. On the presentation of such transcript, such officer shall draw an order on such treasurer for the amount of the judgment in favor of the party for whom the same was given. Thereafter such order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of such public corporation;

Third. The certified transcript herein provided for shall not be furnished by the clerk, unless at the time an execution might issue on such

judgment if the same were against a private person, nor until satisfaction of the judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum no order upon the treasurer shall issue thereon.

CHAPTER THIRTY-SIX.

OF ACTIONS TO AVOID CHARTERS, LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE AND TO DETERMINE THE RIGHT THERETO.

Sec.
337. Scire facias and quo warranto abolished.
338. Action against public or private corporation to be commenced on the direction of the governor.
339. Action to annul the existence of corporation.
340. Action for the usurpation of office or franchise.
341. Who to prosecute actions, pleadings by whom verified, how leave granted, and who deemed coplaintiff.
342. Duty of prosecuting attorney as to commencing action.
343. When relator's right may be pleaded and determined in the action.
344. If judgment be given in favor of relator what he may do.
345. Relator after judgment may have action for damages.
346. Actions against several persons claiming office or franchise.
347. Judgment against usurper. Court may fine him.
348. Judgment against corporation.
349. Copy of judgment roll to be filed.
350. How judgment enforced.

Scire facias and quo warranto abolished.

SEC. 337. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by an action in the mode prescribed in this chapter.

Action against public or private corporation to be commenced on the direction of the governor.

SEC. 338. An action may be maintained in the name of the United States, whenever the governor shall so direct, against a corporation either public or private, for the purpose of avoiding the act of incorporation, or the act renewing or modifying its corporate existence, on the ground that such act or either of them was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of such corporation, when the same has been formed under any general law operating in this district therefor, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

Action to annul the existence of corporation.

SEC. 339. An action may be maintained in the name of the United States against a corporation other than a public one on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall—

First. Offend against any of the provisions of the acts, or either of them, creating, renewing, or modifying such corporation or the provisions of any general law under which it became incorporated; or,

Second. Violate the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third. Whenever it has forfeited its privileges or franchises by failure to exercise for a period of one year its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.

Sixth. Whenever any such corporation or association of persons shall combine for the purpose of forming a trust or agreement to pre-

vent competition or to control the price, production or sale of any goods, products, or merchandise.

Action for the usurpation of office or franchise.

SEC. 340. An action may be maintained in the name of the United States upon the information of the United States attorney or upon the relation of a private party against the person offending in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within the district, or any office in a corporation, either public or private, created or formed by or under the authority of the district; or,

Second. When any public officer has done or suffered an act which, by the provisions of law, makes a forfeiture of his office; or,

Third. When any association or number of persons act within the district as a corporation without being duly incorporated.

Who to prosecute actions, pleadings by whom verified, how leave granted, and who deemed coplaintiff.

SEC. 341. The actions provided for in this chapter shall be commenced and prosecuted by the United States attorney. When the action is upon the relation of a private party, as allowed in section three hundred and forty, the pleadings on behalf of the district shall be verified by such relator as if he were the plaintiff in the action, or otherwise as provided in section seventy-one; in all other cases such pleading shall be verified by the attorney in like manner, or otherwise as provided in such section. When an action can only be commenced by leave as provided in section three hundred and thirty-nine, such leave shall be granted when it appears by affidavit that the acts or omissions in such section specified have been done or suffered by such corporation. When an action is commenced on the information of a private person, as allowed in section three hundred and forty, having an interest in the question, such party, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff.

Duty of prosecuting attorney as to commencing action.

SEC. 342. When directed by the governor, as prescribed in section three hundred and thirty-eight, it shall be the duty of the prosecuting attorney to commence the action therein provided for accordingly. In all other actions provided for in this chapter it shall be his duty to commence such action upon leave given where leave is required in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the district to indemnify it against the costs and expenses that may be incurred thereby.

When relator's right may be pleaded and determined in the action.

SEC. 343. Whenever an action is brought against a person for any of the causes specified in subdivision one of section three hundred and forty, the United States attorney, in addition to the statement of the cause of action, may also separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his right thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant as justice may require.

If judgment be given in favor of relator what he may do.

SEC. 344. If judgment be given upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to the possession and enjoyment of such franchise, or to take upon himself the execution of such office, after qualifying himself therefor as required by law, and to demand and receive the possession of all the books, papers, and property of whatever nature belonging thereto.

Relator after judgment may have action for damages.

SEC. 345. If judgment be given upon the right and in favor of the person so alleged to be entitled, he may afterwards maintain an action to recover the damages which he may have sustained by reason of the premises. In such action the defendant may be arrested and held to

bail in the same manner and with the like effect as in other actions where the defendant is subject to arrest.

Actions against several persons claiming office or franchise.

SEC. 346. Several persons may be joined as defendants in an action for the causes specified in subdivision one of section three hundred and forty, and in such action their respective rights to such office or franchise may be determined.

Judgment against usurper. Court may fine him.

SEC. 347. When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in subdivision one of section three hundred and forty, is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also in its discretion impose a fine upon the defendant not exceeding two thousand dollars.

Judgment against corporation.

SEC. 348. If it be determined that a corporation against which an action has been commenced pursuant to this chapter has forfeited its corporate rights, privileges, and franchises, judgment shall be given that such corporation be excluded therefrom, and that the corporation be dissolved.

Copy of judgment roll to be filed.

SEC. 349. If judgment be given against a corporation the effect of which is that such corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the United States attorney to cause a copy of the judgment roll to be filed with the officer issuing the certificate of corporation or the letters patent to such corporation.

How judgment enforced.

SEC. 350. A judgment given in any action provided for in this chapter in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or, if the defendant be a corporation, the body of any or all of the officers or members of such corporation refusing or neglecting obedience thereto.

CHAPTER THIRTY-SEVEN.

OF ACTIONS BY AND AGAINST EXECUTORS OR ADMINISTRATORS.

Sec.
351. What causes of action do not survive.
352. What causes of action do survive.
353. When a death ensues from an injury.
354. Representatives regarded as one person.
355. When judgment for want of answer is evidence of assets.
356. Effect of inventory as evidence, and how it may be contradicted or avoided.
357. Executor of his own wrong not liable as such.
358. When action may be commenced against executor or administrator.
359. Claim must be presented before action can be commenced.
360. When provisional remedies allowed against executors or administrators.

What causes of action do not survive.

SEC. 351. A cause of action arising out of an injury to the person dies with the person of either party, except as provided in section three hundred and fifty-three; but the provisions of this chapter shall not be construed so as to abate the action mentioned in section thirty-six, or to defeat or prejudice the right of action given by section thirty-one.

What causes of action do survive.

SEC. 352. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives.

When a death ensues from an injury.

SEC. 353. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for an injury done by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed ten thousand dollars, and the amount recovered, if any, shall be exclusively for the benefit of the decedent's husband or wife and children when he or she leaves a husband, wife, or children, him or her surviving; and when any sum is collected it must be distributed by the plaintiff as if it were unbequeathed assets left in his hands, after payment of all debts and expenses of administration, and when he or she leaves no husband, wife, or children, him or her surviving, the amount recovered shall be administered as other personal property of the deceased person; but the plaintiff may deduct therefrom the expenses of the action, to be allowed by the proper court upon notice, to be given in such manner and to such persons as the court deems proper.

Representatives regarded as one person.

SEC. 354. In an action against several executors or administrators, they shall all be considered as one person, representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons be served only on part of them, in the same manner and with the like effect as if served on all, except as provided in the next section.

When judgment for want of answer is evidence of assets.

SEC. 355. When a judgment is given against an executor or administrator, for want of an answer such judgment is not to be deemed evidence of assets in his hands unless it appear that the complaint alleged assets and that the summons was served upon him.

Effect of inventory as evidence, and how it may be contradicted or avoided.

SEC. 356. In an action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, is put in issue and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence—

First. That any property has been omitted in such inventory, or was not returned therein at its full value, or that since the return thereof such property has increased in value;

Second. That such property has perished or been lost without the fault of such executors or administrators, or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants can not be charged for any things in action specified in their inventory unless it appear that they have been collected, or with due diligence might have been.

Executor of his own wrong not liable as such.

SEC. 357. No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

When action may be commenced against executor or administrator.

SEC. 358. An action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters testamentary or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise.

Claim must be presented before action can be commenced.

SEC. 359. Such action shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator, and by him disallowed. If such claim is presented after the expiration of the period of six months, mentioned in sections eight hundred and twenty and eight hundred and twenty-one, the executor or administrator in an action therefor shall only be liable to the extent of the assets in his hands at the time the summons is served upon him.

SEC. 360. In an action against an executor or administrator, as such, the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate; but for his own acts as such executor or administrator such remedies shall be allowed for the same causes and in like manner and with like effect as in actions generally.

When provisional remedies allowed against executors or administrators.

CHAPTER THIRTY-EIGHT.

GENERAL PROVISIONS RELATING TO ACTIONS OF AN EQUITABLE NATURE.

Sec.
361. Limitation of actions.
362. In whose name an action to be prosecuted.
363. Plaintiffs and defendants, who may be.
364. Same subject.
365. Service of the summons.
366. Service of the summons by publication.
367. What objections if not taken by demurrer or answer may be made on the trial.
368. Counterclaim of defendant.
369. What causes of actions may be united.
370. Arrest and bail in actions of equitable nature.

SEC. 361. An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in chapter two of this title; and an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property; but no action shall be maintained to set aside, cancel, annul, or otherwise affect a patent to lands issued by the United States, or to compel any person claiming or holding under such patent to convey the lands described therein or any portion of them to the plaintiff in such action, or to hold the same in trust for or to the use and benefit of such plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired prior to the date of such patent, unless such action is commenced within ten years from the date of such patent. In an action upon a new promise, fraud, or mistake the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake: *Provided*, This section shall not be construed so as to bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action or set up by complaint to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by complaint for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred by the provisions of chapter two of this title.

Limitation of actions.

—construction, etc.

SEC. 362. Every action of an equitable nature shall be prosecuted in the name of the real party in interest, except as in this section otherwise provided. An executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom and in whose name a contract is made for the benefit of another.

In whose name an action to be prosecuted.

SEC. 363. All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs,

Plaintiffs and defendants, who may be.

except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

Same subject

SEC. 364. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Service of the summons.

SEC. 365. When there is more than one defendant in the action, service of only one copy of the complaint shall be required, the same to be served on the defendant designated by the plaintiff or his attorney by a direction indorsed on such summons, but the summons served on the other defendants shall contain a brief statement of the cause of action and relief demanded.

Service of the summons by publication.

SEC. 366. In addition to the causes enumerated in the subdivisions of section forty-seven, service of the summons may be made by publication in the following cases:

First. When the subject of the action is real or personal property in the district, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein;

Second. When the action is for divorce, as hereinafter provided.

What objections if not taken by demurrer or answer may be made on the trial.

SEC. 367. The objection to the jurisdiction of the court, or that the complaint does not state facts sufficient to constitute a cause of action, if not taken by demurrer or answer, may be made on the trial.

Counterclaim of defendant.

SEC. 368. The counterclaim of the defendant shall be one upon which an action might be maintained by the defendant against the plaintiff in the action; and in addition to the cases specified in the subdivisions of section sixty-four, it is sufficient if it be connected with the subject of the action.

What causes of actions may be united.

SEC. 369. The plaintiff in an action of an equitable nature may unite several causes of action in the same complaint, where they all arise out of—

First. The same transaction, or transactions connected with the same subject of action;

Second. Contract, express or implied; or,

Third. Injuries, with or without force, to property;

Fourth. Claims to real property, or any interest therein, with or without an account for the rents and profits thereof;

Fifth. Claims to personal property, or any interest therein, with or without an account for the use thereof;

Sixth. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one of these classes, and must affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Arrest and bail in actions of equitable nature.

SEC. 370. The writ of ne exeat is abolished, and instead thereof the plaintiff in an action may have the defendant arrested and held to bail in like manner and with like effect as provided in the chapter of this title "Of arrest and bail." A cause of arrest in an action shall be the same as those specified in section ninety-nine, so far as the same may exist, and not otherwise.

CHAPTER THIRTY-NINE.

OF THE TRIAL OF ISSUES IN ACTIONS OF AN EQUITABLE NATURE.

Sec.
371. Certain provisions to apply.
372. How and when testimony taken.
373. Conduct of the trial.
374. Objections to depositions, when and how made.
375. Same subject.
376. Chapters 20 and 24 shall apply.
377. Judgment of dismissal before trial and effect thereof.
378. Same after trial.
379. Chapters 26, 27, and 28 to apply.
380. When judgment may be given in vacation; entry, roll, and final record thereof.

Certain provisions to apply.

SEC. 371. The provisions of chapter fifteen of this title shall apply to actions of an equitable nature except as in this chapter otherwise or specially provided. Both issues of law and fact shall be tried by the court, unless referred. Whenever it becomes necessary or proper to inquire of any fact by the verdict of a jury, the court may direct a statement thereof, and that a jury be formed to inquire of the same. The statement shall be tried as an issue of fact in an action, and the verdict may be read as evidence on the trial of the action.

How and when testimony taken.

SEC. 372. All issues of fact in actions of an equitable nature may be tried by the court, and if tried by the court, the evidence shall be presented and the trial conducted in the same manner as other actions: *Provided*, The court may, in its discretion, refer the case to a referee pursuant to the provisions of this title. In all such actions the court, in rendering its decisions therein, shall set out in writing its findings of fact upon all the material issues of fact presented by the pleadings, together with its conclusions of law thereon; but such findings of fact and conclusions of law shall be separate from the judgment, and shall be filed with the clerk, and shall be incorporated in, and constitute a part of, the judgment roll of the case; and such findings of fact shall have the same force and effect, and be equally conclusive, as the verdict of a jury in an action. Exceptions may be taken during the trial to the ruling of the court, and also to its findings of fact, and a statement of such exceptions prepared and settled as in an action, and the same shall be filed with the clerk within ten days from the entering of the decree, or such further time as the court may allow.

Conduct of the trial.

SEC. 373. When the action is called for trial, the trial shall proceed in the order prescribed in subdivisions one, two, three, four, and five of section one hundred and eighty-seven, unless the court for special reasons otherwise directs.

Objections to depositions, when and how made.

SEC. 374. Upon the trial either party may object to the reading of a deposition, or any part thereof, when offered by the other because the witness is incompetent, or the testimony is so, or irrelevant, and not otherwise. All other objections to depositions shall be taken by written exceptions filed with the clerk within twenty days from the filing of the testimony, and may be heard and decided by the court or judge thereof at any time thereafter before the trial of the action.

Same subject.

SEC. 375. When it appears from the deposition that a party was present at the examination of a witness, such party shall not be heard to object to anything in or concerning such deposition not excepted to at the time of taking the same, except the objections allowed to be taken on the trial as provided in section three hundred and seventy-two of this title. When any part of the examination of a witness is excluded for any reason, so much of the cross-examination as relates to the same matter is excluded also.

Chapters 20 and 24 shall apply

SEC. 376. The provisions of chapters twenty and twenty-four of this title shall apply to actions of an equitable nature, but the final determination of the rights of the parties thereto is called a judgment, and any intermediate determination is called an order.

Judgment of dismissal before trial and effect thereof.

SEC. 377. A judgment dismissing an action may be given against the plaintiff in any of the cases specified in subdivisions one, two, and

three of section two hundred and thirty-seven, except the last clause of such subdivision three. Such judgment is a determination of the action, but shall not have the effect to bar another action for the same cause or any part thereof.

Same after trial.

SEC. 378. Whenever upon the trial it is determined that the plaintiff is not entitled to the relief claimed, or any part thereof, a judgment shall be given dismissing the action, and such judgment shall have the effect to bar another action for the same cause or any part thereof, unless such determination be on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of such plaintiff, give such judgment without prejudice to another action by the plaintiff for the same cause or any part thereof.

Chapters 26, 27, and 28 to apply.

SEC. 379. The provisions of chapters twenty-six and twenty-seven of this title, from and inclusive of section two hundred and forty-one to and inclusive of section two hundred and forty-four, shall apply to actions of an equitable nature. The provisions of chapter twenty-eight shall apply to controversies which might be the subject of such an action.

When judgment may be given in vacation; entry, roll, and final record thereof.

SEC. 380. When upon the submission of such an action the court is unadvised as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing the same with the clerk. When a judgment is given in an action of an equitable nature, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Sections two hundred and fifty-one, two hundred and fifty-two, two hundred and fifty-four, two hundred and fifty-five, and two hundred and fifty-nine, of this title shall apply to actions of an equitable nature. The provisions of chapter thirty of this title shall apply to judgments and the final record or roll thereof.

CHAPTER FORTY.

OF THE MODE OF ENFORCING A JUDGMENT IN ACTIONS OF AN EQUITABLE NATURE.

Sec.
381. When equivalent to performance.
382. Certain chapters to apply.

When equivalent to performance.

SEC. 381. A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party do not comply therewith, be deemed and taken to be equivalent thereto. The court or judge thereof may enforce an order or judgment in an action of an equitable nature, other than for the payment of money, by punishing the party refusing or neglecting to comply therewith, as for a contempt.

Certain chapters to apply.

SEC. 382. The provisions of chapter thirty-one of this title shall apply to the enforcement of judgments so far as the nature of the judgment may require or admit of it, but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in an action.

CHAPTER FORTY-ONE.

OF INJUNCTION.

Sec.
383. Definition of, and how permanent injunction enforced.
384. Allowance of injunction.
385. Service of the order allowing the injunction.
386. When defendant may be restrained during the pendency of the action.
387. Allowance of injunction after answer.
388. Motion to vacate or modify injunction.

Definition of, and how permanent injunction enforced.

SEC. 383. An injunction is an order requiring a defendant in an action to refrain from a particular act. It is only allowed as a provisional remedy, and when a judgment is given enjoining a defendant,

such judgment shall be effectual and binding on such defendant without other proceeding or process, and may be enforced, if necessary, as provided in section three hundred and eighty-one.

Allowance of injunction.

SEC. 384. An injunction may be allowed by the court or judge thereof at any time after the commencement of the action and before judgment. Before allowing the same the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs and disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as he may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Service of the order allowing the injunction.

SEC. 385. The undertaking and affidavits, if any, upon which the injunction is allowed, shall be filed with the clerk. The order may be served as a summons and returned to the clerk, with a proof of service indorsed thereon, except that the service shall be made upon the defendant personally. The order may be filed with the clerk at once, and shall be deemed to be served upon the defendant from the date of its allowance, if it appear therefrom that the defendant appeared before the court or judge at the allowance thereof.

When defendant may be restrained during the pendency of the action.

SEC. 386. When it appears by the complaint 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 the commission or continuance of which during the litigation would produce injury to the plaintiff; or when it appears by affidavit 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 concerning the subject of the action, and tending to render the judgment ineffectual; or when it appears by affidavit that the defendant threatens or is about to remove or dispose of his property, or any part thereof, with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Allowance of injunction after answer.

SEC. 387. An injunction shall not be allowed after the defendant has answered, except upon notice, but in such case the defendant may be restrained until the decision of the court or judge allowing or refusing the injunction; and before answer, if the court or judge deem it proper that the defendant should be heard before allowing an injunction, an order may be made requiring the defendant to show cause, at a specified time and place, why the injunction should not be allowed, and in the meantime the defendant may be restrained.

Motion to vacate or modify injunction.

SEC. 388. If the injunction be allowed without notice, the defendant may, at any time after answer, and before trial, apply, upon notice, to the court or judge thereof, to vacate or modify the same. The application may be made upon affidavits in addition to the answer, and if so, the plaintiff may oppose the same by affidavits, or other evidence, in addition to those upon which the injunction was allowed. If, upon the hearing of the motion, it satisfactorily appear that the injunction should not have been allowed, either in whole or in part, it shall be vacated or modified accordingly.

CHAPTER FORTY-TWO.

OF THE FORECLOSURE OF LIENS UPON REAL PROPERTY.

Sec.
389. Liens upon real property, how foreclosed.
390. Parties defendant.
391. Where two or more liens upon the same property.
392. How judgment enforced.
393. Property sold upon foreclosure, how redeemed.
394. Action for foreclosure can not be maintained during pendency of action for the debt.
395. Nature of judgment where debt payable in installments some of which not due.
396. Effect of payment before sale.

Liens upon real property, how foreclosed.

SEC. 389. A lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, shall be foreclosed, and

the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. In such action, in addition to the judgment of foreclosure and sale, if it appear that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor or other lien debtor, or by any other person as principal or otherwise, the court shall also adjudge a recovery of the amount of such debt against such person or persons, as the case may be, as in the case of an ordinary judgment for the recovery of money.

Parties defendant.

SEC. 390. Any person having a lien subsequent to the plaintiff upon the same property or any part thereof, or who has given a promissory note or other personal obligation for the payment of the debt or any part thereof, secured by the mortgage or other lien which is the subject of the action, shall be made a defendant in the action, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary.

Where two or more liens upon the same property.

SEC. 391. When it is adjudged that any of the defendants have a lien upon the property, the court shall make a like judgment in relation thereto and the debt secured thereby as if such defendant were a plaintiff in the action; and when a judgment is given foreclosing two or more liens upon the same property or any portion thereof in favor of different persons not united in interest, such judgment shall determine and specify the order of time, according to their priority, in which the debts secured by such lien shall be satisfied out of the proceeds of the sale of the property.

How judgment enforced.

SEC. 392, The judgment may be enforced by execution as an ordinary judgment for the recovery of money, except as in this section otherwise or specially provided:

First. When a judgment of foreclosure and sale is given, an execution may issue thereon against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if it be in favor of different persons not united in interest, it shall issue upon the joint request of such persons, or upon the order of the court or judge thereof, on the motion of either of them;

Second. When the judgment is also against the defendants or any one of them in person, and the proceeds of the sale of the property upon which the lien is foreclosed is not sufficient to satisfy the judgment as to the sum remaining unsatisfied to either, the judgment may be enforced by execution as in ordinary cases. When in such case the judgment is in favor of different persons not united in interest, it shall be deemed a separate judgment as to such persons, and may be enforced accordingly.

Property sold upon foreclosure, how redeemed.

SEC. 393. A judgment of foreclosure shall have the effect to bar the equity of redemption, and property sold on execution issued upon a judgment may be redeemed in like manner and with like effect as real property sold on an execution issued on a judgment.

Action for foreclosure can not be maintained during pendency of action for the debt.

SEC. 394. During the pendency of an action for the recovery of a debt secured by any lien mentioned in section three hundred and eighty-nine, an action can not be maintained for the foreclosure of such lien, nor thereafter, unless judgment be given in such action that the plaintiff recover such debt or some part thereof, and an execution thereon against the property of the defendant in the judgment is returned unsatisfied in whole or in part.

Nature of judgment where debt payable in installments some of which not due.

SEC. 395. When an action is commenced to foreclose a lien by which a debt is secured, which debt is payable in installments, either of interest or principal, and any of such installments is not then due, the court shall adjudge a foreclosure of the lien, and may also adjudge a sale of the property for the satisfaction of the whole of such debt, or so much thereof as may be necessary to satisfy the installment then

due, with costs of action; and in the latter case the judgment of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole or in part, whenever default shall be made in the payment of the installments not then due.

Effect of payment before sale.

SEC. 396. If, before a judgment is given, the amount then due, with the costs of action, is brought into court and paid to the clerk, the action shall be dismissed, and if the same be done after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated, and the execution, if any have issued, be recalled by the clerk. When an installment not due is adjudged to be paid, the court shall determine and specify in the judgment what sum shall be received in satisfaction thereof, which sum may be equal to such installment, or otherwise, according to the present value thereof. The provisions of this chapter as to liens upon personal property are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property.

CHAPTER FORTY-THREE.

OF ACTIONS FOR THE PARTITION OF REAL PROPERTY.

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401. Upon whom summons may be served by publication.
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434. Report may be excepted to; effect of confirmation.
435. Proceedings when a party or incumbrancer becomes purchaser.
436. When and what proceeds of sale to be invested.
437. In whose name securities taken or investments made.
438. Same subject.
439. When clerk to keep account and receive interest.
440. When equal partition can not be made, court may adjudge compensation.
441. When proceedings of sale paid to guardian of infant.
442. When paid to guardian of insane person.
443. Costs of partition, how apportioned.

Who may maintain an action for partition.

SEC. 397. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain an action of an equitable nature for the partition of such real property, according to

the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appears that a partition can not be had without great prejudice to the owners.

Complaint, what it shall contain.

SEC. 398. The interest of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory device, or the remainder be a contingent remainder, so that such parties can not be named, that fact shall be set forth in the complaint.

What lien creditors may be made defendants, etc.

SEC. 399. The plaintiff shall make creditors having liens upon the property or any portion thereof, defendants in the action. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only upon the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Summons, how directed.

SEC. 400. The summons shall be directed by name to all the tenants in common who are known, and in the same manner to all lien creditors who are made parties to the action, and generally to all persons unknown, having or claiming an interest or estate in the property.

Upon whom summons may be served by publication.

SEC. 401. If a party having a share or interest in or lien upon the property be unknown, or either of the known parties reside out of the district or can not be found therein, and such fact be made to appear by affidavit, the summons may be served upon such absent or unknown party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication, it must be accompanied by a brief description of the property which is the subject of the action.

Answer, what to contain.

SEC. 402. The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby, and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Rights of the parties may be put in issue, etc.

SEC. 403. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined in such action, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment for partition or sale is given.

When order of sale may be made instead of partition.

SEC. 404. If it be alleged in the complaint and established by evidence, or if it appear by the evidence, without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition can not be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall adjudge a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or not ascertained.

How referees to make partition.

SEC. 405. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 406. The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed, a judgment shall be given that such partition be effectual forever, which judgment shall be binding and conclusive— Proceedings on report of referees.

First. On all parties named therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or inheritance of such property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

Second. On all persons interested in the property who may be unknown, to whom notice shall have been given of the application for partition by publication, as directed by section four hundred and one; and

Third. On all other persons claiming from such parties or persons, or either of them.

SEC. 407. But such judgment and partition shall not affect any tenants for years or for life of the whole of the property which is the subject of partition; nor shall such judgment or partition preclude any person, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made. Who not affected thereby.

SEC. 408. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges. Expenses of referees.

SEC. 409. If the referees report to the court that the property of which partition shall have been adjudged, or any separate portion thereof, is so situated that a partition thereof can not be made without great prejudice to the owners and the court is satisfied that such report is correct, it may thereupon, by an order, direct the referees to sell the property or separate portion thereof so situated. When order of sale may be made upon report of referees.

SEC. 410. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold. In case of partial sale, how estate for life or years set off.

SEC. 411. If an order of sale be made, and before a distribution of the proceeds thereof, the plaintiffs shall produce to the court a certificate showing the liens remaining unsatisfied, if any, by judgment upon the property, or any portion thereof, and unless he do so the court shall order a referee to ascertain them. When reference ordered to ascertain lien creditors.

SEC. 412. If it appear by such certificate, or reference in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby, respectively, and the order of priority in which they are entitled to be paid out of the property. Referees to ascertain amount of liens.

SEC. 413. The plaintiff must cause a notice to be served, at least ten days before the time for appearance, on each person having such lien by judgment to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, on his judgment. Notice to lien creditors.

SEC. 414. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts thereon or secured thereby, and their priority, respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him. Duties of referee.

Exceptions to report.

SEC. 415. The report of the referee may be excepted to by either party to the action or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the district, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record or by publication thereof for such time and in such manner as the order may prescribe.

Effect of confirmation of report.

SEC. 416. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the action and upon the lien creditors who have been duly served with the notice to appear before the referee as provided in section four hundred and thirteen.

Distribution of proceeds of sale.

SEC. 417. The proceeds of the sale of the incumbered property shall be distributed by the judgment of the court as follows:

First. To pay its just proportion of the general costs of the action;

Second. To pay the costs of the reference;

Third. To satisfy the several liens, in their order of priority, by payment of the sums due and to become due, according to the judgment;

Fourth. The residue among the owners of the property sold, according to their respective shares.

When party may be required to exhaust other securities.

SEC. 418. Whenever any party to the action or who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Proceedings not to delay or affect certain parties.

SEC. 419. The proceedings to ascertain the amount of the liens and to determine their priority, as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale nor affect any other party whose rights are not involved in such proceedings.

Proceeds of sale to be distributed or paid into court.

SEC. 420. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. But if no such direction be given all such proceeds and securities shall be paid into court or deposited as directed by the court.

When action to continue.

SEC. 421. When the proceeds of sales of any shares or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleading, as in an original action.

Sale by referees, how made.

SEC. 422. All sales of real property made by the referees shall be made by public auction to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the time, place, and terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Court may direct sale to be made on credit.

SEC. 423. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained to be invested for the benefit of unknown owners, infants, and parties out of the district.

SEC. 424. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner.

Mortgages and other securities, how taken by referees.

SEC. 425. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Estate for life or years, how disposed of.

SEC. 426. Any person entitled to an estate for life or years in any undivided part of the property, whose estates shall have been sold, shall be entitled to receive such sum in gross as may be deemed upon principles of law applicable to annuities a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

Compensation for such estate in case of sale.

SEC. 427. If such consent be not given, as provided in the last preceding section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

If consent not given, court to determine the value of such estate.

SEC. 428. The proportion of the proceeds of the sale to be invested as provided in the section last preceding shall be ascertained and determined in the several cases as follows:

Rule for the determination of the value.

First. If an estate in dower be included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in such property upon which the claim of dower existed;

Second. If an estate by the curtesy, or other estate for life or years, be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share thereof in which such estate may be.

And in all cases the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale.

SEC. 429. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Rights of unkown tenants to be protected.

SEC. 430. In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportional value of such inchoate, contingent, or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured, or paid over in such manner as to protect the rights and interests of the parties.

Inchoate or contingent interests, how provided for.

SEC. 431. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately, or otherwise if the court so directs.

Terms of sale to be made known at the time of sale.

SEC. 432. Neither of the referees, nor any person for the benefit of

Referees not to purchase.

either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Report of referees, what to contain.

SEC. 433. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of lands sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

Report may be excepted to; effect of confirmation.

SEC. 434. The report of sale may be excepted to by any party entitled to a share of the proceeds, in like manner and with like effect as in ordinary cases. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale, which acts they are hereby authorized to do. Such order shall have the effect to discharge the property of the estate or interest of every person mentioned in section four hundred and six, and of tenants for life or years of the property sold, and shall be binding and conclusive upon all such persons, as if the same were a decree for the partition of such property, and upon all persons whomsoever as to the regularity of the proceedings concerning such sale, except as provided in section four hundred and thirty-two.

Proceedings when a party or incumbrancer becomes purchaser.

SEC. 435. When a party entitled to a share of the property or an incumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

When and what proceeds of sale to be invested.

SEC. 436. When there are proceeds of sale belonging to an unknown owner, or to a person without the district who has no legal representatives within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same may be invested under such order in securities on interest for the benefit of the persons entitled thereto.

In whose name securities taken or investments made.

SEC. 437. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Same subject.

SEC. 438. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referee, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

When clerk to keep account and receive interest.

SEC. 439. The clerk in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

When equal partition can not be made, court may adjudge compensation.

SEC. 440. When it appears that partition can not be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants unless in case

of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

When proceeds of sale paid to guardian of infant.

SEC. 441. When the share of an infant is sold the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the action, upon such guardian giving the security required by law or directed by order of the court.

When paid to guardian of insane person.

SEC. 442. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking, approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Costs of partition, how apportioned.

SEC. 443. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

CHAPTER FORTY-FOUR.

OF ACTIONS OF AN EQUITABLE NATURE BY AND AGAINST EXECUTORS, ADMINISTRATORS, LEGATEES, HEIRS, AND DEVISEES.

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In what actions chapter 37 shall apply.

SEC. 444. The provisions of chapter thirty-seven of this title shall apply to actions of an equitable nature by and against executors and administrators, except as in this chapter otherwise or specially provided. Sections three hundred and fifty-one, three hundred and fifty-two, and three hundred and fifty-three of such chapter shall not so apply. All causes of actions of an equitable nature by one person against another, however arising, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action of an equitable nature thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

An action against next of kin by creditor of the estate.

SEC. 445. The next of kin of a deceased person are liable to an action by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The action may be against all the next of kin jointly or against any one or more of them severally.

Each liable for the whole amount received.

SEC. 446. In such action the plaintiff may recover the value of all the assets received by all the defendants in the action if necessary to satisfy his debt; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other next of kin to whom assets have also been delivered.

Next of kin may maintain an action to compel contribution.

SEC. 447. Any one of the next of kin against whom a recovery is had pursuant to section four hundred and forty-six may maintain an action against all the other next of kin of the deceased person to whom any such assets have been delivered jointly, or against any of them separately, for a just and equal contribution, and may recover of each defendant such amount as shall be in the same proportion to the whole sum collected of the plaintiff as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the next of kin of the deceased.

An action against legatees by creditor of the testator.

SEC. 448. Legatees are liable to an action by a creditor of the testator to recover the value of any legacy received by them. The action may be maintained against all the legatees jointly or against any one or more of them severally. In such action the plaintiff shall not recover unless he shows—

First. That no assets were delivered by the executor or administrator of the testator to his next of kin; or

Second. That the value of such assets has been recovered by some other creditor; or

Third. That such assets are not sufficient to satisfy the demand of the plaintiff.

And in the last case he shall recover only the deficiency. The whole amount which the plaintiff shall recover shall be apportioned among all the legatees of the testator in proportion to the value of their legacies respectively, and his proportion shall only be recovered of each legatee.

Apportionment of costs in an action against next of kin or legatees.

SEC. 449. In an action against several next of kin or legatees jointly for assets delivered to them, if a recovery be had against such next of kin or legatees, the cost of such action shall be apportioned among the several defendants in proportion to the amount recovered against each of them.

Payment of the amount recovered against any one satisfies the judgment as to such person.

SEC. 450. A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

Heirs or devisees liable for the debts of their ancestor or testator.

SEC. 451. Heirs and devisees are liable to an action by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all the heirs who are liable shall be made parties to the action.

In what cases and to what extent not liable.

SEC. 452. But the heirs are not liable for the debt, unless it appear that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof shall have been collected, the heirs of such deceased person are liable for the residue.

Section 452 not to affect a case where debt charged upon real estate by will.

SEC. 453. The section last preceding shall not affect the liability of heirs for a debt of their ancestor where such debt was by his will

expressly charged exclusively on the real properties descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

Preference of debts, and definition thereof.

SEC. 454. In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as herein provided, they shall be liable therefor without other priority or preference than such ancestors would be. The word "debt," as used in this chapter, shall be construed to include all claims for the payment of money which survive against the personal representatives of the deceased, as provided in section four hundred and forty-four.

How judgment against heir or devisee enforced.

SEC. 455. A judgment against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to the heir or devisee, and not otherwise. Such judgment shall have preference as a lien on such real property to any judgment or decree obtained against such heir or devisee on account of a debt or demand due in his own right.

When heirs or devisees personally liable.

SEC. 456. When it appears in the action that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so aliened, and a judgment may be given against him therefor, to be enforced by execution, as if the judgment were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before action commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by the judgment therefor against such heir or devisee.

Judgment against several heirs or devisees jointly to be apportioned among them.

SEC. 457. In an action against several heirs jointly, or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the testator in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or devisee.

Devisees not liable when there are assets.

SEC. 458. A devisee shall not be liable to the creditor of his testator unless it appear that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appear that after due proceedings the creditor has been unable to recover the debt, or any part thereof, from the personal representatives of the testator or from his next of kin, legatees, or heirs.

Liable for deficiency only.

SEC. 459. In either of the cases specified in the section last preceding the amount of the deficiency of the personal assets, and of the real property descended, to satisfy the debt of the plaintiff, or the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees, and heirs, may be recovered of the devisees of such testator, to the extent of the value of the real property devised to them respectively.

Two preceding sections not to affect a case where the debt is charged upon the real property by the will.

SEC. 460. The two sections last preceding shall not affect the liability of devisees for a debt of their testator where such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee, or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

CHAPTER FORTY-FIVE.

ACTIONS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT.

Sec.
461. Husband or wife may maintain action.
462. What marriages absolutely void.
463. What marriages void when so declared.
464. At whose action marriages declared void.
465. At whose action marriages declared voidable.
466. Action to declare marriage valid.
467. For what causes marriages may be dissolved.
468. Residence of parties.
469. Same.
470. Pleas in bar by defendant.
471. Maintenance and custody of children pending action.
472. Judgment for maintenance for the custody of children.
473. Power of court to modify decree.
474. Right to remarry.

Husband or wife may maintain action.

SEC. 461. A husband or wife may maintain an action of an equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

What marriages absolutely void.

SEC. 462. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within the district, be absolutely void.

What marriages void when so declared.

SEC. 463. When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from the time it is so declared by the decree of a court having jurisdiction thereof.

At whose action marriages declared void.

SEC. 464. A marriage may be declared void from the beginning, at the action of either party, for any of the causes specified in section four hundred and sixty-two, and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause, directly or otherwise.

At whose action marriages declared voidable.

SEC. 465. A marriage shall not be declared void for any of the causes specified in section four hundred and sixty-three, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

Action to declare marriage valid.

SEC. 466. When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections four hundred and sixty-two and four hundred and sixty-three, the same may be declared valid and lawful at the action of the other; and in such action the court shall have power, if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

For what causes marriages may be dissolved.

SEC. 467. The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes:

First. Impotency existing at the time of the marriage and continuing to the commencement of the action;

Second. Adultery;

Third. Conviction of felony;

Fourth. Willful desertion for the period of two years;

Fifth. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action.

Residence of parties.

SEC. 468. When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for three years prior to the commencement of the action.

Same.

SEC. 469. In an action for the dissolution of the marriage contract the plaintiff therein must be an inhabitant of the district at the commencement of the action and for three years prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Pleas in bar by defendant.

SEC. 470. In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and show in bar of the action either—

First. That the act was committed by the procurement or with the connivance of the plaintiff; or,

Second. That the act had been expressly forgiven, or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or,

Third. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision second of this section; or,

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth, or sixth of section four hundred and sixty-seven, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on subdivision third of the section four hundred and sixty-seven, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Maintenance and custody of children pending action.

SEC. 471. After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of the husband during the pendency of the action, and the court may restrain either or both parties from disposing of the property of either party pending the action.

Judgment for maintenance and for the custody of children.

SEC. 472. Whenever a marriage shall be declared void or dissolved the court shall have power to further decree as follows:

First. For the future care and custody of the minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper giving the preference to the party not in fault;

Second. For the recovery of the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or installments, as may be just and proper for such party to contribute toward the nurture and education thereof;

Third. For the recovery of the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife, when she is not the party in

fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

Power of court to modify decree.

SEC. 473. At any time after a judgment is given the court or judge thereof, upon the motion of either party, on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

Right to remarry.

SEC. 474. A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, and if he or she does so contract, shall be liable therefor as if such judgment had not been given, until the action has been heard and determined on appeal, and if no appeal be taken, the expiration of the period allowed by law to take such appeal.

CHAPTER FORTY-SIX.

OF ACTIONS TO DETERMINE ADVERSE CLAIMS AND BOUNDARIES.

Sec.
475. An action to determine adverse claims.
476. An action to establish boundaries.
477. Pleadings in such action.
478. Mode of proceeding thereafter.
479. Oath and duties of commissioners.
480. Their report.

An action to determine adverse claims.

SEC. 475. Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.

An action to establish boundaries.

SEC. 476. In any case where any dispute or controversy exists, or may hereafter arise, between two or more owners of adjacent or contiguous lands in the district, concerning the boundary lines thereof, or the location of the line or lines dividing such lands, either party or any party to such dispute or controversy may bring and maintain an action of an equitable nature in the district court of the district, for the purpose of having such controversy or dispute determined, and such boundary line or lines, or dividing lines, ascertained and marked by proper monuments, upon the ground where such line or lines may be ascertained to be, and established in such action.

Pleadings in such action.

SEC. 477. The complaint in such action shall be sufficient if it appears therefrom that the plaintiff and defendant or defendants are owners of adjacent lands; that there is a controversy or dispute between the parties concerning their boundary or dividing line or lines, and it shall not be necessary to set forth the nature of such dispute or controversy further than that the plaintiff shall describe the boundary or dividing line as he shall claim it to be. The defendant, in his answer, shall set forth the nature of his claim with reference to the location of the line in controversy.

Mode of proceeding thereafter.

SEC. 478. The mode of proceeding under this Act shall be analogous to that of other actions of an equitable nature: *Provided*, At the time of entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested com-

missioners, one of whom shall be a practical surveyor, and shall direct the commissioners to go upon the lands of the parties and establish and mark out upon the grounds, by proper marks and monuments, the boundary or dividing line as ascertained and determined by the court in its judgment.

Oath and duties of commissioners.

SEC. 479. Before entering upon the discharge of their duties the commissioners shall make and file their oath, in writing, to faithfully and impartially perform their duties as such commissioners, and after designating the line by proper marks and monuments, they shall file, in the court and cause, a report of their doings as such commissioners, and the same shall be, when approved or confirmed by the court, a part of the judgment roll in the cause.

Their report.

SEC. 480. The report of the commissioners may be confirmed by the court, upon written motion of either party to such action, whenever it shall appear to the court that the motion was served upon the adverse party two days before the presentation thereof, and that no exceptions have been filed to the report within two days after the service. If exceptions are filed as aforesaid to the report, the exceptions may be heard with the motion to confirm, and the motion may confirm, modify, or set aside the report, as shall seem just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

CHAPTER FORTY-SEVEN.

GENERAL PROVISIONS CONCERNING ACTIONS.

Sec.
481. Lost papers, how supplied.
482. Successive actions.
483. Consolidation of actions.
484. When court has jurisdiction.
485. Jurisdiction over corporations.
486. Exercise of jurisdiction.
487. When majority of referees may act.
488. Computation of time.

Lost papers, how supplied.

SEC. 481. If an original paper or pleading be lost or withheld by any person, the court or judge thereof may order a verified copy thereof to be filed and used instead of the original.

Successive actions.

SEC. 482. Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arises therefrom.

Consolidation of actions.

SEC. 483. Whenever two or more actions are pending at one time between the same parties and in the same court upon causes which might have been joined, the court may, upon the motion of the defendant, order the same to be consolidated. An action is deemed to be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

When court has jurisdiction.

SEC. 484. No natural person is subject to the jurisdiction of the district court of the district unless he appear in the court, or be found within the district, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached. But this section is not to be construed to limit the power of the said court to declare a marriage void or a dissolution thereof when the defendant is a nonresident of the district, in the cases provided for in chapter forty-five.

Jurisdiction over corporations.

SEC. 485. No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Exercise of jurisdiction.

SEC. 486. When the court has jurisdiction of the parties it may exercise it in respect to any cause of action, wherever arising, except for the specific recovery of real property situated without the district, or for injury thereto.

When majority of referees may act.

SEC. 487. Whenever there is more than one referee all must meet, but a majority of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

Computation of time.

SEC. 488. The time within which an act is to be done, as provided in this code, shall be computed by excluding the first day and including the last, unless the last day fall upon a Sunday, Christmas, or other legal holiday, in which case the last day shall also be excluded. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen or which completes the full period required for publication.

CHAPTER FORTY-EIGHT.

OF OFFERS TO COMPROMISE AND THE INSPECTION OF WRITINGS.

Sec.
489. Offers to compromise, how accepted and effect thereof.
490. Order for the inspection of papers.

Offers to compromise, how accepted and effect thereof.

SEC. 489. The defendant may, at any time before trial, serve upon the plaintiff and offer to allow judgment to be given against him for the sum, or the property, or to the effect therein specified. If the plaintiff accept the offer, he shall, by himself or attorney, indorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon him; and thereupon judgment shall be given accordingly, as in case of a confession. If the offer be not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs accruing after the service of the notice of the offer, but the defendant shall recover of him costs and disbursements from the time of such service.

Order for the inspection of papers.

SEC. 490. The court, or judge thereof, while an action is pending, may order either party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence or matters relating to the merits of the action, or the defense therein. If obedience to the order be neglected or refused, the court may exclude the book, document, or paper from being given in evidence, or, if wanted as evidence by the party applying therefor, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party so neglecting or refusing as for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, documents, or papers when he is examined as a witness.

CHAPTER FORTY-NINE.

OF MOTIONS AND ORDERS.

Sec.
491. Order and motion, definition of.
492. Motions, to whom and where made.
493. Notice of motion, time of, and when necessary.
494. Application refused not to be repeated.

Order and motion, definition of.

SEC. 491. Every direction of a court or judge made or entered in writing, and not included in a judgment is denominated an order. An application for an order is a motion.

SEC. 492. Motions shall be made to the court or judge, as provided in other parts of this code. They shall be made at the place where the action is triable, except when made to a judge of the court before whom the action is pending and without notice, in which case an order may be made by such judge in any part of the district.

Motions, to whom and where made.

SEC. 493. When a notice of a motion is necessary, it shall be served twenty days before the time appointed for the hearing; but the court, or judge thereof, may prescribe, by order indorsed upon the notice, a shorter time. Notice of a motion is not necessary, except when this code requires it, or when directed by the court or judge in pursuance thereof.

Notice of motion, time of, and when necessary.

SEC. 494. If an application for an order, made to a judge of the court in which the action or proceeding is pending, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge. A violation of this section is punishable as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by the court, or judge thereof, in which the action or proceeding is pending.

Application refused not to be repeated.

CHAPTER FIFTY.

OF NOTICE AND THE SERVICE AND FILING OF PAPERS.

Sec.
495. Notices to be in writing.
496. Notices and other papers, how served and upon whom.
497. When service may be made by mail; time allowed for distance.
498. How copy deposited and when service deemed to be made.
499. Appearance, how made; defendant not to be heard before appearance.
500. When party absent from the district; when service to be made on attorney.
501. Foregoing provisions not to apply to summons.
502. Notice is valid, though defective in form.
503. Filing of papers.

SEC. 495. Notices shall be in writing, and notices and other papers shall be served on the party or attorney in the manner prescribed in this chapter where not otherwise provided by this code.

Notices to be in writing.

SEC. 496. The service or deposit in the post-office, when served by mail, may be made by any person other than the party himself. The proof of service shall be the same as proof of service of a summons, and shall be returned with the original notice, or other paper of which service is made, at the time and place therein prescribed for the hearing or other proceeding to be had thereon. The service may be personal by delivery of a copy of the notice or other paper to the party or attorney on whom the service is required to be made, or it may be as follows:

Notices and other papers, how served and upon whom.

First. If upon an attorney, it may be made during his absence from his office by leaving the copy with his clerk therein, or with the person having charge thereof; or when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office, or if it be not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

Second. If upon a party, it may be made by leaving the copy at his residence between the hours of six in the morning and nine in the evening with some person of suitable age and discretion.

SEC. 497. Service by mail may be made when the person for whom the service is made and the person on whom it is made reside in different places, between which there is a communication by mail, adding one day to the time of service for every twenty miles of distance between the place of deposit and the place of address.

When service may be made by mail: time allowed for distance.

SEC. 498. In case of service by mail the copy must be deposited in the post-office, addressed to the person on whom it is to be served at

How copy deposited and when service deemed to be made.

his place of residence, and the postage paid. The service shall be deemed to be made on the first day after the deposit in the post-office that the mail leaves the place of deposit for the place of the address, and not otherwise.

Appearance, how made; defendant not to be heard before appearance.

SEC. 499. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, and until he does so appear he shall not be heard in such action or in any proceeding pertaining thereto, except the giving of the undertakings allowed to the defendant in the provisional remedies of arrest, attachment, and the delivery of personal property. When the defendant has not appeared, notice of a motion or other proceeding need not be served upon him, unless he be imprisoned for want of bail, or unless directed by the court, or judge thereof, in pursuance of this title.

When party absent from the district; when service to be made on attorney.

SEC. 500. When a party is absent from the district and has no attorney in the action, service may be made by mail if his residence be known; if not known, on the clerk for him. When a party, whether absent or not from the district, has an attorney in the action, service of notice or other papers shall be made upon the attorney.

Foregoing provisions not to apply to summons.

SEC. 501. The foregoing provisions do not apply to the service of a summons or other process, nor so much thereof as allows service to be made of any notice or other paper to bring a party into contempt, otherwise than upon such party personally.

Notice is valid, though defective in form.

SEC. 502. A notice or other paper is valid and effectual, although defective either in respect to the title of the action in which it is made, or the name of the court or the parties, if it intelligently refer to such action.

Filing of papers.

SEC. 503. All undertakings, affidavits, or other papers required by or provided for in this code shall be filed with the clerk, except when this code otherwise specially provides. A pleading or paper shall be filed by delivering the same to the clerk at his office, who shall indorse upon it the day of the month and the year, and subscribe his name thereto. The clerk shall not be required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is intelligibly indorsed on the back of it, or unless the contents thereof can be read by a person of ordinary skill.

CHAPTER FIFTY-ONE.

OF APPEALS AND WRITS OF ERROR.

Sec.
504. Appeals and writs of error, how taken.
505. What judgments shall be final.
506. When may be taken.
507. From what an appeal may be taken.
508. Laws regulating procedure and practice on appeal.

Appeals and writs of error, how taken.

SEC. 504. Appeals and writs of error may be taken and prosecuted from the final judgments of the district court for the district of Alaska or any division thereof direct to the Supreme Court of the United States in the following cases, namely: In prize causes and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States; and that in all other cases where the amount involved or the value of the subject-matter exceeds five hundred dollars the United States circuit court of appeals for the ninth circuit shall have jurisdiction to review by writ of error or appeal the final judgments, orders, of the district court.

SEC. 505. The judgments of the circuit court of appeals shall be final in all cases coming to it from the district court, but whenever the judges of the circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any case pending before the circuit court of appeals on writ of error to or appeal from the district court, judges may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the questions and propositions certified to it, and its instruction shall be binding upon the circuit court of appeals. What judgments shall be final.

SEC. 506. No appeal or writ of error by which any final order or judgment may be reviewed under the provisions of this Act shall be taken or sued out except within one year after the entry of the order or judgment sought to be reviewed. When may be taken.

SEC. 507. An appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction, made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause in which such interlocutory order was made shall not be stayed during the pendency of such appeal, unless otherwise ordered by the district court. From what an appeal may be taken.

SEC. 508. All provisions of law now in force regulating the procedure and practice in cases brought by appeal or writ of error to the Supreme Court of the United States or to the United States circuit court of appeals for the ninth circuit, except in so far as the same may be inconsistent with any provision of this Act, shall regulate the procedure and practice in cases brought to the courts, respectively, from the district court for the district of Alaska. The provisions of this chapter shall apply to all cases pending in the district court of Alaska at the time this Act takes effect. Laws regulating procedure and practice on appeal.

CHAPTER FIFTY-TWO.

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523. Costs where person sues or defends in the right of another.
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525. Costs in certain cases.
526. Security for costs.
527. Same subject.
528. Costs on motion, etc.

SEC. 509. The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied, of the parties; but there may be allowed to the prevailing party in the judgment certain sums by way of indemnity for his attorney fees in maintaining the action or defense thereto, which allowances are termed costs. Costs; compensation of attorney.

SEC. 510. Costs are allowed of course to the plaintiff upon a judgment in the district court in his favor in the following cases: When costs allowed to plaintiff.

First. In an action for the recovery of the possession of real property, or where a claim of title or interest in real property, or right to the possession thereof, arises upon the pleadings, or is certified by the court to have come in question upon the trial;

Second. In actions for fines and forfeitures, and the actions provided for in chapters thirty-five and thirty-six of this title;

Third. In an action involving an open mutual account, where it appears to the satisfaction of the court that the sum total of such accounts of both parties exceeds one hundred and fifty dollars;

Fourth. In an action for the recovery of personal property;

Fifth. In an action not hereinbefore specified, for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more.

But in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or breach of promise of marriage, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs and disbursements than damages; and in an action to recover the possession of personal property, if the plaintiff recover property or the value thereof, as established on the trial, and damages for the detention of the same, in all less than fifty dollars, he shall recover no more costs and disbursements than the sum of such value and damages.

Costs in several actions on same cause.

SEC. 511. When several actions shall be prosecuted for the same cause of action, against several parties who might have been joined as defendants in the same action, disbursements shall be allowed the plaintiff in each action if he prevail therein; but costs shall not be allowed such plaintiff in more than one of such actions, which shall be at his election, unless the party or parties prosecuted in such other action or actions shall at the time of the commencement of the previous action have been without the district or secreted therein.

Costs, when allowed to defendant.

SEC. 512. Costs are allowed of course to the defendant in the actions mentioned in section five hundred and eleven unless the plaintiff be entitled to costs therein; and when there are several defendants not united in interest, and making separate defenses by separate answers, costs shall be allowed or not to each of such defendants as if the action were commenced against him separately.

Disbursements, when allowed.

SEC. 513. A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses, the necessary expenses of taking depositions by commission or otherwise, the expense of publication of the summons or notices, and the postage where the same are served by mail, the compensation of referees, and the necessary expense of copying any public record, book, or document used as evidence on the trial.

Costs and disbursements in an action of equitable nature.

SEC. 514. In an action of equitable nature costs and disbursements shall be allowed to a party in whose favor a judgment is given in like manner and amount as in other actions, without reference to the amount recovered or the value of the subject of the action, unless the court otherwise directs.

Who liable for fees.

SEC. 515. Every officer, witness, or other person required to do or perform any act or service for any party to any action or proceeding whatever shall be entitled to demand and receive from such party the compensation which the law allows therefor in advance; but a party to any action or proceeding in any court of justice in the district may, at his option, pay the fees of the officers thereof in advance or give such officers an undertaking with sufficient sureties therefor. The costs and disbursments which a party is entitled to recover from another may be collected by the execution to enforce the judgment as a part thereof. The fees secured to the officers of the court, or either of them, by any party to the judgment may be collected by an execution against the property of such party and that of his sureties in the undertaking therefor. Such officers' execution may issue in the name of the clerk as plaintiff in the writ and for the benefit of all officers of the court to whom fees are so due and secured, whenever an execution might issue to enforce the judgment at the instance of the prevailing party therein.

Costs and disbursements, how taxed.

SEC. 516. Costs and disbursements shall be taxed and allowed by the clerk. No disbursements shall be allowed any party unless he shall

file with the clerk within five days from the entry of judgment a statement of the same, which statement must be verified except as to fees of officers. A statement of disbursements may be filed with the clerk at any time after five days, but in such case a copy thereof must be served upon the adverse party. A disbursement which a party is entitled to recover must be taxed, whether the same has been paid or not by such party. The statement of disbursements thus filed, and costs, shall be allowed of course unless the adverse party, within two days from the time allowed to file the same, shall file his objections thereto, stating the particulars of such objections.

When objections made.

SEC. 517. When objections are made to the claim for costs and disbursements, the clerk shall forthwith pass upon the same, and indorse upon the verified statement, or append thereto, the charges allowed or disallowed. Any party aggrieved by the decision of the clerk in the allowance of costs or disbursements may appeal from such decision to the court within five days from the date of such decision, by serving a notice of such appeal, and in what particulars, upon the adverse party or his attorney, which appeal shall be heard and determined by such court, or judge thereof, as soon thereafter as convenient.

Appeal.

Effect of such appeal.

SEC. 518. Such appeal shall stay the proceedings as to the costs and disbursements to which the appeal is taken or relates, unless the respondent file with the clerk an undertaking, with one or more sureties, to the effect that if the decision of the clerk be reversed or modified he will make such restitution as the court or judge may direct. The sufficiency of the sureties in the undertaking may be excepted to by the appellant, and they be required to justify in like manner and with like effect as in an ordinary undertaking for an appeal.

Fees of referees.

SEC. 519. The fees of referees shall be four dollars per day to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rates shall be allowed.

Costs on postponement, etc.

SEC. 520. Upon an application to postpone a trial, the payment to the adverse party of a sum, not exceeding ten dollars, as costs may be imposed by the court as a condition of granting the postponement; and in all cases where this code authorizes a court or judge to allow a party to do any act in an action or proceeding upon terms, such court or judge may, as a condition of such allowance, impose upon such party the payment of a like sum as costs.

Plea of tender and effect as to costs.

SEC. 521. When in any action for the recovery of money or damages only the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause of action, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender be found true, and the plaintiff do not recover a greater sum than the amount so tendered, he shall not recover costs off the defendant, but the defendant shall recover them off him.

Guardian of an infant plaintiff liable.

SEC. 522. When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, as if he were the actual plaintiff in such action, and payment thereof may be enforced against him accordingly.

Costs where person sues or defends in the right of another

SEC. 523. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute to prosecute or defend therein, costs shall be recovered as in ordinary cases, but such costs shall only be chargeable upon or collected off the estate, fund, or party represented, unless the court or judge thereof shall order the same to be recovered off the plaintiff or defendant personally for mismanagement or bad faith in such action or the defense thereto.

Costs on review of inferior court.

SEC. 524. When the decision of any officer, tribunal, or court of inferior jurisdiction is brought before a court for review, such review

shall, for all the purposes of costs or disbursements, be deemed an appeal to such court upon errors in law, and costs therein shall be allowed and recovered accordingly.

Costs in certain cases.

SEC. 525. In all actions prosecuted or defended in the name and for the use of any public corporation in the district the public corporation shall be liable for and may recover costs in like manner and with like effect as in the case of natural persons. When the action is upon the information of any natural person, he shall be liable in the first instance for the defendant's costs; and such costs shall not be recovered from the United States until after execution issued therefor against such person and returned unsatisfied in whole or in part.

Security for costs.

SEC. 526. The attorney of a plaintiff who resides out of the district, or is a foreign corporation, against whom costs are adjudged in favor of the defendant, is liable to such defendant therefor; and if he neglect to pay the same upon the information of such defendant, shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action, or at any time thereafter before judgment, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

Same subject.

SEC. 527. The sureties in such undertaking shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than two hundred dollars, in like manner and with like effect as such sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired, or if excepted to, until they be found sufficient, the attorney is liable as if no undertaking had been given. A deposit of two hundred dollars, or other sum which the court or judge may direct, with the clerk may be made in lieu of such undertaking.

Costs on motion, etc.

SEC. 528. A sum not exceeding five dollars as costs may be allowed to the prevailing party on a motion, in the discretion of the court, and may be absolute or directed to abide the event of the action. In any action or proceeding as to which the allowance and recovery of costs may not be provided for in this title, costs may be allowed or not, according to the measure herein prescribed, and apportioned among the parties, in the discretion of the court.

CHAPTER FIFTY-THREE.

OF THE RECORDS AND FILES OF COURT.

Sec.
529. Records of court, what constitute.
530. Register, how kept.
531. Journal, what to be entered therein.
532. Judgment docket, how arranged.
533. Execution docket, how kept.
534. Fee book, what to be entered therein.
535. Final record, what to be recorded therein.
536. Jury book, how kept.
537. Files of the court, what are.
538. Custody of the records and files.
539. Search and examination of records and files.

Records of court, what constitute.

SEC. 529. The records of the district court are a register, journal, judgment docket, execution docket, fee book, jury book, and final record.

Register, how kept.

SEC. 530. The register is a book wherein the clerk shall enter, by its title, every action or proceeding commenced in, or transferred or appealed to, the court whereof he is clerk, according to the date of its commencement, transfer, or appeal; and thereafter, until the entry of judgment, note therein, according to the date thereof, the filing or return of any paper or process, or the making of any order, rule, or other direction in or concerning such action or proceeding.

SEC. 531. The journal is a book wherein the clerk shall enter the proceedings of the court during term time, and such proceedings in vacation as this code specially directs.

Journal, what to be entered therein.

SEC. 532. The judgment docket is a book wherein the judgments are docketed, as elsewhere provided in this code. Each page thereof shall be divided into eight columns, and headed as follows: Judgment debtors; Judgment creditors; Amount of judgment; Date of entry in journal; When docketed; Appeal, when taken; Decision on appeal; Satisfaction, when entered.

Judgment docket, how arranged.

SEC. 533. The execution docket is a book wherein the clerk shall note, under the title of every cause, the issue and return of execution, and generally the filing or return of any paper or process, or the making of any order, rule, or other direction therein, from and after the entry of judgment or decree until satisfaction or performance thereof.

Execution docket how kept.

SEC. 534. The fee book is one wherein the clerk shall enter, under the title of every cause, against the party to which the service is rendered, the clerk's fees earned, and received or not received, and none other, except as specially directed by this code.

Fee book, what to be entered therein.

SEC. 535. The final record is a book wherein the clerk shall record the papers, pleadings, and proceedings in a cause, as elsewhere provided in this code.

Final record, what to be recorded therein.

SEC. 536. The jury book is one wherein the clerk shall enter the names of the persons attending upon the court at a particular term as grand or trial jurors, the time of the attendance of each, and when discharged or excused, and the amount of fees and mileage earned by each.

Jury book, how kept.

SEC. 537. The files of the court are all papers or process filed with or by the clerk of the court in any action or proceeding therein or before the judge thereof.

Files of the court, what are.

SEC. 538. The records and files of the court are to be kept in the clerk's office in the custody of the clerk, and he is responsible for them. They shall not be taken out of the office by anyone, except by the judge of the court, or an attorney thereof when allowed by special order of the court or judge, or some general rule therefor prescribed by the court and entered in the journal.

Custody of the records and files.

SEC. 539. Whenever requested the clerk, upon being tendered legal fees therefor, shall furnish to any person a certified copy of any portion of such records or files, and no person other than such clerk is entitled to make such copy or to the use of the records or files for such purposes. Whenever requested the clerk shall search such records and files and give a certificate thereof according to the nature of the inquiry.

Search and examination of records and files.

CHAPTER FIFTY-FOUR.

GENERAL PROVISIONS CONCERNING SPECIAL PROCEEDINGS.

Sec.
540. Parties to special proceedings, how designated.
541. Judgments, orders, and motions.

SEC. 540. The party prosecuting a writ of review, writ of mandamus, writ of habeas corpus, or a proceeding for contempt shall be known as the plaintiff, and the adverse party as the defendant.

Parties to special proceedings, how designated.

SEC. 541. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definition of a motion and an order in an action are applicable to similar acts in a special proceeding.

Judgments, orders, and motions.

CHAPTER FIFTY-FIVE.

OF THE WRIT OF REVIEW.

Sec.
542. Writ of certiorari to be known as writ of review.
543. Who may prosecute.
544. By whom allowed and how applied for.
545. When allowed.
546. Undertaking of plaintiff.
547. To whom directed.
548. Stay of proceedings; when returnable.
549. When and by whom writ issued; how served.
550. Incomplete return; limitation of writ.
551. Power of court to review.

Writ of certiorari to be known as writ of review.

SEC. 542. The writ formerly known as the writ of certiorari is known in this title as the writ of review.

Who may prosecute.

SEC. 543. Any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors therein as in this chapter prescribed. Upon a review, the court may review any intermediate order involving the merits necessarily affecting the decision or determination sought to be reviewed.

By whom allowed and how applied for.

SEC. 544. The writ shall be allowed by the district court or judge thereof, upon the petition of the plaintiff, describing the decision or determination sought to be reviewed with convenient certainty, and setting forth the errors alleged to have been committed therein. Such petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney of the court, to the effect that he had examined the process or proceeding and the decision or determination therein, and that the same is erroneous, as alleged in the petition.

When allowed.

SEC. 545. The writ shall be allowed in all cases where there is no appeal or other plain, speedy, and adequate remedy, and where the inferior court, officer, or tribunal in the exercise of judicial functions appears to have exercised such functions erroneously, or to have exceeded it or his jurisdiction, to the injury of some substantial right of the plaintiff.

Undertaking of plaintiff.

SEC. 546. Before allowing the writ, the court or judge shall require the party applying therefor to give an undertaking, with one or more sureties, subject to its or his approval, in the amount to be fixed by it or him, conditioned that he will perform the judgment or decision sought to be reviewed in case the district court shall so order, and judgment may be given by said court against the applicant and his surety or sureties in case the judgment or decision sought to be reviewed shall be affirmed for the amount thereof, and the costs of said proceeding.

To whom directed.

SEC. 547. The writ shall be directed to the court, officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring it or them to return the writ to the district court, within a time therein specified, with a certified copy of the record or proceedings in question annexed thereto, that the same may be reviewed by such district court, and requiring the defendant to desist from further proceedings in the matter to be reviewed.

Stay of proceedings; when returnable.

SEC. 548. The words in the writ requiring the stay of proceedings may be inserted or omitted in the discretion of the court or judge issuing the same, and the proceedings shall be stayed or not accordingly. The writ shall be made returnable at the next term of the district court, or in vacation, and if the latter, the same may be tried and judgment given therein, by the judge thereof, in like manner and with like effect as in term time.

When and by whom writ issued; how served.

SEC. 549. Upon the filing of the order allowing the writ, and the petition and undertaking of the plaintiff, the clerk shall issue the writ,

according to the direction of the order. The writ shall be served by delivering a copy of the original to the opposite party in the action or proceeding sought to be reviewed, at least ten days before the return of the original writ, and may be served by an officer or person authorized to serve a summons, who shall indorse on the original writ the manner of service thereof.

Incomplete return; limitation of writ.

SEC. 550. If the return to the writ be incomplete, the court may order a further return to be made. In no case shall a writ be allowed unless the application therefor be made within six months from the date of the decision or determination complained of.

Power of court to review.

SEC. 551. Upon the review the court shall have power to affirm, modify, reverse, or annul the decision or determination reviewed, and, if necessary, to award restitution to the plaintiff, or, by mandate, direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the district court on review an appeal may be taken in like manner and with like effect as from a judgment of such district court in an action.

CHAPTER FIFTY-SIX.

OF THE WRIT OF MANDAMUS.

Sec.
552. Mandamus to be known as in this chapter.
553. To whom writ may issue; not to control judicial discretion.
554. How writ applied for and by whom allowed and issued.
555. How directed and served.
556. Either alternative or peremptory; what to contain.
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558. When defendant may show cause, and how.
559. If defendant fail to show cause, peremptory writ to issue.
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562. Recovery of damages a bar to other suit or action.
563. When court may impose fine upon defendant.
564. How tried.
565. Appeal from judgment of district court.

Mandamus to be known as in this chapter.

SEC. 552. The writ of mandamus is known in this code as prescribed and regulated in this chapter.

To whom writ may issue; not to control judicial discretion.

SEC. 553. It may be issued to any inferior court, corporation, board, officer, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. But though the writ may require such court, corporation, board, officer, or person to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

How writ applied for and by whom allowed and issued.

SEC. 554. The writ shall be allowed by the court, or judge thereof, upon the petition, verified as a complaint in an action, of the party beneficially interested. It may be allowed with or without notice to the adverse party, as in the case of a writ of review. Upon the filing of the petition and order of allowance, the writ shall be issued by the clerk in accordance therewith.

How directed and served.

SEC. 555. The writ shall be directed to the court, corporation, board, officer, or person mentioned or designated in the order of allowance, and may be served thereon by any officer or person authorized to serve a summons by delivery of a copy of the original to such officer or person, or to any member of such court, or to any officer of such corporation upon whom this code authorizes a summons to be served. The proof of service shall be the same as in a writ of review, and obedience to the writ may be enforced in such manner as the court, or judge thereof, shall direct.

Either alternative or peremptory; what to contain.

Sec. 556. The writ is either alternative or peremptory. When it is alternative, it shall state concisely the facts according to the petition, showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court or judge thereof by whom the writ was allowed, at a time and place therein specified, why he has not done so; and that he then and there return the writ, with his certificate annexed, of having done as he is commanded, or the cause of his omission thereof. When peremptory, the writ shall be in similar form, except that the words requiring the defendant to show cause why he has not done as commanded, and to return the cause therefor, shall be omitted.

When peremptory writ shall be issued in first instance.

Sec. 557. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus shall be allowed in the first instance; in all other cases the alternative writ shall be first issued.

When defendant may show cause, and how.

Sec. 558. On the return day of the alternative writ, or such further day as the court or judge thereof may allow, the defendant on whom the writ shall have been served may show cause by demurrer or answer to the writ in the same manner as to a complaint in an action.

If defendant fail to show cause, peremptory writ to issue.

Sec. 559. If the defendant do not show cause by demurrer or answer, a peremptory mandamus shall be allowed against him. If the answer contain new matter, the same may be demurred or replied to by the plaintiff within such time as the court or judge may prescribe. If the replication contain new matter, the same may be demurred to by the defendant within such time as the court or judge may prescribe, or he may countervail such matter on the trial or other proceedings by proof, either in direct denial or by way of avoidance.

Pleadings and mode of proceedings therein.

Sec. 560. The pleadings in the proceeding by mandamus are those mentioned in the two sections last preceding. They are to have the same effect, and to be construed and may be amended in the same manner, as pleadings in an action. Either party may move to strike out, or be allowed to plead over after motion or demurrer allowed or disallowed, and the issues joined shall be tried and the further proceedings thereon had in like manner and with like effect as in an action.

Recovery of damages.

Sec. 561. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained by reason of the premises, to be ascertained in the same manner as in an action, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

Recovery of damages a bar to other suit or action.

Sec. 562. A recovery of damages by virtue of this chapter against a party who shall have made a return to a writ of mandamus is a bar to any other action against the same party for the same cause.

When court may impose fine upon defendant.

Sec. 563. Whenever a peremptory mandamus is directed to a public officer or body commanding the performance of any public duty specially enjoined by law, if it appear to the court or judge thereof that such officer or any member of such body has without just excuse refused or neglected to perform the duty so enjoined, the court or judge may imprison, or impose a fine, not exceeding one thousand dollars, upon every such officer or member of such body for each refusal.

How tried.

Sec. 564. In the district court the writ may be made returnable either in term time or vacation, and if the latter, may be tried and determined before the judge thereof in like manner and with like effect as in term time.

Appeal from judgment of district court.

Sec. 565. From the judgment of the district court, or judge thereof, refusing to allow a mandamus, or directing a peremptory mandamus, an appeal may be taken in like manner and with like effect as in an action.

CHAPTER FIFTY-SEVEN.

OF THE WRIT OF HABEAS CORPUS.

Sec.
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579. If any legal cause shown, discharge granted.
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581. In certain cases, when to be discharged.
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583. On commitment for criminal offenses, how to proceed.
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591. Precept requiring the production of the person.
592. Obedience to judgment of discharge, how enforced.
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598. Penalty for refusing copy of order.
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601. How served.
602. Same subject.
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605. Proof of service.
606. Within what time return to be made.
607. What court has jurisdiction.
608. Appeal from judgment; question not to be reexamined.

Who may prosecute.

SEC. 566. Every person imprisoned, or otherwise restrained of his li erty, within the district, under any pretense whatsoever, except in the cases specified in the next section, may prosecute a writ of habeas corpus according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal to be delivered therefrom.

Who not entitled to prosecute.

SEC. 567. Persons properly imprisoned or restrained by virtue of the legal judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution regularly and lawfully issued upon such judgment or decree, shall not be allowed to prosecute the writ.

By whom allowed, and application therefor.

SEC. 568. The writ shall be allowed by the court, or the judge thereof, upon the petition of the party for whose relief it is intended, or by some other person in his behalf, signed and verified by the oath of the petitioner, to the effect that he believes it to be true.

Petition for writ; what it shall contain.

SEC. 569. The petition shall state in substance—

First. That the party in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the place where, and officer or person by whom he is imprisoned or restrained, naming both parties, if their names be known, or describing them, if not known;

Second. That such person is not imprisoned or restrained by virtue of any order, judgment, or process specified in section five hundred and sixty-seven;

Third. The cause or pretense of such imprisonment or restraint, according to the best knowledge or belief of the petitioner;

Fourth. If the imprisonment or restraint be in virtue of any order, warrant, or process, a copy thereof shall be annexed to the petition,

or it must be alleged that, by reason of the removal or concealment of the party before the application, a demand of such copy could not be made, or that such demand was made, and the legal fees therefor tendered to the person having the party in his custody, and that a copy was refused;

Fifth. If the imprisonment or restraint be alleged to be illegal, in what the alleged illegality consists;

Sixth. That the legality of the imprisonment or restraint has not been already adjudged upon a prior writ of habeas corpus to the knowledge or belief of the petitioner.

When allowed.

SEC. 570. The court or judge to whom the petition is presented must allow the writ without delay, unless it appears from the petition itself, or from the documents annexed thereto, that the person for whose relief it is intended is by the provisions of this chapter prohibited from prosecuting the writ. Upon the filing of the petition and the order of allowance with the clerk, the clerk shall issue the writ immediately in accordance therewith.

What the writ shall contain.

SEC. 571. The writ shall command the defendant to produce the person imprisoned or restrained, by whatsoever name he may be charged or called, and certify and return therewith the time and cause of his imprisonment or restraint, before the court or judge allowing the writ, at a time and place therein specified, or immediately after the receipt of the writ, to do and receive what shall then and there be considered concerning the person so imprisoned or restrained; or when it appears by the petition and documents thereto annexed that the cause or offense for which the person is imprisoned or restrained is not bailable, the production of the party may be dispensed with, though such production be prayed for in the petition, and the writ issued accordingly.

Not to be disobeyed for want of form.

SEC. 572. The writ shall not be disobeyed for any defect of form. It is sufficient—

First. If the officer or person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and anyone who may be served with the writ is to be deemed the officer or person to whom it was directed, although it may be directed to him by a wrong name or description, or to another person;

Second. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

What the return shall contain.

SEC. 573. The officer or person upon whom the writ shall have been duly served shall state in his return, plainly and unequivocally—

First. Whether he has or has not the party in his custody or power or under his restraint, and if he have not, whether he has had the party in his custody or under his power or restraint at any and what time prior or subsequent to the date of the writ;

Second. If he has the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

Third. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable;

Fourth. If the person upon whom such writ shall have been served shall have had the party in his power or custody or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return shall be signed by the person making the same, and, except where such person shall be a sworn

public officer and shall make his return in his official capacity, it shall be verified by oath.

Person to be produced.

SEC. 574. The person or officer on whom the habeas corpus shall have been served shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Warrant to issue in case of neglect or refusal to obey.

SEC. 575. If the person upon whom such writ shall have been duly served shall refuse or neglect to obey the same by producing the party named in such writ and making a full and explicit return thereto within the time required, and no sufficient excuse be shown, it shall be the duty of the court or judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue a warrant against such person, directed to the marshal, and commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and on such person being so brought he shall be committed to close custody until he shall make return to such writ and comply with any order that may be made in relation to the person for whose relief such writ shall have been issued.

If officer neglects, to whom warrant to issue.

SEC. 576. If the marshal or any deputy shall have neglected to return such writ, the warrant may be directed to any other person to be designated therein, who shall have full power to execute the same, and such marshal or deputy upon being brought up may be committed to any jail or other place of imprisonment in the district.

Precept to marshal.

SEC. 577. The court or judge by whom any such warrant shall be issued may also, at the same time or afterwards, issue a precept to the marshal or other person to whom such warrant shall have been directed, commanding him to bring forthwith before such court or judge the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such marshal or person until discharged or remanded.

When cause to be inquired into.

SEC. 578. The court or judge before whom the party shall be brought on such writ shall, immediately after the return thereof, proceed to examine into the facts contained in such return and into the cause of the imprisonment or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

If any legal cause shown, discharge granted.

SEC. 579. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which he is held.

When party to be remanded.

SEC. 580. It shall be the duty of the court or judge forthwith to remand such party if it shall appear that he is legally detained in custody.

In certain cases, when to be discharged.

SEC. 581. If it appear on the return that the prisoner is in custody by virtue of an order or civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, such prisoner shall be discharged in either of the following cases:

First. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum, or person;

Second. When, though the original imprisonment was lawful, yet by some act, omission, or event which has taken place afterwards the party has become entitled to be discharged;

Third. When the order or process is defective in some matter of substance required by law, rendering such process void;

Fourth. When the order or process, though in proper form, has been issued in a case not allowed by law;

Fifth. When the person having the custody of the prisoner under such order or process is not the person empowered by law to detain him; or,

Sixth. When the order or process is not authorized by any judgment of any court, nor by any provision of law.

Legality of certain judgments and process not to be inquired into.

SEC. 582. But no court or judge, on the return of a writ of habeas corpus, has power to inquire into the legality or justice of any order, judgment, or process specified in section five hundred and sixty-seven, nor into the justice, propriety, or legality of any commitment for a contempt made by a court, officer, or body, according to law, and charged in such commitment, as provided by law.

On commitment for criminal offenses, how to proceed.

SEC. 583. If it appear that the party has been legally committed for a criminal offense, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be probably guilty of such offense, although the commitment be irregular, he shall forthwith be remanded to the custody or placed under the restraint from which he was taken, if the officer or person under whose custody or restraint he was be legally entitled thereto; if not so entitled, he shall be committed to the custody of the officer or person so entitled.

Until judgment given, how to be kept.

SEC. 584. Until judgment be given upon the return, the party may either be committed to the custody of the marshal or placed in such care or under such custody as his age and other circumstances may require.

When notice to be given to third party.

SEC. 585. When it appears, from the return to the writ, that the party named therein is in custody on an order or process under which another person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the party so interested, or his attorney, shall have had notice of the time and place at which such writ shall have been made returnable.

Notice, when given to the district attorney.

SEC. 586. When it appears from the return that the party is imprisoned or restrained on a criminal accusation, the court or judge shall make no order for his discharge until notice of the return is given to the district attorney.

Return may be controverted.

SEC. 587. The plaintiff in the proceeding, on the return of the writ, may, by replication, verified as in an action, controvert any of the material facts set forth in the return, or he may allege therein any fact to show, either that his imprisonment or restraint is unlawful, or that he is entitled to his discharge; and thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of the imprisonment or restraint, or against the same, and to dispose of the party as the law and justice of the case may require.

Pleadings on the return.

SEC. 588. The plaintiff may demur to the return, or the defendant may demur to the new matter, if any, set forth in the replication of the plaintiff, or by proof controvert the same, as upon a direct denial or avoidance. The pleadings herein provided for shall be made within such time as the court or judge shall direct, and they shall be construed and have the same effect as in an action.

When production of person dispensed with.

SEC. 589. Whenever, from the sickness or infirmity of the party, he can not without danger be produced, the officer or person in whose custody he is may state that fact in his return to the writ, and if satisfied of the truth of the allegation, and the return be otherwise sufficient, the court or judge shall proceed to decide on the return and to dispose of the matter in the same manner as if the party had been produced.

Judgment of discharge or dismissal of proceedings.

SEC. 590. If it appear that the party detained is illegally imprisoned or restrained, judgment shall be given that he be forthwith discharged; otherwise judgment shall be given that the proceeding be dismissed and the party remanded.

Precept requiring the production of the person.

SEC. 591. Notwithstanding the issuing of the writ without requiring the production of the person, the court or judge before whom the same was returnable may, before final decision, issue a precept to

the officer or other person to whom the writ was directed, requiring the production of the person.

Obedience to judgment of discharge, how enforced.

SEC. 592. Obedience to a judgment for the discharge of a person imprisoned or restrained, pursuant to the provisions of this chapter, may be enforced by the court or judge by proceedings for a contempt. No officer or other person is liable to any action or proceeding for obeying such judgment of discharge.

Person once discharged not again imprisoned.

SEC. 593. No person who has been finally discharged upon a proceeding by habeas corpus, pursuant to the provisions of this chapter, shall be again imprisoned, restrained, or kept in custody, for the same cause; but it is not to be deemed the same cause—

First. If he have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offense by the legal order or process of the court, wherein he is bound by recognizance or undertaking to appear, or in which he is indicted or convicted for the same offense; or,

Second. If, after a judgment or discharge for a defect of evidence, or for a material defect in the commitment, in a criminal case, the party be again arrested on sufficient evidence, and committed by legal process for the same offense; or,

Third. If, after a civil action, the party have been discharged for any illegality in the judgment, decree, or process hereinbefore specified, and be afterwards imprisoned for the same cause of action; or,

Fourth. If, in a civil action, he have been discharged from commitment on a writ of arrest, and be afterwards committed on execution, in the same action, or on a writ of arrest in another action, after the dismissal of the first one.

When warrant to issue in lieu of habeas corpus.

SEC. 594. Whenever it appears by satisfactory evidence that any person is illegally imprisoned or restrained, and that there is good reason to believe that he will be carried out of the district, or suffer some irreparable injury before he can be relieved by the issuing of a writ of habeas corpus, any court or judge authorized to issue such writ may issue a warrant reciting the facts, and directed to the marshal or any other person therein designated, commanding such officer or person to take such person, and forthwith to bring him before such court or judge, to be dealt with according to law.

Arrest of the person having custody of the party.

SEC. 595. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having the party in his custody, as for a criminal offense, committed in the taking or detaining of such party, the warrant may also contain an order for the arrest of such person for such offense.

Warrant, how executed and the proceedings thereon.

SEC. 596. Any officer or person to whom such warrant shall be directed shall execute the same by bringing the party therein named and the person who detains him, if so commanded by the warrant, before the court or judge issuing the same; and thereupon the person detaining such party shall make a return in like manner, and the like proceeding shall be had thereon as if a writ of habeas corpus had been issued in the first instance.

Person arrested to be committed or bailed.

SEC. 597. If the person having such party in his custody be brought before the court or judge as for a criminal offense, he shall be examined, committed, bailed, or discharged by the court or judge in like manner as in other criminal cases of the like nature.

Penalty for refusing copy of order.

SEC. 598. Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority by which he shall detain any person to anyone who shall demand such copy and tender the fees therefor shall forfeit two hundred dollars to the person so detained.

When district attorney may apply for a writ.

SEC. 599. Whenever a writ of habeas corpus is required in any action or proceeding, civil or criminal, to which the United States is a party, the application therefor may be made by the district attorney, and

whenever so issued the court or judge shall state in the order of allowance that it was issued on such application.

By whom served; tender of fees and undertaking.

Sec. 600. A writ of habeas corpus may be served by the marshal, or by any other person therein designated, at any place within the district, and the service thereof shall not be deemed complete, so as to require the prisoner to be brought up before the court or judge issuing the same, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a marshal or other officer, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such marshal or other officer, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific amount of money, and if not, then in such a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, to the effect that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed shall make return thereto, in the manner required by section five hundred and seventy-three, and shall state therein the reason why such prisoner is not produced, and thereupon the court or judge granting the writ may proceed as if the prisoner were produced. But this section, from and inclusive of the words "and the service thereof," does not apply to a case wherein the writ is issued on the application of the district attorney.

How served

Sec. 601. The writ of habeas corpus may be served by delivery of a certified copy of the original to the officer or person to whom it is directed, or, if he can not be found, by leaving such copy at the jail or other place in which the party is imprisoned or restrained, with any under officer or other person having charge for the time of such party.

Same subject.

Sec. 602. If the officer or person on whom the writ ought to be served conceal himself, or refuse admittance to the person attempting to serve it, it may be served by affixing it in some conspicuous place on the outside either of his dwelling house or the jail or other place where the party is confined.

Duty to obey writ.

Sec. 603. It is the duty of the marshal or other officer upon whom a writ of habeas corpus has been served, whether such writ be directed to him or not, upon payment or tender of the fees allowed by law and the delivery or tender of the undertaking herein prescribed, to obey and return the writ according to the exigency thereof; and it is the duty of every other person upon whom the writ is served, having the custody of the person for whose benefit it is issued, to obey and return it in like manner without requiring the payment of any fees, unless the judgment of such fees has been required by the court or judge allowing such writ.

When charges for producing party may be ordered paid.

Sec. 604. Every court or judge allowing a writ of habeas corpus, directed to a person other than the marshal or other officer, may, in its discretion, require, in order to render the service effectual, that the charges of producing the party be paid by the applicant; and in such case the court or judge shall, in the order allowing the writ, specify the amount of such charges, which shall not exceed the fees allowed by law to marshals for similar services.

Proof of service.

Sec. 605. The proof of service of the writ of habeas corpus shall be the same as in the service of a summons, except that the same shall be indorsed upon a copy of the writ made by the officer or person serving it, and returned to the clerk who issued the writ.

Within what time return to be made.

Sec. 606. If the writ be returnable at a certain time, such return shall be made and the party produced, if required or there be no valid

excuse therefor, as herein provided, at the time and place specified therein; if it be returnable forthwith, and the place of return be within twenty miles of the place of service, the return must be made and the party produced within twenty-four hours, and the same time is allowed for every additional twenty miles.

What court has jurisdiction.

SEC. 607. At any time after the allowance of such writ or warrant by the court or judge thereof, the plaintiff therein, or the person applying therefor on his behalf, may give notice to the judge issuing the same, and thereupon, if necessary to avoid delay, such judge shall by order require that the return be made and the party produced before him at such time and place as may be convenient.

Appeal from judgment; question not to be reexamined.

SEC. 608. Any party to a proceeding by habeas corpus, including the United States when the district attorney appears therein, may appeal from the judgment of the district court refusing to allow such writ or any final judgment therein, either in term time or vacation, in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be reexamined upon another or subsequent proceeding of the same kind.

CHAPTER FIFTY-EIGHT.

OF THE PUNISHMENT OF CONTEMPTS.

Sec.
609. Contempts defined.
610. Punishment for contempt.
611. In presence of court, how punished.
612. In other cases, mode of proceeding.
613. If defendant imprisoned, may be brought up.
614. The United States is plaintiff; when district attorney may prosecute.
615. When defendant bailed; how warrant executed.
616. Bail, how given.
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618. Determination and sentence.
619. Judgment to indemnify party injured.
620. When party may be imprisoned.
621. Person also liable to indictment.
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623. Appeal from judgment.

Contempts defined.

SEC. 609. The following acts or omissions, in respect to a court of justice, or proceedings therein, are deemed to be contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding;

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

Third. Misbehavior in office, or other willful neglect or violation of duty, by an attorney, clerk, marshal, or other person appointed or selected to perform a judicial or ministerial service;

Fourth. Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

Fifth. Disobedience of any lawful judgment, order, or process of the court;

Sixth. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance;

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

Eighth. Unlawfully detaining a witness or party to an action or proceeding while going to, remaining at, or returning from the court where the same is for trial;

Ninth. Any other unlawful interference with the process or proceedings of the court;

Tenth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness;

Eleventh. When summoned as a juror in a court, improperly conversing with a party to an action or proceeding to be tried at such court, or with any other person in relation to the merits of such action, or proceeding, or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or proceeding contrary to law, after such action or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate, or officer. The conduct specified in subdivisions first and second of this section, when committed before a judicial officer, or disobedience of the lawful order or process of such officer made in the cases specified in section seven hundred and eleven, is also to be deemed a contempt of the authority of such officer.

Punishment for contempt.

SEC. 610. Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars nor the imprisonment six months; and when the contempt is not one of those mentioned in subdivisions first and second of the last section, or in subdivision first of section seven hundred and eleven it must appear that the right or remedy of a party to an action or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by fine not exceeding one hundred dollars.

In presence of court, how punished.

SEC. 611. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. In other cases of contempt the trial shall proceed upon testimony produced as in criminal cases and the accused shall be entitled to be confronted with the witnesses against him, but such trial shall be by the court or, in the discretion of the court, upon application of the accused, a trial by jury may be had as in any criminal case.

In other cases, mode of proceeding.

SEC. 612. In cases other than those mentioned in the section last preceding, before any proceedings can be taken therein the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

If defendant imprisoned, may be brought out.

SEC. 613. If the party charged be in the custody of an officer, by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody, that he may answer, and he shall thereupon be produced and held, until an order be made for his disposal.

The United States is plaintiff; when district attorney may prosecute.

SEC. 614. In the proceeding for a contempt the United States is the plaintiff. In all cases of public interest the proceeding may be prosecuted by the district attorney on behalf of the United States; and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the United States.

When defendant bailed; how warrant executed.

SEC. 615. Whenever a warrant of arrest is issued pursuant to this chapter the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the war-

rant or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the marshal must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged as provided in section six hundred and sixteen.

Bail, how given.

SEC. 616. The defendant shall be discharged from the arrest upon executing and delivering to the marshal, at any time before the return day of the warrant, an undertaking, with two sufficient sureties, to the effect that the defendant will appear on such return day, and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant.

Return of warrant, and proceedings on appearance.

SEC. 617. The marshal shall return the warrant of arrest, and the undertaking, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or has appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Determination and sentence.

SEC. 618. Upon the evidence so taken the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged, and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

Judgment to indemnify party injured.

SEC. 619. If any loss or injury to a party in an action or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover off the defendant a sum of money sufficient to indemnify him and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action or proceeding by the aggrieved party for such loss or injury.

When party may be imprisoned.

SEC. 620. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it; and in such case the act must be specified in the warrant of commitment.

Person also liable to indictment.

SEC. 621. Persons proceeded against according to the provisions of this chapter are also liable to indictment for the same misconduct, if it be an indictable offense; but the court, before his conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

If party do not appear, proceedings thereon.

SEC. 622. When a warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

Appeal from judgment.

SEC. 623. Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from a judgment in an action; but such appeal shall not have the effect to stay the proceeding in any other action or proceeding, or upon any judgment, decree, or order therein concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided in the procedure before them.

CHAPTER FIFTY-NINE.

OF THE MEANS OF THE PRODUCTION OF EVIDENCE.

Sec.
624. Subpœna for witness defined.
625. Subpœna, how and by whom issued.
626. Subpœna, when and to whom issued in blank.
627. Subpœna, how served.
628. How served if witness concealed.
629. Proof of service.
630. When witness obliged to attend.
631. Person present compelled to testify.
632. Disobedience to subpœna, how punished.
633. Forfeiture therefor.
634. When warrant may be issued to bring witness.
635. Warrant of arrest or commitment.
636. If witness be a prisoner, how produced or examined.

Subpœna for witness defined.

SEC. 624. The process by which the attendance of a witness is required is a subpœna. It is a writ directed to a person and requiring his attendance at a particular time and place, to testify as a witness in a particular action, suit, or proceeding therein specified, on behalf of a particular party therein mentioned. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpœna, how and by whom issued.

SEC. 625. The subpœna is as follows:

First. To require attendance before a court of record, or at the trial of an issue therein, or out of such court in an action, suit, or proceeding pending therein, by the clerk of such court;

Second. To require attendance before a commissioner appointed to take testimony by a court of the United States, or any State or Territory, or any foreign country, by any clerk of a court of record, in places within the jurisdiction of such court;

Third. To require attendance before the judge, justice of the peace, or other person authorized by law to take the testimony or affidavit of another, by such judge, justice of the peace, or other person, in the places within their respective jurisdiction.

Subpœna, when and to whom issued in blank.

SEC. 626. The subpœnas authorized by subdivisions first and second of the last section, upon the request of a party and an attorney of the court, shall be issued by the clerk in blank, and delivered to such party or attorney, who may thereafter fill up such blank with the name of the witness or witnesses that he may desire to be subpœnaed, and cause the same to be served as in this chapter required.

Subpœna, how served.

SEC. 627. A subpœna may be served by the party or any other competent person over eighteen years of age. The service is made by reading and showing the original and delivering a copy to the witness personally, giving or offering to him at the same time the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

How served if witness concealed.

SEC. 628. The marshal or any deputy or any person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed, so as to prevent the service of a subpœna, and serve the same upon such witness.

Proof of service.

SEC. 629. Proof of service of a subpœna shall be made in the same manner as in the service of a summons.

When witness obliged to attend.

SEC. 630. A witness is not obliged to attend for oral examination or otherwise at a place distant more than one hundred miles from the place where he resides or at which he may be served with a subpœna; except that in an action or proceeding pending in a court of record the court or judge thereof, upon the affidavit of the party, or some one on his behalf, showing that the testimony of the witness is material

and his oral examination important and desirable, may indorse upon the subpœna an order for the attendance of the witness; the service of such subpœna and order and the payment of legal fees to the witness are sufficient to require his attendance, if he be served within the district.

Person present compelled to testify.

SEC. 631. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance before such court or officer on a subpœna.

Disobedience to subpœna, how punished.

SEC. 632. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer before whom he is required to attend or the refusal takes place, and if the witness be a party his complaint, answer, or reply may be stricken out.

Forfeiture therefor.

SEC. 633. A witness disobeying a subpœna duly served shall forfeit to the party requiring his attendance the sum of fifty dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered by an action at law.

When warrant may be issued to bring witness.

SEC. 634. In case of the failure of a witness to attend, the court or officer before whom he is required to attend, upon proof of the due service of the subpœna and tender of his fees, may issue a warrant to the marshal requiring him to arrest the witness and bring him before the court or officer where his attendance was required.

Warrant of arrest or commitment.

SEC. 635. Every warrant of commitment issued by a court or officer pursuant to this chapter shall specify therein the cause of the commitment; and if it be for refusing to answer a question such question shall be stated in the warrant.

If witness be a prisoner, how produced or examined.

SEC. 636. If the witness be a prisoner, confined in a prison within the district, an order for his examination in the prison upon a deposition, or for his temporary removal and production, before a court or officer, for the purpose of being orally examined, may be made as follows:

First. By the court or judge thereof in which the action or proceeding is pending, unless it be a court of a justice of the peace;

Second. By any judge of a court of record, when the action or proceeding is pending in a justice's court, or when the witness's deposition, affidavit, or oral examination is required before a judge or other person out of court;

Third. Such order shall only be made upon the affidavit of the party desiring the order, or some one on his behalf, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality;

Fourth. If the witness be imprisoned at the place where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required; in all other cases his examination shall be taken by deposition.

CHAPTER SIXTY.

OF THE MODE OF TAKING THE TESTIMONY OF WITNESS.

Sec.
637. How authenticated if taken outside the district.
638. Affidavit, when may be used.
639. When deponent to be produced for cross-examination.
640. Proof of publication by affidavit.
641. Where affidavit may be filed, and effect thereof.

How authenticated if taken outside the district.

SEC. 637. An affidavit or deposition taken in any State or Territory of the United States, the District of Columbia, or in a foreign coun-

try, otherwise than upon commission, must be authenticated as follows before it can be used in the district:

First. It must be certified by a commissioner appointed by the governor of the district to take affidavits and depositions in such State, Territory, District, or country, or

Second. It must be certified by a judge of a court having a clerk and a seal to have been taken and subscribed before him at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court, under the seal thereof.

Affidavit, when may be used.

Sec. 638. An affidavit may be used to prove the service of a summons, notice, or other paper in an action or proceeding to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly provided for by law, except as provided in the next section.

When deponent to be produced for cross-examination.

Sec. 639. Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice requiring the person making the affidavit to be produced before some officer authorized to administer oaths, therein named, for cross-examination. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge thereof may direct, upon a previous notice to his adversary of at least three days, he produce the deponent for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon such production the deponent may be examined by either party, but a party shall not be obliged to produce a witness for examination as in this section provided, except within the district where the provisional remedy was allowed.

Proof of publication by affidavit.

Sec. 640. Proof of the publication of a document or notice required by law, or by an order of court or a judge, to be published in a newspaper, may be made by the affidavit of the printer of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. But such affidavit must be made within six months after the last day of publication.

Where affidavit may be filed, and effect thereof.

Sec. 641. If such affidavit be made in an action or proceeding pending in a court, it may be filed with the clerk thereof; and the same is primary evidence of the facts therein stated.

Chapter Sixty-one.

OF DEPOSITIONS.

Sec.
642. Deposition, when used.
643. Testimony of witness out of the district.
644. When deposition taken of witness within district.

Deposition, when used.

Sec. 642. In all cases other than those mentioned in section six hundred and thirty-eight where a written declaration under oath is used, it must be a deposition.

Testimony of witness out of the district.

Sec. 643. The testimony of a witness out of the district may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding at any time after a question of fact has arisen therein.

When deposition taken of witness within district.

Sec. 644. The testimony of a witness in the district may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, by the adverse party;

Second. When the witness's residence is such that he is not obliged to attend in obedience to the subpœna, as provided in section six hundred and thirty;

Third. When the witness is about to go more than one hundred miles beyond the place of trial;

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

Fifth. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

CHAPTER SIXTY-TWO.

OF THE MANNER OF TAKING DEPOSITIONS OUT OF THE DISTRICT.

Sec.
645. Testimony of a witness out of the district, how taken.
646. Commission, how and by whom issued.
647. Interrogatories may be annexed.
648. Contents of commission.
649. Trial, when postponed therefor.
650. Deposition taken out of district before commission.
651. Either party may attend or require written interrogatories.

Testimony of a witness out of the district, how taken.

SEC. 645. The deposition of a witness out of the district may be taken upon commission issued from the court, or without commission before a commissioner appointed by the governor of the district to take depositions in any State, Territory, or District of the United States, or in any foreign country.

Commission, how and by whom issued.

SEC. 646. The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his own court, on the application of either party upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it.

Interrogatories may be annexed.

SEC. 647. Such interrogatories, direct and cross, as the respective parties may prepare, to be settled by the clerk or justice in a summary manner as to the form thereof, if the parties disagree, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Contents of commission.

SEC. 648. The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without them, in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or justice who issued the commission, or other person designated and agreed upon, and forward it to him by mail or other usual channel of conveyance.

Trial, when postponed therefor.

SEC. 649. A trial or other proceeding shall not be postponed by reason of a commission not being returned, except it appear by affidavit that the testimony of the witness is material and necessary, and that proper diligence has been used to obtain it.

Deposition taken out of district before commission.

SEC. 650. The deposition of a witness out of the district, and in any State, Territory, or District of the United States, may also be taken before a commissioner appointed by the governor of the district to take depositions in such State, Territory, or District, upon giving to the adverse party eight days' notice of the time and place of the examination, the name of the commissioner, and the witness, if the distance of the place of examination from the place where the testimony is to be used does not exceed fifty miles, and one day in addition for every additional twenty-five miles.

Either party may attend or require written interrogatories.

SEC. 651. Either party may attend upon such examination and examine the witnesses upon oral interrogatories, but if either party,

by a written notice to the other within three days from the service of the original notice, require it, it shall be taken upon written interrogatories, to be settled, if not agreed upon, by the same officer and in the same manner as in case of a deposition upon commission; and in such case the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

CHAPTER SIXTY-THREE.

OF THE MANNER OF TAKING DEPOSITIONS IN THE DISTRICT.

Sec.
652. Depositions in the district, when taken, and notice thereof.
653. How taken; either party may attend.
654. Certificate of officer.
655. Deposition, to whom forwarded.
656. May be used by either party; objections to relevancy or form.
657. Proof before using certain depositions; insufficient notice.
658. Depositions may be read at any time; exclusion of a portion.

Depositions in the district, when taken, and notice thereof.

SEC. 652. Either party may take the testimony of a witness in the district by deposition, in the cases allowed by this code, before the clerk of a court of record, or other person authorized to administer oaths, on giving the adverse party previous notice of the time and place of the examination, the name of the officer, and the witness; such notice shall be given at least three days before the day of the examination, if the distance of the place of examination from the residence of the person to whom notice is given does not exceed twenty-five miles, and one day in addition for every additional twenty-five miles, unless the court or judge thereof by order prescribe a shorter time. When a shorter time is prescribed the order shall be served with the notice.

How taken; either party may attend.

SEC. 653. Either party may attend upon such examination and examine the witness upon oral interrogatories. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed it shall be read to or by the witness and subscribed by him. Before subscribing it the witness shall be allowed, if he desire it, to correct or explain any statement in the deposition, but such statement, although corrected and explained, shall remain a part of the deposition.

Certificate of officer.

SEC. 654. The officer taking the deposition shall append thereto his certificate, under the seal of his office, if there be a seal, to the effect that the deposition was taken before him, at a place mentioned, between certain hours of a day or days mentioned, and reduced to writing by a person therein named; that, before proceeding to the examination, the witness may be duly sworn to tell the truth, the whole truth, and nothing but the truth; that the deposition was read to or by the witness and then by him subscribed.

Deposition, to whom forwarded.

SEC. 655. The officer taking the deposition shall inclose the same in a sealed envelope, directed to the clerk of the court, or the justice of the peace before whom the action or proceeding is pending, or such other person as may by writing be agreed upon, and deliver or forward the same accordingly by mail or other usual channel of conveyance.

May be used by either party; objections to relevancy or form.

SEC. 656. A deposition taken pursuant to the provisions of this chapter may be used by either party upon the trial or proceeding against any party giving or receiving the notice, subject to all legal exceptions. But no objections can be made at the trial to the relevancy of the testimony or the form of the interrogatory, unless the same appear by the deposition or written interrogatories to have been taken at the time of the examination or the settling of such interrogatories. Section six hundred and fifty-three, except the first sentence thereof, and sections six hundred and fifty-four and six hundred and

fifty-five shall apply to depositions taken out of the district on oral interrogatories.

Proof before using certain depositions; insufficient notice.

SEC. 657. If a deposition be taken under subdivisions two, three, or four of section six hundred and sixty, before the same can be used proof shall be made that the witness did reside beyond the service of a subpœna, or that he still continues absent or infirm, as the case may be. A deposition taken, whether in the district or without, upon insufficient notice or otherwise, not substantially in conformity with the provisions of this chapter, may be excluded from the case, unless such insufficient notice or other omission has been waived by the consent or conduct of the adverse party.

Depositions may be read at any time; exclusion of a portion.

SEC. 658. When a deposition has once been taken it may be read in the same action or proceeding, or in any other action or proceeding, between the same parties or their representatives upon the same subject, and is then to be deemed the evidence of the party reading it. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also.

CHAPTER SIXTY-FOUR.

OF THE GENERAL RULES OF EXAMINATION.

Sec.
659. Order of proof, how regulated.
660. Witness not under examination may be excluded.
661. Interpreter sworn, when.
662. Court may control mode of interrogation.
663. Direct and cross-examination defined.
664. Leading questions defined.
665. When witness may testify or refresh his memory from writing.
666. Cross-examination, as to what it extends.
667. Party not to impeach his own witness.
668. Witness, how reexamined.
669. How witness impeached.
670. Same subject.
671. Evidence of good character, when allowed.
672. Writing shown to witness may be inspected by adverse party.

Order of proof, how regulated.

SEC. 659. The order of proof shall be regulated by the sound discretion of the court. Ordinarily, the party beginning the case shall exhaust his evidence before the other begins.

Witness not under examination may be excluded.

SEC. 660. If either party require it, the judge may exclude from the court room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses.

Interpreter sworn, when.

SEC. 661. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

Court may control mode of interrogation.

SEC. 662. The court may exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but, subject to this rule, the parties may put such legal and pertinent questions as they see fit. The court, however, may stop the production of further evidence, upon any particular point, when the evidence upon it is already so full as to preclude reasonable doubt.

Direct and cross examination defined.

SEC. 663. The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

Leading questions defined.

SEC. 664. A question which suggests to the witness the answer which the examining party desires is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, unless merely formal or preliminary, except in the sound discretion of the court, under special circumstances, making it appear that the interests of justice require it.

When witness may testify or refresh his memory from writing.

SEC. 665. A witness is allowed to refresh his memory, respecting a fact, by anything written by himself or under his direction at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing. But in either case the writing must be produced, and may be inspected by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts; but such evidence shall be received with caution.

Scope of cross-examination.

SEC. 666. The adverse party may cross-examine the witness as to any matter stated in his direct examination or connected therewith, and in so doing may put leading questions; but if he examine him as to other matters, such examination is to be subject to the same rules as a direct examination.

Party not to impeach his own witness.

SEC. 667. The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section six hundred and seventy.

Witness, how reexamined.

SEC. 668. A witness once examined shall not be reexamined as to the same matter without leave of the court; but he may be reexamined as to any new matter upon which he has been examined by the adverse party. After the examinations on both sides are concluded the witness shall not be recalled without leave of the court. Leave is granted or withheld in the exercise of a sound discretion.

How witness impeached.

SEC. 669. A witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence that his general reputation for truth is bad, or that his moral character is such as to render him unworthy of belief, but not by evidence of particular wrongful acts; except that it may be shown by the examination of the witness or the record of the judgment that he has been convicted of a crime.

Same subject.

SEC. 670. A witness may also be impeached by evidence that he has made at other times statements inconsistent with his present testimony; but before this can be done the statements must be related to him, with the circumstances of times, places, and persons present; and he shall be asked whether he has made such statements, and, if so, allowed to explain them. If the statements be in writing, they shall be shown to the witness before any question is put to him concerning them.

Evidence of good character, when allowed.

SEC. 671. Evidence of the good character of a party is not admissible in a civil action or proceeding unless the issue therein involve his character, nor of a witness in any action or proceeding until the character of such witness has been impeached.

Writing shown to witness may be inspected by adverse party.

SEC. 672. Whenever a writing is shown to a witness it may be inspected by the adverse party, and if proved by the witness, shall be read to the jury before his testimony is closed, or it shall not be read, except on recalling the witness.

CHAPTER SIXTY-FIVE.

OF THE EFFECT OF EVIDENCE.

Sec.
673. On what points jury to be instructed.

On what points jury to be instructed.

SEC. 673. The jury, subject to the control of the court in the cases specified in this code, are the judges of the effect and value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

First. That their power of judging the effect of evidence is not arbi-

trary, but to be exercised with legal discretion and in subordination to the rules of evidence;

Second. That they are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in their minds against a less number, or against a presumption or other evidence satisfying their minds;

Third. That a witness willfully false in one part of his testimony may be distrusted in others;

Fourth. That the testimony of an accomplice ought to be viewed with distrust and of the oral admissions of a party with caution;

Fifth. That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence; that in criminal cases guilt shall be established beyond reasonable doubt;

Sixth. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

Seventh. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

CHAPTER SIXTY-SIX.

OF THE RIGHTS AND DUTIES OF WITNESSES.

Sec.
674. Witness bound to attend when subpœnaed.
675. What questions witness bound to answer.
676. Right of witness to protection.
677. When witness protected from arrest.
678. To make affidavit if arrested.
679. Court may discharge witness from arrest.

Witness bound to attend when subpœnaed.

SEC. 674. It is the duty of a witness, duly served with a subpœna and tendered mileage and fees for the day named, to attend at the time appointed, with any papers, books, documents, or other thing under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed; but a witness, at the end of each day's attendance, may demand of the party or his attorney the payment of his legal fees for the next following day, and if not then paid he is not obliged to remain longer in attendance.

What questions witness bound to answer.

SEC. 675. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself. But he need not give an answer which will have a direct tendency to subject him to criminal prosecution, or to degrade his character, unless, in the latter case, it be as to the very fact in issue, or to a fact from which the fact in issue would be presumed. This privilege is the privilege of the witness, but a witness must answer as to the fact of his previous conviction for felony.

Right of witness to protection.

SEC. 676. It is the right of the witness to be protected from irrelevant, insulting, or improper questions, or from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

When witness protected from arrest.

SEC. 677. Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other officer, is exonerated from arrest in a civil case while going to the place of attendance, necessarily remaining there, and returning therefrom. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of court; and the officer making it is responsible to the witness arrested for double the amount of damages which may be assessed against him therefor, and is also liable to

an action at the suit of the party serving the witness with the subpœna for the damages sustained by him in consequence of the arrest.

To make affidavit if arrested.

SEC. 678. But the officer making the arrest is not liable in any way therefor, unless the person making the exception make, if required, an affidavit stating—

First. That he has been served with a subpœna to attend as a witness before a court, judge, or other officer, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and

Second. That he has not been thus served by his own procurement, with the intention of avoiding an arrest. The affidavit may be taken by the officer, and exonerates him from liability for not making the arrest or for discharging the witness when arrested.

Court may discharge witness from arrest.

SEC. 679. The court, judge, or officer before whom the attendance of the witness is required may discharge a witness from an arrest made in violation of section six hundred and seventy-seven.

CHAPTER SIXTY-SEVEN.

OF EVIDENCE IN PARTICULAR CASES.

Sec.
680. Whoever pays or delivers entitled to receipt.
681. Objections to tender must be specified.
682. Rules for construing description of real property.
683. Offer of compromise not an admission.
684. Confession of adultery in divorce cases.

Whoever pays or delivers entitled to receipt.

SEC. 680. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

Objections to tender must be specified.

SEC. 681. The person to whom a tender is made shall at the time specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Rules for construing description of real property.

SEC. 682. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

First. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application;

Second. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount;

Third. Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both;

Fourth. When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title;

Fifth. When tide water is the boundary, the rights of the grantor to low-water mark are included in the conveyance;

Sixth. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

SEC. 683. An offer of compromise is not an admission that anything is due; and no evidence thereof shall be permitted. Offer of compromise not an admission.

SEC. 684. In an action for the dissolution of the marriage contract on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of dissolution. Confession of adultery in divorce cases.

CHAPTER SIXTY-EIGHT.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Sec.
685. Evidence may be perpetuated.
686. Order for examination, how obtained.
687. Service of the order and notice in case of nonresidents.
688. How taken and where filed.
689. Papers filed with deposition, primary evidence.
690. When the deposition may be used.
691. How objected to when produced.
692. Power and duty of the officer taking deposition.

SEC. 685. The testimony of a witness may be taken conditionally and perpetuated as provided in this chapter. Evidence may be perpetuated.

SEC. 686. The order for taking the testimony may be made by any judge of the district court upon the application of the party desiring it, when it appears from the petition of such party, verified as a complaint— Order for examination, how obtained.

First. That the applicant is a party or expects to be a party to an action or proceeding in a court in the district, or that he has an interest in real property or some easement or franchise therein about which a controversy may arise which would be the subject of such an action or proceeding;

Second. That the testimony of a witness, whose name and place of residence is stated, is material to the prosecution or defense, as the case may be, of such action or proceeding, or possible controversy, and generally the question involved therein, and the facts expected to be proved by the witness;

Third. The names and residence of the adverse parties or persons adversely interested, so far as the applicant knows or can ascertain them.

The judge may thereupon in his discretion make an order allowing the examination, prescribing therein the place thereof, and how long before the examination the order and notice of the time and place therefor shall be served.

SEC. 687. If it appear that the adverse parties or persons adversely interested, or any of them, reside out of the district, or are unknown, the judge shall direct that, as to such parties or persons, service of the order and notice shall be made by publication, in the same manner as a summons. Upon proof of the service, the deposition may be taken conditionally by the judge who made the order of examination, or by any other officer or person therein designated. Service of the order and notice in case of nonresidents.

SEC. 688. Every interrogatory or answer, or declaration of the witness, shall be taken down, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, and then certified by the judge or other officer or person taking the same and immediately thereafter filed in the office of the clerk of the court, together with the order for the examination of the witness, the petition on which the same was granted, the notice, and the proof of service of the order and notice. How taken and where filed.

SEC. 689. The papers filed with the deposition, as required by the last section, or a certified copy thereof, are primary evidence of the facts stated therein to show compliance with the provisions of this chapter. Papers filed with deposition, primary evidence.

SEC. 690. If thereafter a trial be had between the persons named in the petition as parties actual, expectant, or possible, or their representatives or successors in interest, upon proof of the death or insan- When the deposition may be used.

ity of the witness, or that he is beyond the district and his residence unknown, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or a certified copy thereof may be given in evidence by either party.

How objected to when produced.

SEC. 691. The deposition when so taken, when produced in evidence, may be objected to as if it was the oral testimony of the witness, except that the form of the interrogatory shall not be objected to.

Power and duty of the officer taking deposition.

SEC. 692. The judge, officer, or other person taking the deposition shall control the examination, to the end that the whole truth may be declared by the witness, and if no one appears other than the applicant, he shall prevent leading and suggestive interrogatories by such applicant, except when the same may be necessary or merely formal, and shall himself cross-examine the witness, concluding with the general interrogatory to the effect whether the witness knows anything further in relation to the matter which would be of benefit to either party.

CHAPTER SIXTY-NINE.

OF OATHS AND AFFIRMATIONS.

Sec.
693. Who authorized to take testimony and administer oaths.
694. Form may be varied to suit witness' belief.
695. Same subject.
696. Who may affirm.
697. Affirmation equivalent to oath; when false to be deemed perjury.

Who authorized to take testimony and administer oaths.

SEC. 693. Every court, judge, clerk of a court, commissioner, justice of the peace, or notary public is authorized to take testimony in any action or proceeding, and such other persons in particular cases as this code elsewhere authorizes. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized.

Form may be varied to suit witness' belief.

SEC. 694. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court or officer may in its discretion adopt that mode.

Same subject.

SEC. 695. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Who may affirm.

SEC. 696. Any person who has conscientious scruples against taking an oath may make his solemn affirmation.

Affirmation equivalent to oath; when false to be deemed perjury.

SEC. 697. Whenever by any provision of this title an oath is required, an affirmation is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

CHAPTER SEVENTY.

OF COURTS OF JUSTICE.

Sec.
698. Judicial power, how vested.
699. The district court.
700. Justice's court.
701. Mode of proceeding.
702. Jurisdiction of justice's court.
703. Jurisdiction not to include certain cases.
704. Where action may be commenced.
705. Power of court respecting judicial proceedings.
706. Power, how exercised.
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708. Appointment of judge pro tempore.
709. Judicial officer not to act as attorney, except.
710. Power of a judge out of court.
711. Power of judicial officers.
712. Powers, how exercised.
713. Power to take and certify affidavits.
714. Same subject.

Judicial power, how vested.

SEC. 698. The judicial power in the district of Alaska is vested in a district court, in commissioners exercising the powers of probate courts, and in commissioners as ex officio justices of the peace.

SEC. 699. The district court is a court of general jurisdiction, civil and criminal, and also shall have admiralty jurisdiction. The district court.

SEC. 700. A justice's court is a court held by a commissioner as ex officio justice of the peace within the precinct for which he may be appointed. There are no particular terms of such court, but the same is always open for the transaction of business, according to the mode of proceeding prescribed for it. Justice's court.

SEC. 701. The mode of proceeding and the rules of evidence are the same in a justice's court as in a like action or proceeding in a court of record, except where otherwise specially provided. Mode of proceeding.

SEC. 702. A justice's court has jurisdiction, but not exclusive, of the following actions: Jurisdiction of justice's court.

First. For the recovery of money or damages only, when the amount claimed does not exceed one thousand dollars;

Second. For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed one thousand dollars;

Third. For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding one thousand dollars;

Fourth. Also, to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute.

SEC. 703. The jurisdiction conferred by the last section does not extend, however— Jurisdiction not to include certain cases.

First. To an action in which the title to real property shall come in question;

Second. To an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, upon a promise to marry, in actions of an equitable nature or in admiralty causes.

SEC. 704. In an action in a justice's court to recover a penalty or forfeiture given by statute the cause of action or some part thereof must have arisen within the precinct where the action is commenced, or upon a lake, river, or other water bordering upon such precinct and opposite thereto; but otherwise than this the jurisdiction of justice's court does not depend upon where the cause arose, provided that the defendant shall reside in the precinct where the action is commenced, or personal service can be had on the defendant in such precinct; and if the defendant do not reside in the district, the action may be commenced in the precinct in which the plaintiff resides. Where action may be commenced.

SEC. 705. Every court of justice has power— Power of court respecting judicial proceedings.

First. To preserve and enforce order in its immediate presence;

Second. To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority;

Third. To provide for the orderly conduct of proceedings before it or its officers;

Fourth. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court in an action or proceeding pending therein;

Fifth. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto;

Sixth. To compel the attendance of persons to testify in an action or proceeding therein in the cases and manner provided by this code;

Seventh. To administer oaths in an action, or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Power, how exercised.

SEC. 706. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided in this code.

Judicial officer, definition of. When disqualified to act.

SEC. 707. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

First. In an action or proceeding to which he is a party, or in which he is directly interested;

Second. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

Third. When he is related to either party by consanguinity or affinity within the third degree;

Fourth. When he has been attorney in the action or proceeding in question for either party.

But this section does not apply to an application to change the place of trial or the regulation of the order of business in court. In the cases specified in subdivisions three and four the disqualification may be waived by the parties, and shall be deemed to be waived unless an application be made as provided in this code.

Appointment of judge pro tempore.

SEC. 708. Whenever it appears that the judge of the district court presiding in the division where the action is pending is disqualified under the provisions of the section last preceding the action shall be transferred to another division of said court unless a judge of another division will appear and preside during the disposition thereof: *Provided, however*, That the parties may by written stipulation agree upon a member of the bar of said court to try the same.

Judicial officer not to act as attorney, except.

SEC. 709. Any judicial officer may act as an attorney in any action or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, or otherwise other than as in this section allowed: *Provided*, No justice of the peace or other judicial officer shall have a partner who shall practice law or act as attorney in the court over which he presides.

Power of a judge out of court.

SEC. 710. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise.

Power of judicial officers.

SEC. 711. Every judicial officer has power—

First. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by this code or other statute;

Second. To compel obedience to his lawful orders, as provided in this code;

Third. To compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided in this code;

Fourth. To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties.

Powers, how exercised.

SEC. 712. For the effectual exercise of the powers specified in the last section, a judicial officer may punish for contempt in the cases and manner provided in this code.

Power to take and certify affidavits.

SEC. 713. The judge of the district court has power in any part of the district to take and certify—

First. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

Second. The acknowledgment of satisfaction of a judgment in any court;

Third. An affidavit or deposition to be used in any court of justice or other tribunal of the district;

Fourth. To exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

SEC. 714. Every other judicial officer may, within the precinct in which he is chosen— Same subject.

First. Exercise the powers mentioned in subdivisions one, two, and three of the last section;

Second. Exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

CHAPTER SEVENTY-ONE.

MISCELLANEOUS PROVISIONS RESPECTING THE COURTS AND JUDICIAL OFFICERS.

Sec.
715. Sittings of court to be public; exceptions.
716. Nonjudicial days; what legal business may be done.
717. If court appoint or adjourn for such day to be deemed for next judicial day.
718. When judge does not attend.
719. Proceedings not affected by failure of term or vacancy.
720. Application to court or judge, how addressed.
721. Proceedings to be in English.
722. Power of court to adjourn proceedings.
723. Means to be used by court to execute its powers.

SEC. 715. The sittings of every court of justice are public, except as provided in this section. Upon the agreement of the parties to a civil action or proceeding, filed with the clerk or entered upon the journal, the court may direct the trial of an issue of law or fact, or any other proceeding therein, to be private; and upon such order being made all persons shall be excluded except the officers of the court, the parties, their witnesses, and counsel. Sittings of court to be public; exceptions.

SEC. 716. Courts of justice may be held, and judicial business transacted, on any day except as provided in this section. No court can be opened, nor can any judicial business be transacted, on a Sunday, on a legal holiday, or on a day appointed by the Executive authority of the United States or of the district as a day of fasting or thanksgiving, except for the following purposes: Nonjudicial days; what legal business may be done.

First. To give instructions to a jury then deliberating on their verdict;

Second. To receive the verdict of a jury;

Third. For the exercise of the powers of a magistrate in criminal actions, or in proceedings of a criminal nature: *Provided*, That this section shall not be so construed as to prevent the issuance of any writ or order for which the judge granting the same may think an emergency exists.

SEC. 717. If any of the days mentioned in the last section happen to be a day appointed for holding a court, or to which it is adjourned, it is deemed appointed for or adjourned to the next judicial day. If court appoint or adjourn for such day to be deemed for next judicial day.

SEC. 718. If no judge attend on the day appointed for holding a court before four o'clock in the afternoon, the court shall stand adjourned until the next day at nine o'clock; and if no judge attend on that day before four o'clock in the afternoon it shall then stand adjourned for the term. When judge does not attend.

SEC. 719. No proceeding in a court of justice, in any action or proceeding pending therein, is affected by a vacancy in the office of the judge, or by the failure of a term thereof. Proceedings not affected by failure of term or vacancy.

Application to court or judge, how addressed.

SEC. 720. An application or other proceeding addressed to a court shall be addressed to it by its style, as given in this code; an application or other proceeding addressed to a judicial officer shall be addressed to him by his name, without any other title than his style of office.

Proceedings to be in English.

SEC. 721. Every writing in any action or proceeding whatever, in a court of justice of the district, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals in the customary manner.

Power of court to adjourn proceedings.

SEC. 722. A court or judicial officer has power to adjourn any proceeding before it or him from time to time, as may be necessary, unless otherwise expressly provided by this code.

Means to be used by court to execute its powers.

SEC. 723. When jurisdiction is by any law of the United States conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specially pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

CHAPTER SEVENTY-TWO.

OF REFEREES.

Sec.
724. Referee, definition of.

Referee, definition of.

SEC. 724. A referee is a person appointed by the court or a judicial officer, with power—

First. To try an issue of law or of fact in a civil action or proceeding, and report thereon;

Second. To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact, or to take and report the evidence in an action of an equitable nature;

Third. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by this code.

CHAPTER SEVENTY-THREE.

OF COMMISSIONERS TO ACKNOWLEDGE DEEDS.

Sec.
725. How appointed, tenure of office, powers and duties.
726. Seal and oath of office, and when and where filed.

How appointed, tenure of office, powers and duties.

SEC. 725. The governor may appoint as many commissioners in each State, Territory, and District of the United States as he may deem expedient, who shall hold their offices for four years, and may within the State, Territory, or District for which they are appointed, and not otherwise, take and certify—

First. The proof or acknowledgment of a conveyance of real property within the district or of any other written instrument to be used or operated therein;

Second. The acknowledgment of satisfaction of any judgment of a court of this district;

Third. An affidavit or deposition to be used in any court of justice or before any judicial officer of the district; and

Fourth. To exercise any other power, and perform any other duty, conferred or imposed upon them by this code or other statutes.

Seal and oath of office, when and where filed.

SEC. 726. A commissioner appointed under the last section shall, before he can exercise the powers therein conferred, provide himself

with a seal of office, and take and subscribe an oath before a judicial officer in the county, city, or town where he resides, faithfully to perform the duties of the office of a commissioner to take affidavits, depositions, and the proof and acknowledgment of deeds, out of the district, according to the laws thereof, and file such oath and an impression of such seal in the office of the secretary of the district. The secretary of the district shall collect five dollars for each certificate of appointment made under this chapter and disburse the same as provided in section thirty-two, title one, chapter one of this Act.

CHAPTER SEVENTY-FOUR.

OF THE CLERK OF THE DISTRICT COURT.

Sec.
727. Office hours.
728. Deputy, how appointed.
729. Can not act as attorney.
730. Powers and duties of clerks.

Office hours.

SEC. 727. The clerk of the district court shall keep his office open for the transaction of business on every judicial day from nine to twelve in the forenoon and from one to five in the afternoon.

Deputy, how appointed.

SEC. 728. The clerk of the district court or any division thereof may have a deputy, to be appointed by such clerk in writing, at each place where regular or special terms of court are held and to continue during his pleasure. Such deputy has the power to perform any act or duty relating to the clerk's office that his principal has, and his principal is responsible for his conduct; and for all money received by him in his official capacity each deputy clerk shall be entitled to such compensation as the court or judge thereof may, subject to the approval of the Attorney-General, allow, the same to be paid by the clerk on order of the court as other court expenses are allowed and paid.

Can not act as attorney.

SEC. 729. The clerk of the district court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk.

Powers and duties of clerks.

SEC. 730. The clerk of the district court has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and it is the duty of such clerk—

First. To keep the seal of the court and affix it in all cases where he is required by law;

Second. To record the proceedings of the court;

Third. To keep the records, files, and other books and papers appertaining to the court;

Fourth. To file all papers delivered to him for that purpose in any action or proceeding in the court;

Fifth. To attend the terms of the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein in the presence and under the direction of the court;

Sixth. To keep the journal of the proceedings of the court at its terms, and under the direction of the court to enter its orders and judgments;

Seventh. To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto, and filed with him;

Eighth. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by this code or other statute;

Ninth. In the performance of his duties to conform to the direction of the court.

CHAPTER SEVENTY-FIVE.

OF ATTORNEYS.

Sec.
731. When cause may be prosecuted or defended in person or by attorney.
732. Attorney a public officer; who may act as such.
733. Application for admission and proof thereon.
734. Women may be admitted.
735. Oath of office; order of admission.
736. Attorneys of other States and countries may appear as counsel.

When cause may be prosecuted or defended in person or by attorney.

SEC. 731. Any action or proceeding may be prosecuted or defended by a party in person or by attorney, except that the United States or a corporation, either public or private, appears by attorney in all cases; and where a party appears by attorney the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party.

Attorney a public officer; who may act as such.

SEC. 732. An attorney is a public officer, but any person may act in that capacity who has been admitted as such by the district court of the district, or may be hereafter admitted, as provided in this chapter.

Application for admission and proof thereon.

SEC. 733. An applicant for admission as attorney must apply to the district court, and must show—

First. That he is a citizen of the United States, or has declared his intention to become such, and is a resident of said district, and of the age of twenty-one years, which proof may be made by his own affidavit;

Second. That he is a person of good moral character, which may be proved by any evidence satisfactory to the court;

Third. That he has the requisite learning and ability, which must be shown by the examination of the applicant by the judges, or under their direction, at the term at which the application is made.

Women may be admitted.

SEC. 734. Hereafter women shall be admitted to practice law as attorneys in the courts of said district upon the same terms and con ditions as men.

Oath of office; order of admission.

SEC. 735. If, upon the examination, the applicant be found qualified, the court shall administer an oath to the applicant to support the Constitution and laws of the United States and of the district, and to faithfully and honestly demean himself or herself in office. The court shall then direct an order to be entered to the effect that the applicant is a citizen of the United States and of the district, of the age of twenty-one years, of good moral character, and possessed of the requisite learning and ability to practice as an attorney in all the courts of the district, and has taken the oath of office; and upon the entry of the order and payment of the legal fee, he or she is entitled to practice as such attorney, and not otherwise.

Attorneys of other States and countries may appear as counsel.

SEC. 736. Whenever an applicant for admission as attorney shall present to the district court a certificate showing him to have been duly admitted to practice as an attorney in the highest courts of any State or Territory of the United States, or in one of the circuit courts, or the Supreme Court of the United States, such applicant may be admitted to practice as an attorney without further examination.

CHAPTER SEVENTY-SIX.

OF THE DUTIES OF ATTORNEYS, AND THEIR AUTHORITY.

Sec.
737. Authority of an attorney.
738. Proceedings when party alleges that attorney appears for him without authority.
739. When attorney may be compelled to show authority.
740. Attorney, how changed.
741. Notice of change.
742. Lien of attorneys.
743. By what court and for what causes an attorney may be removed or suspended.
744. By whom the proceedings to be instituted.
745. Accusation, how made.
746. Order for accused to appear and answer.
747. If accused do not appear, court to proceed.
748. May demur to or controvert the accusation.
749. If demurrer not sustained must answer forthwith; judgment for want of answer or trial.
750. Accusation on knowledge of the court presumed to be true, but may be shown otherwise.
751. Proceeding to compel an attorney to deliver over money or papers.
752. How court to proceed if attorney claim a lien.

Authority of an attorney.

SEC. 737. An attorney has authority—

First. To bind his client in any of the proceedings in an action or proceeding by his agreement filed with the clerk or entered upon the journal of the court, and not otherwise;

Second. To receive money or property claimed by his client in an action or proceeding during the pendency thereof, or within three years after judgment, and, upon the payment or delivery thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. But this section does not prevent a party from employing a new attorney to issue execution upon a judgment, or to take the other proceedings prescribed by this code for its enforcement, and when he does so the authority of the former attorney ceases.

Proceedings when party alleges that attorney appears for him without authority.

SEC. 738. If it be alleged by a party for whom an attorney appears that he does so without authority, and the allegation be verified by the affidavit of the party, the court may, if it find the allegation true, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his act.

When attorney may be compelled to show authority.

SEC. 739. The court or judge thereof may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the party for whom he assumes to appear.

Attorney, how changed.

SEC. 740. The attorney in an action or proceeding may be changed at any time before judgment or final determination, as follows:

First. Upon his own consent, filed with the clerk or entered upon the journal; or,

Second. Upon the order of the court or judge thereof, on the application of the client or the attorney, for sufficient cause.

Notice of change.

SEC. 741. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party. Until then, he is bound to recognize the former attorney.

Lien of attorneys.

SEC. 742. An attorney has a lien for his compensation, whether specially agreed upon or implied, as provided in this section—

First. Upon the papers of his client which have come into his possession in the course of his professional employment;

Second. Upon money in his hands belonging to his client;

Third. Upon money in the hands of the adverse party in an action

or proceeding in which the attorney was employed from the time of giving notice of the lien to that party;

Fourth. Upon a judgment to the extent of the costs included therein, or, if there be a special agreement, to the extent of the compensation specially agreed on, from the giving notice thereof to the party against whom the judgment is given and filing the original with the clerk where such judgment is entered and docketed. This lien is, however, subordinate to the rights existing between the parties to the action or proceeding.

By what court and for what causes an attorney may be removed or suspended.

SEC. 743. An attorney may be removed or suspended by the district court for either of the following causes, arising after his admission to practice:

First. Upon his being convicted of any felony or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence;

Second. For a willful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession;

Third. For being guilty of any willful deceit or misconduct in his profession;

By whom the proceedings to be instituted.

SEC. 744. The proceeding to remove an attorney as provided in the last section shall be taken by the court, of its own motion, for matters within its knowledge, or that of any of the judges thereof; otherwise it may be taken upon the information of another.

Accusation, how made.

SEC. 745. If the proceedings be upon the motion of the court or judges thereof, for matters within its knowledge, the accusation shall be made by an order of the court reciting the facts charged. If upon the information of another, the accusation must be presented to the court, in writing, and verified by the oath of the person making it, or of some other person, to the effect that the charges therein contained are true, as he believes.

Order for accused to appear and answer.

SEC. 746. After the accusation has been made or received the court shall forthwith make an order requiring the accused to appear and answer the accusation at a specified time in the same or a subsequent term, and shall cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order to appear and answer. But when the proceeding is upon the information of another, the accusation shall be dismissed at once unless it appear therefrom that the accused should be required to appear and answer the same.

If accused do not appear, court to proceed.

SEC. 747. The accused must appear at the time appointed in the order and answer the accusation, unless, for sufficient cause, the court assign another day for that purpose. If he do not appear, the court may proceed and determine the accusation in his absence.

May demur to or controvert the accusation.

SEC. 748. The accused may demur to the accusation for insufficiency or controvert it by answer. The demurrer and answer shall be in writing, and the latter shall be verified by the oath of the accused in the same manner as a pleading in an action.

If demurrer not sustained must answer forthwith; judgment for want of answer or trial.

SEC. 749. If a demurrer, for insufficiency, be not sustained, the accused shall answer forthwith. If he plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he controvert the matters charged, the court shall then, or at such time as it may appoint, proceed to try the accusation, and give a judgment of removal, suspension, or acquittal, according to law and the right of the case.

Accusation on knowledge of the court presumed to be true, but may be shown otherwise.

SEC. 750. When an accusation is made upon the knowledge of the court, or the judges thereof, the facts shall be set forth as in other cases, and the accused may controvert the accusation, whereupon the issues of fact shall be by the court referred to at least three disinterested members of the bar, who shall report their findings of fact to the

court, and the judgment of the court shall be entered according to such findings.

Proceeding to compel an attorney to deliver over money or papers.

SEC. 751. When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in a judicial proceeding or not, he may be required, by an order of the court, to do so within a specified time or show cause why he should not be punished for a contempt.

How court to proceed if attorney claim a lien.

SEC. 752. If, however, the attorney claim a lien upon the money or papers, under the provisions of section seven hundred and forty-two, the court shall—

First. Impose, as a condition of making the order, that the client give security, in form and amount to be directed, to satisfy the lien when determined in an action; or,

Second. Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or,

Third. Direct the trial of the controversy by a jury, or refer it, and upon the verdict or report determine the same as in other cases.

CHAPTER SEVENTY-SEVEN.

OF RECEIVERS.

Sec.
753. In what cases he may be appointed.
754. His oath and undertaking.

In what cases he may be appointed.

SEC. 753. A receiver may be appointed in any civil action or proceeding, other than an action for the recovery of specific personal property—

First. Provisionally, before judgment, on the application of either party, when his right to the property which is the subject of the action or proceeding, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired;

Second. After judgment, to carry the same into effect;

Third. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply his property in satisfaction of the judgment;

Fourth. In cases provided in this code, or by other statutes, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;

Fifth. In the cases when a debtor has been declared insolvent.

His oath and undertaking.

SEC. 754. A receiver, before entering upon his duties, shall be sworn faithfully to perform his trust to the best of his ability, and shall also file with the clerk of the court an undertaking, of one or more sufficient sureties, in a specified sum, to be fixed by the court or judge thereof, to the effect that he will faithfully discharge the duties of receiver and will obey the orders of the court or judge thereof in respect thereto. The sureties must justify in the same manner as bail upon an arrest.

CHAPTER SEVENTY-EIGHT.

OF THE TRIAL FEE.

Sec.
755. Trial fees.
756. Amount of.
757. Recovered as disbursement.
758. Public corporation need not pay.
759. In justice's court, when and to whom paid.
760. When party too poor to pay.
761. Trial fee to be paid to the clerk.
762. Trial fee in justice's court.

Trial fees.

SEC. 755. Parties to a judicial proceeding are required to contribute toward the expense of maintaining courts of justice, or a particular

action or proceeding therein, by the payment of certain sums of money, as provided in this chapter, which are denominated trial fees.

Amount of.

SEC. 756. The trial fee is as follows:

First. In the district court, for every trial by jury, twelve dollars; for every trial by the court, six dollars; for every judgment given without trial, three dollars;

Second. In justice's court, for every trial by jury, six dollars.

Recovered as disbursement.

SEC. 757. The trial fee is to be paid by the plaintiff, appellant, or moving party before he is entitled to or can claim the trial or other proceeding upon which such fee is imposed; and if the party paying such fee prevail in the action, or proceeding, so as to be entitled to recover costs therein, such fee shall be allowed and taxed as a disbursement and collected off the adverse party.

Public corporation need not pay.

SEC. 758. When the United States or any public corporation is a party to a judicial proceeding it need not pay the trial fee in advance, and if it be entitled to recover costs therein, such fee shall be allowed and taxed in its favor as a disbursement and collected off the adverse party as in ordinary cases.

In justice's court, when and to whom paid.

SEC. 759. The trial fee in a justice's court shall be paid to the justice for the demand for a jury, and unless so paid the demand shall be disregarded and the trial proceed as if no such demand had been made, except when a party is prosecuted in a criminal action at the suit of the United States, in which case the party is entitled to a jury trial without the prepayment of such fee; and if judgment be given against him, the fee shall be allowed and taxed in favor of the United States as other disbursements in ordinary cases.

When party too poor to pay.

SEC. 760. If at any time it appear to the satisfaction of the court or judge thereof, from the affidavit of the party or other evidence, that he can not pay the trial fee, such court or judge may direct that he be allowed to proceed without the prepayment thereof; but if such party prevail so as to be entitled to collect such fee as a disbursement off the adverse party, when collected it shall be retained by the clerk as if paid in advance.

Trial fee to be paid to the clerk.

SEC. 761. The trial fees shall be paid to the clerk of the court, who shall keep a regular account of them and by whom paid in his fee book, and deposit them in the manner provided in the case of other moneys collected by virtue of his office.

Trial fee in justice's court.

SEC. 762. In justice's court the trial fee shall be paid to a justice He shall keep an account of them and by whom paid, and distribute the amount among the jury in the particular case in payment of their legal fees.

CHAPTER SEVENTY-NINE.

OF GENERAL PROVISIONS RESPECTING THE ADMINISTRATION OF ESTATES.

Sec.
763. Probate jurisdiction of commissioner.
764. Forms of pleadings.
765. Nature of procedure.
766. Books and records.
767. Index to such books.
768. Costs and disbursements.
769. Orders and decrees for the payment of money, how enforced.

Probate, jurisdiction of commissioner.

SEC. 763. The commissioners appointed in pursuance of this Act and other laws of the United States have jurisdiction within their respective precincts, subject to the supervision of the district judge, in all testamentary and probate matters; that is,

First. To take proof of wills;

Second. To grant and revoke letters testamentary, of administration, and of guardianship;

Third. To direct and control the conduct and settle the accounts of executors, administrators, and guardians;

Fourth. To direct the payment of debts and legacies, and the distribution of the estates of intestates;

Fifth. To order the sale and disposal of the real and personal property of deceased persons;

Sixth. To order the renting, sale, or other disposal of the real and personal property of minors;

Seventh. To take the care and custody of the person and estate of a lunatic or habitual drunkard, and to appoint and remove guardians therefor; to direct and control the conduct of such guardians, and to settle their accounts;

Eighth. To direct the admeasurement of dower.

Forms of pleadings.

SEC. 764. There are no particular pleadings or forms thereof in proceedings before commissioners when exercising the jurisdiction of probate matters, as specified in the section last preceding, other than as provided in this chapter.

Nature of procedure.

SEC. 765. The mode of proceeding is in the nature of a suit in equity as distinguished from an action at law. The proceedings are in writing, and are had upon the application of a party or the order of the court. The court exercises its powers by means of—

First. A citation to the party;

Second. An affidavit or the verified petition or statement of a party;

Third. A subpœna to a witness;

Fourth. Orders, judgments, and decrees;

Fifth. An execution of warrant to enforce them.

Books and records.

SEC. 766. The proceedings in probate matters shall be entered and recorded in the following books:

First. A register, in which shall be entered a memorandum of all official business transacted by the court or judge thereof appertaining to the estate of each person deceased under the name of such person; that pertaining to the guardianship of an infant under the name of such infant; that pertaining to an insane person or a drunkard under his name;

Second. A record of wills, in which shall be recorded all wills proven before the court or judge thereof, with the order of probate thereof, and of all wills proved elsewhere upon which letters of administration are issued by the direction of such court or judge;

Third. A record of the appointment of administrators, whether general or special, or of a partnership and of executors;

Fourth. A record of the appointment of guardians of infants, insane persons, and drunkards;

Fifth. A record of accounting and distribution, in which shall be entered a summary balance sheet of the accounts of administrators, executors, and guardians, with the orders and decrees relating to the same; a memorandum of executions issued thereon, with a note of satisfaction when satisfied; also orders and decrees relating to the sale of real property and to the distribution of the proceeds thereof; and notices of all money or securities paid or deposited in court as proceeds of such sales or otherwise; and a statement showing the names of creditors, and the debts established and entitled to distribution, the amount to which each person is entitled out of such fund, and the amount actually paid to each person, and when paid;

Sixth. A record of the appointment of admeasurer of dower, with all orders and decrees relating to the same, and the admeasurer's report;

Seventh. An order book, in which shall be entered orders directing the conduct of executors, administrators, or guardians; orders for publication of notice to creditors; orders in behalf of creditors, directing debts to be paid or allowing an execution to be issued; appointments of special guardians, appraisers, and referees; orders relating to the production of a will, to removal of executors, administrators, or guard-

ians, or to sureties therefor; and, generally, all other orders not required to be entered in some other book.

Index to such books.

SEC. 767. To each of such books there shall be attached an index, securely bound in the volume, referring to the entries or records, in alphabetical order, under the name of the person to whose estate or business they relate, and naming the page of the book where the entry or record is made.

Costs and disbursements.

SEC. 768. Costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely, but such costs can not exceed those allowed in the trial of a civil action in the district court. Witness fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner.

Orders and decrees for the payment of money, how enforced.

SEC. 769. Orders, judgments, or decrees for the payment of money may be enforced, by execution or otherwise, in the same manner as orders, judgments, or decrees for the payment of money in the district court.

CHAPTER EIGHTY.

OF THE COMMISSIONERS' COSTS IN THE EXERCISE OF PROBATE JURISDICTION.

Sec.
770. Commissioners shall have seal and may appoint clerk.
771. Fees of commissioners.

Commissioners, probate jurisdiction of, etc.

SEC. 770. In the exercise of the jurisdiction conferred upon commissioners by this code in the administration of the estates of deceased persons, and of minors, lunatics, and habitual drunkards, such commissioners shall sit as a probate court, which shall be always open for the transaction of business. Such court shall have a seal, upon which there shall be engraved the words "Probate court, district of Alaska, ——— precinct;" and such courts may appoint a clerk who shall have the authority to attest such seal when attached to the lawful orders and certificates of such court.

Fees of commisioners.

SEC. 771. For the services rendered in the administration of the estates of decedents and of minors, lunatics, and habitual drunkards, the commissioners shall receive fees as follows:

First. For the granting of letters of administration or guardianship, two dollars;

Second. For every other order made in the course of administration, fifty cents; allowance or disallowance of claims, fifty cents;

Third. For the hearing of any objection, one dollar;

Fourth. For making and certifying transcripts to the district court, ten cents per folio.

CHAPTER EIGHTY-ONE.

OF THE PROOF OF WILLS AND THE APPOINTMENT OF EXECUTORS AND ADMINISTRATORS.

Sec.
772. In what precinct will may be proven.
773. Letters testamentary with the will annexed.
774. Who entitled to letters of administration.
775. When persons entitled must apply.
776. Administration to be granted to the husband, unless.
777. Undertaking of executor or administrator.
778. Qualification and justification of sureties.
779. Nonresidents and minors as executors.
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781. Petition to state facts.
782. When will found after administration granted.
783. Heir may apply for removal of executor or administrator.
784. Nonresident executor or administrator may be removed.
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786. Effect of new undertaking or failure to give it.
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788. New administrator may maintain action against former one.
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790. When deceased a member of a copartnership.
791. Partnership property may be administered by surviving partner.
792. His power and duties in such cases.
793. Undertaking of administrator of the partnership.
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795. Duty of surviving partner toward administrator.
796. How last section may be enforced.
797. Who not qualified to act as executor or administrator.
798. Form of letters testamentary.
799. Form of letters of administration.
800. Resignation of executor or administrator.

In what precinct will may be proven.

SEC. 772. Proof of a will shall be taken by the commissioner as follows:

First. When the testator, at or immediately before his death, was an inhabitant of the precinct, in whatever place he may have died;

Second. When the testator, not being an inhabitant of the district, shall have died in the precinct, leaving assets therein;

Third. When the testator, not being an inhabitant of the district, shall have died out of the district, leaving assets in the precinct;

Fourth. When the testator, not being an inhabitant of the district, shall have died out of the district, not leaving assets therein, but where assets thereafter came into the precinct;

Fifth. When real property, devised by the testator, is situated in the precinct and no other commissioner has gained jurisdiction under either of the preceding subdivisions of this section.

Letters testamentary with the will annexed.

SEC. 773. When a will is proven, letters testamentary shall be issued to the persons therein named as executors, or to such of them as give notice of their acceptance of the trust and are qualified. If all the persons therein named decline to accept or be disqualified, letters of administration, with the will annexed, shall be issued to the person to whom the administration would have been granted if there had been no will.

Who entitled to letters of administration.

SEC. 774. Administration of the estate of an intestate shall be granted by the commissioner authorized to take proof of a will as prescribed in section seven hundred and seventy-two in case such intestate had made a will. Administration shall be granted, and letters thereof issued, as follows:

First. To the widow or next of kin, or both, in the discretion of the court;

Second. To one or more of the principal creditors; or

Third. To any other person competent and qualified whom the court may select.

When persons entitled must apply.

SEC. 775. The persons named in the subdivisions of the last section, if qualified and competent for the trust, shall be entitled to the administration in the order therein named. If those named in subdivision one do not apply for the administration within thirty days from the decease of the intestate, they shall be deemed to have renounced their right thereto; but the commissioner in his discretion may, if they reside within the precinct, direct that a citation issue to them, requiring them within such period to apply for or renounce their right of administration; and if the persons named in subdivision two do not make such application within forty days from such decease, they shall be deemed to have renounced their right to the administration also.

Administration to be granted to the husband unless.

SEC. 776. If the deceased were a married woman the administration of her estate shall in all cases be granted to her husband, if he be qualified and competent for the trust and apply therefor within thirty days from her decease, unless by force of a marriage settlement or otherwise she shall have made some testamentary disposition of her property which shall render it necessary and proper to grant the administration to some other person.

Undertaking of executor or administrator.

SEC. 777. No executor or administrator is authorized to act as such until he shall file with the commissioner having jurisdiction of the estate an undertaking in a sum not less than double the probable value of the estate, with one or more sufficient sureties, to be approved by the commissioner, to be void upon condition that such executor or administrator shall faithfully perform the duties of his trust according to law: *Provided*, When by the terms of his will a testator shall expressly declare that no bonds shall be required of his executor, such executor may act upon taking an oath to faithfully fulfill trust without filing the undertaking in this section mentioned: *Provided further*, Such executor shall be criminally and civilly liable as other executors and administrators are for any dereliction of duty.

Qualification and justification of sureties.

SEC. 778. Whenever the penal sum mentioned in the undertaking prescribed in the preceding section exceeds two thousand dollars, three or more sureties may become severally liable for portions of the sums if the aggregate sum for which such sureties became liable shall equal the penal sum required in the undertaking.

Nonresidents and minors as executors.

SEC. 779. If a person be named in a will as executor who is a nonresident of the district or a minor, upon the removal of such disability he is entitled to qualify as such executor, if he apply therefor within thirty days from the removal of such disability, if otherwise competent. If in the meantime an administrator with the will annexed has been appointed, his powers and duties cease with the qualification of such executor; but if another executor has qualified and is acting as such they thereby become joint executors.

Special administrator.

SEC. 780. When for any reason there shall be a delay in issuing letters testamentary or of administration, and the property of the deceased is in danger of being lost, injured, or depreciated, the commissioner may appoint a special administrator to take charge of the estate, who shall qualify in like manner and have the powers and perform the duties of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligations against the deceased. Upon the issuing of letters testamentary or of administration the powers of the special administrator cease.

Petition to state facts.

SEC. 781. In an application to prove a will or for the appointment of an executor or administrator the petition shall set forth the facts necessary to give the court jurisdiction, and also state whether the deceased left a will or not, and the names, age, and residence, so far as known, of his heirs.

When will found after administration granted.

SEC. 782. If, after administration has been granted upon an estate, a will of the deceased be found and proven, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued; and if, after a will has been proven and letters testamentary or of administration with the will annexed have been issued thereon, such will should be set aside, declared void or inoperative, such letters shall be revoked and letters of administration issued.

Heir may apply for removal of executor or administrator.

SEC. 783. Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator who has become of unsound mind or been convicted of any felony or a misdemeanor involving moral turpitude, or who has in any way been unfaithful to or neglectful of his trust, to the probable loss of the applicant. Such application shall be by petition and upon notice to the executor or administrator, and if the court find the charge to be true it shall make an order removing such executor or administrator and revoke his letters.

Nonresident executor or administrator may be removed.

SEC. 784. If an executor or an administrator become a nonresident of the district he may be removed and his letters revoked in the manner prescribed in the last section, except that the notice may be given

by publication or posting for such time as the court or judge thereof may direct.

New undertaking when old insufficient.

SEC. 785. Whenever the amount of an executor's or administrator's undertaking is insufficient, or the sureties therein, or either of them, have become nonresidents of the district, or are likely to or have become insolvent, such executor or administrator shall be required to give a new and sufficient undertaking. The application for such new undertaking may be made by any heir, legatee, devisee, creditor, or other person interested in the estate, and in the manner prescribed in section seven hundred and eighty-three for the removal of executors and administrators.

Effect of new undertaking or failure to give it.

SEC. 786. Such new undertaking, when given and received, shall discharge the sureties in the former undertaking from any liabilities on account of their principal arising from his acts or omissions subsequent thereto. When a new undertaking is ordered, if the executor or administrator fail to comply therewith within five days from the entry thereof, or such further time as the order may prescribe, thenceforward the authority of such executor or administrator shall cease, and he shall be deemed removed and his letters revoked.

Effect of vacancy.

SEC. 787. Whenever an executor or administrator shall die, resign, or be removed, if there be a coexecutor or coadministrator, he shall thenceforward exercise the powers and perform the duties of the trust; and if all the executors or administrators shall die, resign, or be removed, administration of the estate remaining unadministered shall be granted to those next entitled, if they be competent and qualified.

New administrator may maintain action against former one.

SEC. 788. The surviving or remaining executor or administrator, or the new administrator, as the case may be, is entitled to the exclusive administration of the estate, and for that purpose may maintain any necessary and proper action or proceeding on account thereof, against the executor or administrator ceasing to act, or against his sureties or representatives.

Power of the court over an administrator.

SEC. 789. Whenever it appears probable to the commissioner that any of the causes for removal of an executor or administrator exist or have transpired, as specified in section seven hundred and eighty-three it shall be the duty of such commissioner to cite such executor or administrator to appear and show cause why he should not be removed, and if he fail to appear or show sufficient cause an order shall be made removing him and revoking his letters; and it is the duty of the commissioner to exercise a supervisory control over the executor or administrator, to the end that he faithfully and diligently perform the duties of his trust according to law.

When deceased a member of a copartnership.

SEC. 790. The executor or administrator of a deceased person who was a member of a copartnership shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof, and also the value of such person's individual interest in the partnership property after the payment or satisfaction of all the debts and liabilities of the partnership.

Partnership property may be administered by surviving partner.

SEC. 791. After the inventory is taken the partnership property shall be in the custody and control of the executor or administrator for the purpose of administration unless the surviving partner shall, within five days from the filing of the inventory, or such further time as the commissioner may allow, apply for the administration thereof and give the undertaking therefor hereinafter prescribed.

His power and duties in such cases.

SEC. 792. If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the

partnership business generally and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the commissioner may allow. In the exercise of his powers and the performance of his duties the administrator of the partnership is subject to the same limitations and liabilities and control and jurisdiction of the court as a general administrator.

Undertaking of administrator of the partnership.

SEC. 793. The undertaking of the administrator of the partnership shall be in a sum not less than double the value of the partnership property and shall be given in the same manner and be to the same effect as the undertaking of a general administrator.

When administration of partnership property devolves upon the general administrator.

SEC. 794. In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator; but, before entering upon the duties of such administration, he shall give an additional undertaking in double the value of the partnership property.

Duty of surviving partner toward administrator.

SEC. 795. Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him on demand all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

How last section may be enforced.

SEC. 796. Any surviving partner who shall refuse or neglect to comply with the requirements of the last section may be cited to appear before the commissioner, and unless he show cause to the contrary the commissioner shall require him to comply with such section in the particular complained of.

Who not qualified to act as executor or administrator.

SEC. 797. The following persons are not qualified to act as executors or administrators: Nonresidents of the district; minors; judicial officers; persons of unsound mind, or who have been convicted of any felony, or of a misdemeanor involving moral turpitude.

Form of letters testamentary.

SEC. 798. Letters testamentary may be in the following form:

DISTRICT OF ALASKA, }
——— Precinct. } ss.

To all persons to whom these presents shall come, greeting:

Know ye, that the will of ——— ———, deceased, a copy of which is hereto annexed, has been duly proven before the commissioner for the precinct aforesaid, and that ——— ———, who is named executor therein, has been duly appointed such executor by the commissioner aforesaid. This, therefore, authorizes the said ——— ——— to administer the estate of the said ——— ———, deceased, according to law.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court said ——— day of ———, anno Domini 19—.

A B, Commissioner.

Form of letters of administration.

SEC. 799. Letters of administration may be in the following form:

DISTRICT OF ALASKA, }
——— Precinct. } ss.

To all persons to whom these presents shall come, greeting:

Know ye, that it appearing to the commissioner aforesaid that ——— ——— has died intestate, leaving at the time of his death property in this district, such commissioner has duly appointed ——— ———

administrator of the estate of such ——— ———, deceased; this, therefore, authorizes the said ——— ———, to administer the estate of said ——— according to law.

In testimony whereof, et cetera;

the same as in letters testamentary. Letters to an administrator of the partnership with the will annexed, or to a special administrator, may be issued according to the foregoing forms, with such variations as may be proper in the particular case.

Resignation of executor or administrator.

SEC. 800. The commissioner, in his discretion, may allow an executor or administrator to resign when it appears that such executor or administrator is not in default in any matter connected with the duties of his trust. Such executor or administrator shall pay the cost of the proceeding, and, if the application is allowed, he shall surrender his letters to be canceled, and his powers as such shall cease from that time forward.

CHAPTER EIGHTY-TWO.

OF THE INVENTORY OF THE ESTATE.

Sec.
801. When and how made and verified.
802. What to contain.
803. Appraisement and appointment of appraisers.
804. Oath of appraisers.
805. Appraisement of money and debts.
806. Debt due by person named in will as executor.
807. Discharge or bequest of a claim by will.
808. Property discovered after filing inventory.
809. Who entitled to possession and control of property.
810. When person charged with secreting property or writings.
811. Mode of examination of such persons.
812. Proceeding in case such person refuses to appear.
813. Proceeding to compel account.
814. Damages for conversion before administration.

When and how made and verified.

SEC. 801. An executor or administrator shall within one month from the date of his appointment, or such further time as the commissioner may allow, make and file with the commissioner an inventory, verified by his oath, of all the real and personal property of the deceased which shall come to his possession or knowledge.

What to contain.

SEC. 802. The inventory shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator; also a statement of all debts due the deceased, the written evidence thereof, and the security therefor, if any exist, specifying the name of each debtor, the date of each written evidence of debt, the security therefor, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

Appraisement and appointment of appraisers.

SEC. 803. Before the inventory is filed the property therein specified shall be appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the commissioner; but if any part of the property shall be in a precinct other than that wherein administration is granted, the appraisers thereof may be appointed by such commissioner or the commissioner of the precinct wherein the property shall be; in the latter case a certified copy of the order of appointment shall be filed with the inventory.

Oath of appraisers.

SEC. 804. Before making the appraisement the appraisers shall each make and subscribe an affidavit, to be filed with the inventory, to the effect that he will honestly and impartially appraise the property which shall be exhibited to him according to the best of his knowledge and ability.

Appraisement of money and debts.

SEC. 805. The appraisers shall appraise each article of property separately and set down the value thereof in dollars and cents opposite the entry of the article in the inventory. Money, of whatever nature.

that is a legal tender is to be appraised at its nominal value; but debts of all descriptions or kinds are to be appraised at that sum which, in the judgment of the appraisers, may be realized from them by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

Debt due by person named in will as executor.

SEC. 806. The naming anyone executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory; and if the person so named afterward take upon himself the administration of the estate he shall be liable for such sum as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

Discharge or bequest of a claim by will.

SEC. 807. The discharge or bequest in a will of any claim of the testator against a person named as executor therein, or against any other person, shall, as against the creditors of the deceased, be invalid. Such claim shall be included in the inventory, and for all purposes of administration is to be deemed and treated as a specific legacy of that amount.

Property discovered after filing inventory.

SEC. 808. If, after the filing of the inventory, property not mentioned therein shall come to the knowledge or possession of the executor or administrator, it is his duty immediately to make an inventory thereof and cause the same to be appraised in the manner prescribed in this title and file the same with the commissioner.

Who entitled to possession and control of property.

SEC. 809. The executor or administrator is entitled to the possession and control of the property of the deceased, both real and personal, and to receive the rents and profits thereof until the administration is completed, or the same is surrendered to the heirs or devisees by order of the court or judge thereof; but where such property, or any portion thereof, is in the possession of a third person, by virtue of a valid subsisting lease or bailment, the possession and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, it is his duty to keep the same in repair and preserve it from loss or decay as far as possible.

When person charged with secreting property or writings.

SEC. 810. Whenever it appears probable from the affidavit of an executor or administrator, or of an heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate, or any writing relating or pertaining thereto, or that such person has knowledge of any such property or writing being so concealed, secreted, or disposed of, and refuses to disclose the same to the executor or administrator, the commissioner, upon the application of such executor or administrator, may cite such person to appear and answer under oath concerning the matter charged.

Mode of examination of such persons.

SEC. 811. Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the persons cited shall be reduced to writing and subscribed by him and filed. If such person be not in the precinct where administration is granted, the proceeding may be either before the commissioner of such precinct or before the commissioner of the precinct where such person resides or may be found. In the latter case a certified copy of the written interrogatories, if any, and the examination or other proceeding thereon, or connected therewith, shall be filed with the commissioner where administration is granted.

Proceeding in case such person refuses to appear.

SEC. 812. If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt or may at once be committed, by the warrant of the commissioner, to jail, there to remain in close custody until he submits to the order of the commissioner.

Proceeding to compel account.

SEC. 813. The commissioner, upon the application of the executor or administrator, may cite any person who has been intrusted with any

of the property of the deceased to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in a manner prescribed in sections eight hundred and ten, eight hundred and eleven, and eight hundred and twelve, concerning property or writings alleged to be concealed, and with like effect.

Damages for conversion before administration.

SEC. 814. If any person shall, before administration is granted, embezzle, alien, or in any way convert to his own use any of the property of a deceased person, he shall be liable to the executor or administrator in double the amount of damages which may be assessed therefor.

CHAPTER EIGHTY-THREE.

OF THE SUPPORT OF THE WIDOW AND MINOR CHILDREN.

Sec.
815. Provision for widow and minor children before administration.
816. Property to be set apart, and effect of.
817. Further order for support, when made.
818. When the whole of estate to be set apart to widow and children.
819. When estate all deemed assets.

Provision for widow and minor children before administration.

SEC. 815. Until administration of the estate has been granted and the inventory filed, the widow and minor children of the deceased are entitled to remain in possession of the homestead, all the wearing apparel of the family, and household furniture of the deceased, and also to have a reasonable provision allowed for their support during such period, to be allowed by the commissioner.

Property to be set apart, and effect of.

SEC. 816. Upon the filing of the inventory the commissioner shall make an order setting apart for the widow or minor children of the deceased, if any, all the property of the estate by law exempt from execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any; or if there be no widow, it is the property of the minor child, or if more than one, of the minor children, in equal shares, to be used and expended in the nurture and education of such child or children by the guardian thereof as the law directs.

Further order for support, when made.

SEC. 817. If the property so exempt is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for one year after the filing of the inventory, the commissioner may order that the executor or administrator pay to such widow, if any, and if not, then to the guardian of such minor children, an amount sufficient for that purpose.

When the whole of estate to be set apart to widow and children.

SEC. 818. If from the inventory of an intestate's estate, who died leaving a widow or minor children, it appears that the value of the estate does not exceed one hundred and fifty dollars over and above property exempt from execution, upon the filing of the inventory the commissioner shall make a decree providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such widow or minor children in like manner and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property be discovered.

When estate all deemed assets.

SEC. 819. If an intestate leave neither widow nor minor children all the property of the estate is assets in the hands of the administrator, for the payment of funeral expenses, expenses of administration, payment of the debts of the deceased, or distribution according to law.

CHAPTER EIGHTY-FOUR.

OF CLAIMS AGAINST THE ESTATE.

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820. Publication of notice and contents thereof.
821. Proof of publication; effect of not presenting claim.
822. Claim, how presented, and verification of.
823. Claim to be allowed or rejected; if barred, not to be allowed.
824. Effect of judgment against executor or administrator.
825. Judgment against deceased in his lifetime.
826. When and how claim may be referred.
827. Proceeding by referee, and effect of.
828. Claim of executor or administrator.
829. How such claim may be determined.

Publication of notice and contents thereof.

SEC. 820. Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in the precinct, if there be one, or otherwise in such paper as may be designated by the commissioner, as often as once a week for four successive weeks, and oftener if the commissioner shall so direct. In case of publication in a paper published without the precinct, the executor or administrator shall also post a notice in at least three public places, to be designated by the commissioner in his order, one of which shall be at or immediately adjacent to the post-office nearest the residence of the decedent at the time of his death. Such notice shall require all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of such notice, to the executor or the administrator, at a place within the precinct therein specified.

Proof of publication; effect of not presenting claim.

SEC. 821. Before the expiration of the six months mentioned in the last section, a copy of the notice as published, with the proper proof of publication, shall be filed with the commissioner. A claim not presented within six months after the first publication of the notice is not barred, but it can not be paid until the claims presented within that period have been satisfied, and if the claim be not then due, or if it be contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable.

Claim, how presented, and verification of.

SEC. 822. Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant or some one on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due, that no payments have been made thereon, except as stated, and that there is no just counterclaim to the same, to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim, the same may be demanded by the executor or administrator, or that its nonproduction be accounted for.

Claim to be allowed or rejected; if barred, not to be allowed.

SEC. 823. When the claim is presented to the executor or administrator, as prescribed in the last section, if he shall be satisfied that the claim thus presented is just, he shall indorse upon it the words "examined and approved," with the date thereof, and sign the same officially, and shall pay such claim in due course of administration; but if he shall not be so satisfied, he shall indorse thereon the words "examined and rejected," with the date thereof, and sign the same officially. Every executor or administrator shall keep a list of all demands legally exhibited against the estate of the testator or intestate, and shall, every three months, file with the commissioner a statement of all such claims as have been presented, and whether the same have been allowed or rejected by him. If any executor or administrator shall refuse to allow

any claim or demand against the deceased after the same may have been exhibited to him in accordance with the provisions of this Act, the claimant may present his claim to the commissioner having jurisdiction or to the district court or the judge thereof for allowance, giving the executor or administrator thirty days' notice of such application to the court. The district court or the judge thereof shall have power to hear and determine in a summary manner all demands against any estate agreeably to the provisions of this chapter, and which have been so rejected by the executor or administrator, and shall cause a concise entry of the order of allowance or rejection to be made on the record, which order shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases: *Provided*, No claim which shall have been rejected by the executor or administrator, as aforesaid, shall be allowed by any court, judge, referee, or jury, except upon some competent or satisfactory evidence other than the testimony of the claimant. No claim shall be allowed by the executor or administrator or the district court or judge which is barred by the statute of limitations.

Effect of judgment against executor or administrator.

SEC. 824. The effect of a judgment against an executor or administrator, on account of a claim against the estate of his testator or intestate, is only to establish the claim as if it had been allowed by him, so as to require it to be satisfied in due course of administration, unless it appear that the complaint alleged assets in his hands applicable to the satisfaction of such claim, and that such allegation was admitted or found to be true, in which case the judgment may be enforced against such executor or administrator personally.

Judgment against deceased in his lifetime.

SEC. 825. A claim established by judgment against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment docket thereof to the executor or administrator for allowance or rejection, as in other cases; but this section is not to be construed to prevent an execution from being issued upon such judgment, as elsewhere provided in this code.

When and how claim may be referred.

SEC. 826. If the executor or administrator doubt the validity of any claim presented to him, he may agree, in writing, with the claimant that an order of reference be made by the commissioner thereof concerning the same. Upon the filing of such agreement, the commissioner shall make the order accordingly.

Proceeding by referee, and effect of.

SEC. 827. The referee shall proceed to hear and examine the matter, and report thereon to the commissioner, where the order of reference was made, in the same manner and with like effect as if the order was made in an action upon such claim.

Claim of executor or administrator.

SEC. 828. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly verified, may be presented to the commissioner for allowance or rejection; but the allowance of such claim by such commissioner does not conclude a creditor, heir, or other person interested in the estate in any action or proceeding between such executor or administrator and such creditor, heir, or other person.

How such claim may be determined.

SEC. 829. If the commissioner reject the claim of the executor or administrator, either in whole or in part, or in case the same is not presented for allowance, as provided in the last section, the executor or administrator may retain the amount thereof until the final settlement of his accounts, when, if the same is controverted or objected to by any person interested in the estate, the right of the executor or administrator to have the allowance claimed shall be tried and determined by the court. If the claim is not presented to the commissioner, as provided in the section last preceding, before it is barred by the statute of limitations, such claim can not be allowed, retained, or recovered.

CHAPTER EIGHTY-FIVE.

OF THE SALE OF PROPERTY BY EXECUTORS OR ADMINISTRATORS.

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Sale of property, how made, and application therefor.

SEC. 830. No sale of the property of an estate is valid unless made by order of the commissioner, as in this chapter prescribed, unless herein otherwise provided. The application for an order of sale shall be by the petition of the executor or administrator, and in case of real property a citation to the heirs and others interested in such property.

Order of sale of personal property.

SEC. 831. Upon the filing of the inventory the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution; and it shall be the duty of the commissioner to grant such order, if in his judgment it is for the best interest of the estate, and to direct and prescribe the terms of sale upon which such property shall be sold, whether for cash or on credit.

Sales of property thereunder.

SEC. 832. Thereafter the executor or administrator shall sell such personal property from time to time for the purposes specified in the last section, and as often and as much thereof as may be necessary. Such sale shall be conducted in the same manner as a sale of personal property on execution, unless otherwise provided in this chapter.

May be sold at private sale.

SEC. 833. If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the commissioner that it would be for the interest of the estate, he may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale. If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any property of the estate not specially devised or bequeathed remains unsold or appropriated to the purposes specified in section eight hundred and sixty-eight.

When real property may be sold where specially devised.

SEC. 834. When the proceeds of the sale of personal property have been exhausted, and the charges, expenses, and claims specified in section eight hundred and thirty-one have not all been satisfied, the executor or administrator shall sell the real property of the estate, or so much thereof as may be necessary for that purpose. If any of such real property have been specially devised, it shall be exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

SEC. 835. The petition for the order of sale of real property shall state the amount of the sales of personal property, the charges, expenses, and claims still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known.

Petition for order of sale of real property.

SEC. 836. Upon the filing of the petition a citation shall issue to the devisees and heirs therein mentioned, and to all others unknown, if any such there be, to appear at a time therein mentioned, not less than thirty days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for.

Citation to heirs and devisees to show cause.

SEC. 837. Upon an heir or devisee known and resident within the district such citation shall be served and returned as a summons, and upon an heir or devisee unknown or nonresident it may be served by publication or posting, or both, not less than four weeks, or for such further time as the commissioner may prescribe. When service is had by posting, the citation shall be posted at not less than three public places within the precinct, one of which shall be the post-office nearest to the place where the decedent resided at the time of his death. When service of the citation is made by publication or posting, there shall be given with it a brief description of the property described in the petition.

Service of citation.

SEC. 838. If, upon the hearing, the court find that it is necessary that the real property, or any portion thereof, should be sold, it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both; and if such property can not be divided without probable injury and loss to the estate, it may order that it, or any specific lot or portion thereof, shall be sold wholly, whether otherwise necessary or not.

Hearing and orde of sale.

SEC. 839. Upon the order being made, the executor or administrator shall sell the property therein specified upon the terms directed and in the manner herein otherwise provided. Such sale shall be made in the same manner as like property is sold on execution: *Provided, however*, The commissioner may, if thought best, order said property to be sold on the premises. When the sale is upon credit the executor or administrator shall take the note of the purchaser for the purchase money, with a mortgage upon the property to secure the payment thereof.

Sale, how made; security for purchase money.

SEC. 840. Within ten days after the sale of real property the executor or administrator shall make a return of his proceedings concerning such sale. Upon such return any of the persons cited to appear on the application for the order of sale may file his objections to the confirmation of such sale.

Return of sale, and objections thereto.

SEC. 841. Upon the hearing the court shall confirm the sale and decree that the executor or administrator make a conveyance to the purchaser, unless it appear that there were irregularities in the sale, or that the sum bidden for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the court shall make an order vacating the sale and directing that the property be resold; and upon such second sale the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objections are made to the confirmation of the sale as provided in the section last preceding, the court shall nevertheless examine the proceedings concerning such sale, and, if it appear proper, may make the order of resale provided for in this section in the same manner and with like effect as if objections had been filed thereto.

When sale confirmed and when vacated.

Recitals in conveyance and effect thereof.

SEC. 842. A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders, and shall operate to convey all the estate, right, and interest of the testator or intestate in the premises at the time of his death.

When real property may be sold to pay legacy, etc.

SEC. 843. When a testator shall have specially bequeathed any specific article of personal property, or given any legacy by will, and there shall not be sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the deficiency, in the manner hereinbefore provided.

Sale of property under will.

SEC. 844. When the testator shall make provision in his will for the sale or disposition of all or any particular portion of his estate, for the payment of funeral charges, expenses of administration, or of claims against the estate, the property so appropriated may be sold or disposed of as directed by the executor or administrator with the will annexed, without an order of the court therefor; but he shall be bound to conduct the sale and make a return thereof in all respects as if it were made by order of the court, unless there are special directions in the will concerning the manner and terms of sale, in which case he shall be governed by such directions in such respects.

Proceeding in case property appropriated insufficient.

SEC. 845. If the provision made by the will or the property thereby appropriated be insufficient for the purpose intended, the remaining portion of the estate may be sold for that purpose, according to the provisions of this chapter.

Bequests and legacies, when liable for debts.

SEC. 846. The property, real and personal, given by the will to any devisee or legatee is liable for the payment of the funeral charges, expenses of administration, and of claims against the estate; and if there be more than one such devisee or legatee, then in proportion to the value or amount of the several devises and legacies; except that specific devises and legacies shall be exempt from such liability, if such appear to have been the intention of the testator and there be other sufficient property to satisfy such charges, expenses, and claims.

Sale of contract for the purchase of real property.

SEC. 847. If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in such real property by virtue of such contract may be sold in the same manner as if such contract had been executed in the lifetime of the deceased, by a conveyance to him of such property according to the legal effect and terms of such contract.

Sale subject to payments to be made on contract.

SEC. 848. If there be any payments due, or to become due, on such contract, to the vendor of the deceased, sale is made subject thereto, and before the same can be confirmed, or the contract assigned to the purchaser, such purchaser shall execute an undertaking, with one or more sufficient sureties in an amount not less than double the value of all the payments then due or to become due, for the benefit of whom it may concern, to be void upon the condition that such purchaser will make all such payments according to the terms of such contract, and indemnify the executor or administrator or others whom it may concern, against all damages, costs, and expenses by reason of any covenant or agreement contained in such contract.

Assignment of contract and effect thereof.

SEC. 849. The order of confirmation of such sale shall direct the executor or administrator to make an assignment of such contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right, and interest of the deceased at the time of his death in such real property, and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

SEC. 850. If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemption of the same by will, the commissioner, upon the application of the executor or administrator, or the application of an heir or creditor, or other person interested in the estate, may order the executor or administrator to redeem such property out of the proceeds of the other personal property, if it appear that such redemption would be for the interest of the estate, and not prejudicial to creditors.

Order to redeem mortgaged property.

SEC. 851. If, upon such application, such redemption be deemed not proper or inexpedient, the commissioner shall order such property to be sold in like manner and with like effect as is provided in other cases of the sale of real property by this chapter; and the conveyance to the purchaser shall operate to convey to him all the estate, right, and interest which the deceased would have had in the property had not the same been mortgaged by him.

Order for the sale of mortgaged property.

SEC. 852. Ten days before making an order for the application of the proceeds of such sale, the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt, and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator; and thereupon the court shall order that the proceeds of the sale be first applied to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

Application of proceeds of sale.

SEC. 853. The three sections last preceding shall not be construed to include a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

When mortgage foreclosed or suit commenced for that purpose.

SEC. 854. If the debt secured by the mortgage mentioned in section eight hundred and fifty be not due at the time of the making of the order for redemption or application of the proceeds of sale, the party to whom it is payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

When debt not due, how satisfied.

SEC. 855. The order of confirmation of sale in this chapter mentioned is conclusive as to the regularity of the sale and no further. All purchases of the property of the estate by an executor or administrator, however made, whether directly or indirectly, are prohibited, and if made are void.

Effect of order confirming sale.

SEC. 856. Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration, and the claims against the estate, and the deceased shall in his lifetime have made or suffered any conveyance, transfer, or sale of any property, real or personal, or any right or interest therein, with intent to delay, hinder, or defraud creditors, or when such conveyance, transfer, or sale has been so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime has suffered, consented, or procured any judgment or decree to be given against him with such intent or in such manner as to be likewise void, it is the duty of such executor or adminstrator to make application by petition to the commissioner for leave to commence and prosecute to final judgment or decree the necessary and proper actions or proceedings to have such conveyance, transfer, sale, or judgment declared void, and the property affected thereby discharged from the effect thereof.

Fraudulent or void conveyance of judgments of the deceased.

SEC. 857. If upon the application it appear to such commissioner that the assets are insufficient for the purposes specified in the last section, and that it is probable that the conveyance, transfer, or judgment was made, suffered, consented to, or procured with the intent or in the manner specified in the last section, he shall make the order directing

Order allowing proceedings to vacate.

the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

Disposition of property recovered on such proceedings.

SEC. 858. The property recovered by means of any proceeding in pursuance of the last two sections is to be sold and appropriated to supply the deficiency mentioned in section eight hundred and fifty-six in the same manner as other like property; but the right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

CHAPTER EIGHTY-SIX.

OF THE ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.

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859. When filed and what to contain.
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868. Same subject.
869. Amount of compensation.
870. Proceeding in case of neglect to file final account.
871. Administrator may compound for debt due estate.

When filed and what to contain.

SEC. 859. An executor or administrator shall, within six months from the date of the notice of his appointment, and every six months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file the same with the commissioner, showing the amount of the money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof.

Proceeding if administrator neglect to file account.

SEC. 860. An executor or administrator who shall fail to file an account as required in the last section may be required by a citation or ordered by a commissioner to appear and do so, either upon the application of an heir or creditor, or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished as for a contempt, or by warrant of the commissioner be committed to close custody in jail until he consent to do so.

Order for the payment of expenses, charges, and claims.

SEC. 861. Within thirty days after the filing of the first semiannual account, and at each semiannual account thereafter, the commissioner shall ascertain and determine if the estate be sufficient to satisfy the claims allowed by the executor or administrator, within the first six months or any succeeding period of six months thereafter, after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so, he shall so order and direct; but if the estate be insufficient for that purpose, he shall ascertain what per centum of such claims it is sufficient to satisfy, and order and direct accordingly.

Final account, when filed and what to contain.

SEC. 862. When the estate is fully administered it shall be the duty of the executor or administrator to file his final account. Such account shall be verified and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and the amount of money and property, if any, remaining unexpended or unappropriated. Upon the filing of the final account, the commis-

sioner shall make an order directing notice thereof to be given in the same manner as the notice of an appointment of an executor or administrator, and appoint a day not less than sixty days subsequent thereafter for the hearing of objections to such final account and the settlement thereof.

Objections to final account, by whom, and when made.

SEC. 863. An heir, creditor, or other person interested in the estate may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objections; but no creditor shall be allowed to object to such account whose claim has been satisfied, as allowed by the executor or administrator or established by judgment.

Decree upon final account and effect thereof.

SEC. 864. Upon the hearing the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right; and such decree in any other action or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled.

Administrator chargeable with amount of inventory.

SEC. 865. An executor or administrator is chargeable in his account with all the property of the estate which may come into his possession, at the value of the appraisement contained in the inventory, except as in this chapter otherwise provided.

For what administrator responsible.

SEC. 866. He shall not make profit by the increase in value of the property of the estate, or suffer loss for the decrease in value or the destruction thereof, without his fault; and if any of the property of the estate sell for more than its appraised value he shall account for the excess, and if any such property sell for less than its appraised value he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate if it appear that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satisfies any such claim for less than its nominal value he is only entitled to charge in his account the sum actually paid.

Expenses and compensation of administrator.

SEC. 867. An executor or administrator shall be allowed, in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel. For his services he shall receive such compensation as the law provides; but when the deceased, by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services unless he shall, within ten days after his appointment, subscribe and file with the commissioner a written declaration renouncing the compensation provided by the will.

Same subject.

SEC. 868. Notwithstanding the provision in the will for the compensation of an executor, if the estate be insufficient to satisfy the claims against it, the commissioner shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to what the executor would have been entitled to if no such provision had been made.

Amount of compensation.

SEC. 869. The compensation provided by law for an executor or an administrator is a commission upon the whole estate accounted for by him, as follows:

First. For the first thousand dollars, or any less sum, at the rate of seven per centum thereof;

Second. For all above that sum and not exceeding two thousand dollars, at the rate of five per centum thereof;

Third. For all above two thousand and not exceeding four thousand dollars, at the rate of four per centum thereof;

Fourth. For all above the last-mentioned sum, at the rate of two per centum thereof.

In all cases, such further compensation as is just and reasonable may be allowed by the commissioner for any extraordinary and unusual services not ordinarily required of an executor or administrator in the discharge of his trust.

Proceeding in case of neglect to file final account.

SEC. 870. Before the time appointed for the hearing and settlement of a final account the executor or administrator shall file with the commissioner a copy of the notice thereof, with the proper proof of its publication or posting as directed. An executor or administrator who shall fail to file his final account as provided in section eight hundred and sixty-two may be proceeded against in like manner and with like effect as provided in section eight hundred and sixty in case of failure to file a semiannual account.

Administrator may compound for debt due estate.

SEC. 871. Whenever a debtor of a deceased person is unable to pay all his debts, an executor or administrator, by an order of the commissioner, may compound with him and give him a discharge upon receiving a fair and just proportion of his effects; but if such compounding is procured or produced by the fraudulent representations or conduct of such debtor, such payment shall only operate to discharge a like amount of the debt.

CHAPTER EIGHTY-SEVEN.

OF THE PAYMENT OF CLAIMS AND CHARGES.

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884. Qualification of sureties in undertaking, and costs.
885. Application for decree to refund.
886. Proceedings thereon, and how decree enforced.

Order of payment of charges and claims.

SEC. 872. The charges and claims against the estate which have been presented and allowed, or presented and disallowed but subsequently established by judgment within the first six months after the date of the notice of appointment of the executor or administrator, shall be paid in the following order, and those presented and allowed or established in like manner with each succeeding period of six months thereafter during the continuance of the administration in the same manner: First, funeral charges; second, taxes of whatever nature due the United States; third, expenses of last sickness; fourth, all other taxes of whatever nature; fifth, debts preferred by the laws of the United States; sixth, debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens; seventh, debts due employee of decedent for wages earned within the ninety days immediately preceding the death of the decedent; eighth, all other claims against the estate.

Proceeds of real property to be applied in satisfaction of lien.

SEC. 873. The preference given by subdivision sixth of the last section shall extend only to the proceeds of the property upon which the lien exists, and as to such proceeds such debt is to be preferred to any of the classes mentioned in such section other than the taxes upon such property.

How judgment or decree satisfied when given in lifetime of deceased.

SEC. 874. If such debt has been established by judgment against the deceased in his lifetime, such judgment, if the proceeds of the personal property be not sufficient to satisfy it, may, in the discretion

of the commissioner, be either satisfied from the proceeds of the sale of the property by the executor or administrator upon which it is a lien, or enforced by execution against such property. Such sale by the executor or administrator discharges the property from the lien of the judgment, but the same attaches to the proceeds thereof, after deducting therefrom the expenses of sale.

If estate insufficient, payment to be in proportion.

SEC. 875. Except as specially provided in the last three sections, if the estate be insufficient to pay all the claims and charges of any one class, payable within any period of six months during the administration, as provided in section eight hundred and seventy-two, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

Funeral charges, who may incur and when allowed.

SEC. 876. The executor named in the will, or if there be none, or if he do not attend to it, then the husband, widow, or next of kin, in the order herein named, are authorized to incur funeral charges on account of the estate in the burial of the deceased before administration of the estate is granted, and the burial of the deceased may be in a manner and at a cost according to his circumstances and condition in life; but no funeral charges, except those necessary to give the deceased a plain and decent burial, shall be allowed out of the estate where the assets are not sufficient to satisfy all other claims against it, including the legacies and devises, if there be any.

Administrator may retain compensation and expenses.

SEC. 877. The executor or administrator may retain in his hands, in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

Debts not due or contingent.

SEC. 878. A debt due and payable is not entitled to preference over one of the same class not due if the latter be presented within the same period. A debt not due, whether contingent or absolute, upon being presented shall, if absolute, be satisfied by the payment of such sum as the commissioner may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum, to be ascertained in like manner, equal to its present value.

When administrator liable to creditor personally.

SEC. 879. When, upon the filing of a semiannual account, an order is made determining and prescribing the amount of assets applicable to the claims then presented, as provided in section eight hundred and sixty-one, thereafter the executor or administrator is personally liable to each creditor included in such order for such amount.

Distribution and payment of legacies.

SEC. 880. If all the charges and claims shall have been satisfied upon the first distribution of the assets, or as soon thereafter as they may be, the commissioner shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

When real property discharged from administration.

SEC. 881. The real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator, and to be applied to the satisfaction of claims against the estate, as by this chapter provided; but upon the settlement of the estate and the termination of the administration thereof so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order or decree therefor. But if there be any surplus of the proceeds of sale of such real property, or any part thereof, the commissioner shall order and direct a distribution of such surplus among those who would have been entitled to such land if the same had not been sold.

Application of heir or other person for share of estate.

SEC. 882. At any time after the filing of the first semiannual account any heir, devisee, or legatee may apply to the commissioner by petition for an order that he have the possession and rents and profits thereof of the portion of the real property to which he may be entitled, and that payment be made to him of his legacy or distributive share of the personal property of such estate, as the case may be.

Notice and proceedings thereon

SEC. 883. Notice of the application shall be given to the executor or administrator thirty days before the time at which it is made. If upon the hearing it appear that the estate is but little in debt, the commissioner may, in his discretion, grant the petition or some part thereof upon the condition that such applicant file with the commissioner, within a time in the order specified, an undertaking, with one or more sufficient sureties, for the benefit of whom it may concern, in a sum double the value of such real property, legacy, or distributive share, to be void upon the condition that such heir, legatee, or devisee will pay, when required, his portion toward satisfying any claim against the estate.

Qualification of sureties in undertaking, and costs.

SEC. 884. The sureties in such undertaking shall have the same qualifications as sureties in bail upon arrest, and shall justify before the commissioner in like manner. The costs of the proceeding shall be paid by the applicant.

Application for decree to refund.

SEC. 885. If after the giving of such undertaking it shall become necessary, to satisfy any claim against the estate, to require the payment of all or any part of the sum therein specified, it shall be the duty of the executor or administrator to apply by petition to the commissioner for a decree to that effect. Notice of the application shall be given to the party filing the undertaking twenty days before the time at which the application is made.

Proceedings thereon, and how decree enforced

SEC. 886. If upon the hearing it appear necessary and proper that such payment should be made, the commissioner shall decree accordingly, specifying therein the amount to be paid, and within what time; and if the amount be not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking, by execution, in the same manner as a judgment in the district court.

CHAPTER EIGHTY-EIGHT.

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916. Joint account.
917. "Insane person" and "spendthrift" defined.

Next of kin to be guardian.

SEC. 887. Whenever it becomes the duty of a commissioner to appoint a guardian for a minor, the relatives of such minor, whether male or female, upon application to the commissioner, shall in all cases be appointed, the nearest relative having precedence: *Provided*, Said applicant shall be of good moral character and be otherwise competent to discharge the duties of guardian to such ward.

Commissioner to appoint guardian.

SEC. 888. The commissioner for each precinct, when it shall appear to him necessary or convenient, may appoint guardians to minors and

others being inhabitants or residents in such precinct, and also such as shall reside without the district and have any estate within the same.

Who to nominate guardian.

SEC. 889. If the minor is under the age of fourteen years the commissioner may nominate and appoint his guardian, and if he be above that age he may nominate his own guardian, who, if approved by the commissioner having jurisdiction of the estate, shall be appointed accordingly; and if the guardian nominated by such minor shall not be approved by such commissioner, or if the minor shall reside without the district, or if, after having been cited by the commissioner, he shall neglect to nominate a suitable person, the commissioner may nominate and appoint the guardian in the same manner as if the minor were under fourteen years of age.

Powers and duties of guardian.

SEC. 890. Every guardian so appointed shall have the custody and tuition of the minor and the care and management of his estate, and shall continue in office until the minor shall have arrived at the age of twenty-one years, or until the guardian shall have been discharged according to law: *Provided, however*, The father of the minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and to the care of his education.

Bond of guardian.

SEC. 891. Every such guardian shall give bond, with surety or sureties, to the United States, in such sum as the commissioner may order, with conditions as follows:

First. To make a true inventory of all the real estate, and of all goods, chattels, rights, and credits of the ward that shall come to his possession or knowledge, and to return the same to the commissioner at such time as the latter may order;

Second. To dispose of and manage all such estate and effects according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and in relation to the custody, education, and maintenance of the ward;

Third. To render, on oath, an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within a year after his appointment, and at such other times as the commissioner shall direct;

Fourth. At the expiration of his trust, to settle his accounts with the commissioner or with the ward or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be legally entitled thereto.

Testamentary guardian.

SEC. 892. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or for a less time. And every mother may, by her last will in writing, appoint a guardian or guardians for any of her children, to continue during the minority of the child or for a less time: *Provided*, The father of such child or children is dead and has not appointed a guardian, or whenever, by judgment of divorce between such father and mother, the custody of such child or children has been awarded to the mother; and every such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed by the commissioner: *Provided*, Nothing in this section shall be construed to deprive either the surviving father or mother of the custody of the person of his or her children, such surviving parent being competent to transact his or her own business.

Bond of testamentary guardian.

SEC. 893. Every such testamentary guardian shall give bond in like manner and with like conditions as is before required of a guardian

appointed by the commissioner: *Provided*, When the testator in a will appointing the guardian shall have ordered or requested that such bond shall not be given the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the commissioner shall think proper to require it.

Guardian in judicial proceedings.

Sec. 894. Nothing contained in this chapter shall impair the power of the district court or courts of a justice of the peace to appoint a guardian to defend the interests of any minor impleaded in such courts or interested in any suit or matter therein pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute, or defend any suit in his behalf.

Guardians for insane persons, etc.

Sec. 895. Commissioners in their respective precincts shall have power to appoint guardians to take care, custody, and management of the estates, real and personal, of all insane persons, idiots, and all who are incapable of conducting their own affairs, and the maintenance of their families and the education of their children.

Guardian for insane person.

Sec. 896. When the relatives or friends of any insane person, or any other persons inhabitants of the precinct in which such insane person resides, shall apply to the commissioner by petition in writing to have a guardian appointed for him, the commissioner shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person in question is incapable of taking care of himself, the commissioner shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and duties of guardians of insane person.

Sec. 897. Every guardian so appointed for an insane person shall have the care and custody of the person of the ward and the management of all his estate, and he shall give bond to the United States in like manner and in like conditions as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward shall be omitted in the condition of the bond.

Guardian for spendthrift.

Sec. 898. When any person, by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, the commissioner for such precinct of which such spendthrift is a resident or inhabitant shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person complained of comes within the description contained in this section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Order of notice to be filed with the clerk of district court.

Sec. 899. After the order of notice has been issued, the commissioner shall cause a copy of the same to be filed in the office of the clerk of the district court, and if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales, or transfers of real or personal estate made by such spendthrift after such filing of the order of notice in the office of the district court, and before the termination of the guardianship, shall be null and void.

Allowance for defense of ward.

Sec. 900. When a guardian shall be appointed for an insane person or spendthrift, the commissioner shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the proceeding.

Guardian for spendthrift, powers and duties.

Sec. 901. Every guardian so appointed for a spendthrift shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged; and he shall give bond to the United States in like manner and with like condition as is before directed with respect to the guardian of an insane person.

SEC. 902. Every guardian appointed under the provisions of this chapter shall pay all just debts due from his ward out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided by law; he shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the commissioner, compound for the same, and give a discharge to the debtor upon receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward in all legal actions and proceedings, unless when another person is appointed for that purpose as guardian or next friend.

Payment of debts in settlement of accounts.

SEC. 903. The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Management of ward's estate.

SEC. 904. Upon the taking of any inventory, as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward in like manner as is directed with respect to executors and administrators.

Inventory and appraisal of the ward's estate.

SEC. 905. Commissioners in their respective precincts, on the application of a guardian or any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also all of the moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and such commissioner may make such further order and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Management and investment of property.

SEC. 906. When any guardian appointed either by a testator or by a commissioner shall become insane or otherwise incapable of discharging his trust, or be unsuitable therefor, the commissioner, after notice to such guardian and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust when it shall appear to the commissioner proper to allow the same, and upon every such resignation or removal, and also upon the death of any guardian, the commissioner shall appoint another in his stead.

Removal or resignation of guardian.

SEC. 907. The marriage of any female who is under guardianship as a minor shall operate as a discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the commissioner when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Marriage of female ward.

SEC. 908. The commissioner may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case and upon the like terms as are prescribed with regard to executors or administrators.

New bond.

SEC. 909. No action shall be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the time when such guardian shall be discharged: *Provided*, If at the time of such discharge the person entitled to bring such action

Action against sureties on guardian's bond.

shall be out of the district the action may be commenced at any time within three years after his return to the district.

Proceedings in cases of suspected embezzlement.

SEC. 910. Upon complaint made to the commissioner by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the commissioner may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided respecting persons suspected of concealing or embezzling effects of a deceased testator or intestate.

Guardians for non-resident minors.

SEC. 911. When any minor or other person likely to be put under guardianship according to the provisions of this chapter shall reside without the district and shall have any estate therein, any friend of such person, or anyone interested in his estate, in expectancy or otherwise, may apply to the commissioner of any precinct in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the commissioner shall order, and after a full hearing and examination, if it shall appear proper the commissioner may appoint a guardian for such absent person.

Powers and duties of such guardians.

SEC. 912. Every guardian appointed according to the provisions of the preceding section shall have the same powers and duties with respect to any estate of the ward that may be found within the district, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Bond of.

SEC. 913. Every such guardian shall give bond to the United States in like manner and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and the account to be rendered by the guardian shall be confined to such estate and effects which shall come to his hands in the district, and that the provisions respecting the custody of the ward shall not be applicable unless the ward shall come to reside in the district.

First guardianship exclusive.

SEC. 914. The guardianship which shall first be legally granted of any person residing without the district shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the commissioner of any other precinct.

Expenses and compensation.

SEC. 915. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the commissioner before whom his accounts are settled shall consider just and reasonable.

Joint account.

SEC. 916. When an account is rendered by two or more joint guardians, the commissioner may, in his discretion, allow the same upon the oath of any one of them.

"Insane person" and "spendthrift" defined.

SEC. 917. The words "insane person" are intended to include every idiot, every person not of sound mind, every lunatic and distracted person; and the word "spendthrift" is intended to include any one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards contained in this code.

CHAPTER EIGHTY-NINE.

OF THE SALE OF LANDS BY GUARDIAN, AND DISPOSITION OF PROCEEDS.

Sec.
918. When guardian may sell real property of ward.
919. Proceeds to be placed on interest.
920. Application of proceeds.
921. Investment of proceeds.
922. Residue, when considered as real estate.
923. Petition for license to sell.
924. Order to show cause.
925. Service of order.
926. When certificate of commissioners necessary.
927. Bond of guardian.
928. His oath.
929. Notice of sale.
930. License, how long in force.
931. When foreign guardian may file copy of his appointment.
932. When foreign guardian may be licensed to sell.
933. Where proceedings may be instituted.
934. Disposition of residue of proceeds.
935. Costs, when to prevailing parties.
936. Limitation of suits to recover estates sold by guardian.
937. Certain irregularities not to avoid sale.
938. Liability of guardian for misconduct.
939. Sale, when not held void, although irregular.

When guardian may sell real property of ward.

SEC. 918. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor and proceeding therein in the manner hereinafter provided.

Proceeds to be placed on interest.

SEC. 919. When it shall appear upon the representation of any such guardian that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein as hereinafter provided.

Application of proceeds.

SEC. 920. If the estate be sold for the maintenance of the ward and his family, as provided in section nine hundred and eighteen, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, so far as may be necessary, in like manner as if it had been the personal estate of the ward.

Investment of proceeds.

SEC. 921. If the estate is sold in order to put out and invest the proceeds as provided in section nine hundred and nineteen, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the commissioner relating thereto.

Residue, when considered as real estate.

SEC. 922. In every case of the sale of real estate as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward and shall be disposed of among the same persons and in the same manner as the real estate would have been if it had not been sold.

Petition for license to sell.

SEC. 923. In order to obtain a license for such sale the guardian shall present to the commissioner of the precinct in which he was appointed guardian a petition therefor, setting forth the condition of the estate of his ward and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Order to show cause.

SEC. 924. If it shall appear to the commissioner from such petition that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, he shall thereupon make an order directing the next of kin of the ward and all persons interested in the estate to appear before him at a time and place to be therein specified, not less than four nor more than eight weeks from the time

of making such order, to show cause why a license should not be granted for the sale of such estate.

Service of order.

SEC. 925. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks in a newspaper circulating in the district, to be specified by the commissioner.

When certificate of commissioners necessary.

SEC. 926. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioner of the precinct of which the ward is an inhabitant shall certify in writing his approbation of the proposed sale.

Bond of guardian.

SEC. 927. Every guardian licensed to sell real estate as aforesaid shall, before the sale, give bond to the United States, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

His oath.

SEC. 928. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the commissioner or some other officer competent to administer the same, in substance as follows: That in disposing of the estate which he is licensed to sell he will use his best judgment in fixing the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

Notice of sale.

SEC. 929. He shall also give public notice of the time and place of sale and shall proceed therein in like manner as is prescribed for executors and administrators; and the evidence of giving such notice may be perpetuated in the same manner and with the same effect as is provided in the case of sales of real estate by executors and administrators.

License, how long in force.

SEC. 930. No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same.

When foreign guardian may file copy of his appointment.

SEC. 931. When any minor, insane person, or spendthrift residing out of the district shall be put under guardianship in the State or county in which he resides, and shall have no guardian appointed in the district, the foreign guardian may file an authenticated copy of his appointment with the commissioner of any precinct in which there may be real estate of the ward; after which he may be licensed by the commissioner to sell the real estate of the ward in any precinct in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in the district, except in the particulars hereinafter mentioned.

When foreign guardian may be licensed to sell.

SEC. 932. Every foreign guardian so licensed to sell real estate shall take and subscribe the oath in the like case of guardians appointed in the district, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in the district, and may perpetuate the evidence of the notice in the same manner.

Where proceedings may be instituted.

SEC. 933. All the proceedings required to be had before the commissioner in any precinct in the district respecting such sale by a foreign guardian shall be had before the commissioner for the precinct in which the authenticated copy of his appointment is filed.

Disposition of residue of proceeds.

SEC. 934. Upon every such sale by a foreign guardian the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons and in the same proportions as the real estate would have been according to the laws of the district if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond to the United States,

with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

Costs, when to prevailing parties.

SEC. 935. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the commissioner that either the petition or the objection is unreasonable, the commissioner shall give judgment for costs against the losing party in the cause.

Limitation of suits to recover estates sold by guardian.

SEC. 936. No action for the recovery of any estate sold by a guardian under the provisions of this chapter shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the district, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability or after their return to the district.

Certain irregularities not to avoid sale.

SEC. 937. In case of an action relating to any estate sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings: *Provided*, It shall appear—

First. That the guardian was licensed to make the sale by a commissioner of competent jurisdiction;

Second. That he gave a bond that was approved by the commissioner;

Third. That he took the oath prescribed in this chapter;

Fourth. That he gave notice of the time and place of sale as prescribed by law; and

Fifth. That the premises were sold accordingly at public auction, and are held by one who purchased them in good faith.

Liability of guardian for misconduct.

SEC. 938. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in an action on the bond of such guardian or otherwise as the case may require.

Sale, when not held void, although irregular.

SEC. 939. If the validity of any sale made by a guardian under this chapter shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: *Provided*, The guardian was authorized to make the sale by the proper commissioner, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

CHAPTER NINETY.

OF APPEALS IN PROBATE CASES.

Sec.
940. Appeals to district court.
941. Exceptions and orders of commissioner.
942. Duty of district judge.
943. Proceedings in such cases.

Appeals to district court.

SEC. 940. There shall be an appeal to the district court of the district of Alaska from all orders of the commissioners exercising the jurisdiction of a court of probate.

Exceptions and orders of commissioner.

SEC. 941. In the case of decedents any heir, legatee, devisee, creditor, or other person interested in the estate, and in the case of minors, lunatics, and habitual drunkards, any creditor or relative within the third degree of consanguinity, may file with the commissioner exceptions to any order of such commissioner granting or revoking letters of administration or of guardianship, allowing semiannual or final

accounts, allowing or rejecting claims, directing the payment of debts or legacies or the distribution of estates, ordering the sale or disposal of real or personal property, or other proceeding. Upon the filing of such exception the commissioner shall make a transcript of all files, papers, and evidence pertaining to such order or proceeding and forward the same to the clerk of the district court.

Duty of district judge.

SEC. 942. Upon the filing of such exceptions the district judge shall proceed on due notice to hear and determine the same at such time and in such manner as he shall prescribe by order, and for that purpose may receive and entertain affidavits and depositions or hear oral evidence.

Proceedings in such cases.

SEC. 943. Upon such hearing the district court or judge thereof shall determine the issues so raised according to the very right of the matter and make such order in the premises as he may see fit, which order shall be entered in a docket to be kept by the clerk of the court for that purpose, properly indexed, and a copy of the same shall be forwarded to the commissioner before whom the exceptions were filed, who shall thereupon proceed in accordance with such order. Such orders shall be deemed a judgment, subject to appeal in the manner provided for appeals from judgments in the district court.

CHAPTER NINETY-ONE.

OF THE RECORDS AND FILES OF A JUSTICE'S COURT.

Sec.
944. Records and files of a justice's court, what constitutes.
945. Docket of justice, what entries to be made therein.
946. Docket and files, public writings.

Records and files of a justice's court, what constitutes.

SEC. 944. The records and files of a justice's court are the docket and all papers and process filed in or returned to such court concerning or belonging to any proceeding authorized to be had or taken therein or before the justice of the peace who holds such court.

Docket of justice, what entries to be made therein.

SEC. 945. The docket of a justice of the peace is a book in which he must enter—

First. The title of every action or proceeding commenced in his court or before him, with the names of the parties thereto and the time of the commencement thereof;

Second. The date of making or filing any pleading, and, when the same is made orally, a plain statement of the substance thereof and the verification thereto when one is required;

Third. An order allowing a provisional remedy, and the date of issuing and returning the summons or other process;

Fourth. The time when the parties, or either of them, appear, or their failure to do so;

Fifth. Every postponement of a trial or proceeding, and upon whose application, and to what time;

Sixth. The demand for a jury, if any, and by whom made; the order for a jury, and the time appointed for trial thereby;

Seventh. The return of an order for a jury, the names of the persons impaneled and sworn as a jury, and the names of all witnesses sworn, and at whose request;

Eighth. The verdict of the jury, and when given; and if the jury disagree and are discharged without giving a verdict, a statement of such disagreement and discharge;

Ninth. The judgment of the court, and when given;

Tenth. The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking thereof, and the justification of the sureties therein;

Eleventh. Satisfaction of the judgment or any part thereof;

Twelfth. A memorandum of all orders relating to the admission of bail, taking bail, or commitment for want thereof;

Thirteenth. All other matters which may be material or specially required by any statute.

SEC. 946. The docket and files of a justice's court are to be safely and securely kept by the justice of the peace, and by him delivered to his successor in office when demanded. Such docket and files are public writings. Docket and files, public writings.

CHAPTER NINETY-TWO.

OF GENERAL PROVISIONS IN RELATION TO CIVIL ACTIONS IN JUSTICE'S COURT.

Sec.
947. Code of Civil Procedure to govern.
948. Summons, by whom issued, and requirements of.
949. Same subject.
950. Service of summons.
951. When served and by whom.
952. Undertaking for costs, when may be required.
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954. Provisional remedies.
955. Who may serve writ of arrest, attachment, and order for the delivery of personal property.
956. Disposition of defendant arrested in civil action.
957. Defendant entitled to give bail.
958. Undertaking of bail.
959. Undertaking for delivery of personal property.
960. Real property can not be attached by process from a justice's court.
961. Justification of sureties.

SEC. 947. A civil action in a justice's court is commenced and prosecuted to final determination, and judgment enforced therein, in the manner provided in this code for similar actions in courts of record, except as otherwise provided: *Provided*, Necessary disbursements shall in all cases be allowed the prevailing party. Code of Civil Procedure to govern.

SEC. 948. The summons shall be issued and signed by the justice, and must require the defendant to appear before such justice at a time and place to be named therein not less than six nor more than twenty days from the date thereof, to answer the complaint of the plaintiff, or judgment for want thereof will be taken against him. Summons, by whom issued, and requirements of.

SEC. 949. The summons shall be issued and signed by the justice, and may be in the following form: Same subject.

To the United States marshal of the district of Alaska or any deputy: In the name of the United States of America we command you to summon ——— to appear before the undersigned, a justice of the peace in ——— precinct in said district, on the ——— day of———, 19——, at the hour of ——— o'clock, in the ——— of said day, at ———, in the said precinct, to answer the complaint of ———, founded upon an instrument of writing (or note or account, or for trespass or injury to property, or any similar statement, as the case may be), and wherein he demands ——— dollars. Given under my hand this ——— day of———, 19——.

A B,
Commissioner and ex officio Justice of the Peace.

SEC. 950. The service of the summons may be made as follows: First, by delivering a copy thereof to the defendant; or, second, by leaving a copy of the summons at the usual place of abode of the defendant, with some person of the family above the age of fifteen years; and if a defendant shall refuse to hear the summons read, or to receive a copy thereof, at the offer of the officer to read the same or to deliver a copy thereof, such refusal shall be a sufficient service of the summons; or if Service of summons.

the defendant be a corporation, then to the president, secretary, or a managing or local agent thereof.

When served and by whom.

Sec. 951. The summons must be served at least five days before the time therein required for the defendant to appear.

Undertaking for costs, when may be required.

Sec. 952. If the plaintiff is a nonresident of the precinct, the justice may require him to give an undertaking, with one or more sureties, for the costs and disbursements of the action before issuing the summons, and if at any time before the commencement of the trial the defendant apply therefor, the justice must require such plaintiff to give such undertaking; but if the plaintiff is a resident of the precinct the justice may, in his discretion, upon a like application on the part of the defendant require such plaintiff to give such undertaking.

Sureties in such cases.

Sec. 953. The undertaking may be in substantially the following form: "I, A B," or "We, A B and C D, undertake to pay E F, the defendant in this action, all costs and disbursements that may be adjudged to him in this action." The sureties must possess the qualifications of bail upon arrest, and if required by the defendant must justify in a sum not less than fifty dollars. A deposit of fifty dollars with the justice, or such less sum as he may deem sufficient, is equivalent to giving the required undertaking; and if the undertaking or deposit in lieu thereof is not given or made upon the day the same is demanded the justice must dismiss the action as for want of prosecution.

Provisional remedies.

Sec. 954. In a civil action in a justice's court a plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in a court of record. All affidavits, orders, and undertakings for such remedies are to be taken or made and filed with the justice, and such process is to be issued by and made returnable before him.

Who may serve writ of arrest, attachment, and order for the delivery of personal property.

Sec. 955. A writ of arrest, of attachment, and order for the delivery of personal property claimed in the action may be served and executed by any person authorized to serve a summons.

Disposition of defendant arrested in civil action.

Sec. 956. A defendant who has been arrested in a civil action must, if he require it, be at once taken before the justice who issued the writ, for the purpose of giving bail. If he do not so require, the officer making the arrest shall keep him in his custody, and take him before such justice on the day and at the hour the defendant is required to appear and answer.

Defendant entitled to give bail.

Sec. 957. Upon the defendant being brought before the justice, either on the day on which he is required to appear and answer or before, he must be allowed to give bail if he desire to.

Undertaking of bail.

Sec. 958. The undertaking of bail may be given with one or more sufficient sureties, and must be taken by the justice. The plaintiff may then and there except to the sufficiency of the bail, and unless he do so he shall be deemed to have accepted it.

Undertaking for delivery of personal property.

Sec. 959. The undertaking for an order for the delivery of personal property claimed in the action shall be taken by the justice who makes the order, and he shall require the sureties therein to justify as bail upon arrest; and no exceptions to the sufficiency of such sureties shall thereafter be allowed.

Real property can not be attached by process from a justice's court.

Sec. 960. Real property or any interest therein can not be attached upon a writ of attachment in a civil action in a justice's court.

Justification of sureties.

Sec. 961. Whenever sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the justice in whose court the action is pending, and upon the notice prescribed in such cases by this code, or upon a shorter notice, to be prescribed by order of the justice.

CHAPTER NINETY-THREE.

OF THE PLEADINGS IN JUSTICE'S COURT.

Sec.
962. No formal pleadings necessary.
963. Same subject.
964. Action on lost instrument.

SEC. 962. No formal pleadings on the part of either plaintiff or defendant shall be required in a justice's court; but before any process shall be issued in any action the plaintiff shall file with the justice the instrument sued on, and a statement of the account as of the facts constituting the cause of action upon which the action is founded; and the defendant shall, before the trial is commenced, file the instrument, account, or statement of his set-off or counterclaim relied upon. No formal pleadings necessary.

SEC. 963. When the action is founded on any instrument of writing purporting to have been executed by the defendant, and the debt or damage claimed may be ascertained by such instrument, the same shall be filed with the justice, and no other statement or pleading shall be required. If the action be upon an account, a bill of the items constituting the account shall be filed. In all other cases a statement of the facts constituting the cause of action and the amount or sum demanded shall be filed with the justice; but no action shall be dismissed or discontinued for want of any such statement as cause of action, or for any defect or insufficiency thereof, if the plaintiff shall file the instrument or account as a sufficient statement before the jury is sworn or the trial commenced, or when required by the justice. Same subject.

SEC. 964. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the justice the affidavit of himself, or some other credible person, stating such loss or destruction, and setting forth the substance of such instrument. Action on lost instrument.

CHAPTER NINETY-FOUR.

OF THE POSTPONEMENT OF TRIALS IN JUSTICE'S COURT.

Sec.
965. When postponement allowed.
966. When it discharges defendant from arrest.
967. When deposition to be taken.
968. Change of place of trial.
969. Costs of the same.
970. Change, when deemed completed.
971. Proceeding when title to land is in issue.

SEC. 965. When a cause is at issue upon a question of fact the justice must, upon sufficient cause shown, on the application of either party, postpone the trial for a period not exceeding sixty days. When postponement allowed.

SEC. 966. When the defendant is in custody a postponement of the trial granted upon the application of the plaintiff for a longer period than one day discharges the defendant from such arrest; and in such case the justice must indorse upon the writ of arrest, "The defendant is discharged from custody upon the within process," and sign the same with his name and office. When it discharges defendant from arrest.

SEC. 967. An application for the postponement of a trial must be granted unless the party applying therefor, if required by the adverse party, consent to take the deposition of any witness of such adverse party then in attendance upon the court. If the consent is given, the justice must take such deposition, and the same may be read on the trial, subject to the same objections as if the witness were present and gave the testimony orally. When deposition to be taken.

SEC. 968. The justice may change the place of trial, on notice of either party to the action, when it appears from the affidavit of such party either— Change of place of trial.

First. That the justice is a party to, or directly interested in, the

event of the action, or connected by consanguinity or affinity, within the third degree, with the adverse party or those for whom he prosecutes or defends;

Second. That the justice is so prejudiced against the party making the motion that he can not expect an impartial trial before the justice;

Third. That the convenience of parties and witnesses would be promoted by such change, and that the motion is not made for the purpose of delay.

The motion for change of the place of trial can not be made or allowed in any action until after the cause is at issue on a question of fact only. If the motion is allowed, the change shall be made to the nearest justice. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. When the place of trial has been changed, the justice shall forthwith transmit to the nearest justice a transcript of the proceedings had in such cause, with all the original papers filed therein.

Costs of the same.

SEC. 969. The costs of such change of venue shall be paid by the party applying therefor, and not taxed as a part of the costs in the case: *Provided*, It shall not be necessary to issue new subpœnas to witnesses; but the witnesses shall appear before the justice before whom the cause has been transferred without the issue of any other notice than the allowance of the motion to change the venue.

Change, when deemed completed.

SEC. 970. Upon the filing of the transcript and papers with the justice to whom the cause has been transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced before such justice.

Proceeding when title to land is in issue.

SEC. 971. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution in the same manner as if the action had been originally commenced therein; and the costs shall abide with the event of the action.

CHAPTER NINETY-FIVE.

OF TRIAL BY JURY IN JUSTICE'S COURT.

Sec.
972. Demand for jury, how and when made.
973. Trial by court, how judgment may be given.
974. Order to summon jury.
975. When to require jurors to appear.
976. Officer to summon persons qualified to serve.
977. Order for jury, how served.
978. Deficiency, how supplied.
979. Number of peremptory challenges.
980. Qualifications of jurors in justice's court.

Demand for jury, how and when made.

SEC. 972. When a cause is at issue upon a question of fact, if either party then demand a jury trial, and deposit with the justice the trial fee, such issue must be tried by a jury and not the court; but otherwise it must be tried by the court.

Trial by court, how judgment may be given.

SEC. 973. When an issue of fact is tried by the justice it is not necessary that there should be any special statement of the facts found or law determined on such trial, but it is sufficient for the court to give judgment generally, as the law and the evidence may require, for the

plaintiff or the defendant, setting forth therein for what amount, or what relief, or to what effect the same is given.

Order to summon jury.

SEC. 974. When a jury has been demanded by a party to an action in a justice's court, the justice must make an order in writing, directed to the marshal or any deputy, or to any person authorized to act as a constable therein, commanding him to summon six persons to serve as jurors in the action between the parties, naming them, at a time and place to be named therein.

When to require jurors to appear.

SEC. 975. The order shall require the jurors to appear before the justice forthwith, or at some time after it to which the trial of the issue may be postponed.

Officer to summon persons qualified to serve.

SEC. 976. The officer serving the order for a jury must do so impartially, by selecting only such persons as he knows or has good reason to believe are qualified according to law to serve as jurors in the court to which they are summoned and in the particular action for which they are selected.

Order for jury, how served.

SEC. 977. The officer must serve the order by giving notice to each of the persons selected of the time and place he is required to appear, and for what purpose, and return the same according to the direction therein, with the names of the persons summoned, verified by his own certificate.

Deficiency, how supplied.

SEC. 978. If a sufficient number of jurors do not appear at the time and place required, or if any of those appearing are peremptorily challenged, or upon a challenge for cause found disqualified, the justice must order the proper officer to summon a sufficient number of other qualified persons, until the jury is completed.

Number of peremptory challenges.

SEC. 979. Each party is entitled to two peremptory challenges and no more.

Qualifications of jurors in justice's court.

SEC. 980. A person competent to act as a juror in a justice's court must possess the qualifications prescribed by this code for jurors in the district court, and must also be an inhabitant of the precinct in which the court is holden at the time he is summoned.

CHAPTER NINETY-SIX.

OF JUDGMENT AND EXECUTION IN JUSTICE'S COURT.

Sec.
981. Docketing judgment in district court.
982. Effect of same.
983. Setting of mutual judgment.
984. Conditions of judgment proposed as set-off.
985. When transcript stays execution.
986. If judgments mutual, justice must set-off.
987. Judgment for difference.
988. Judgment does not affect title to real property.
989. Execution to enforce judgment when against real property.
990. Execution, when returnable, and by whom served.
991. Filing transcript in another precinct.
992. Transcript of judgment, how enforced.
993. Execution, renewal of.
994. Justice may enforce judgment given by his predecessor.

Docketing judgment in district court.

SEC. 981. Whenever a judgment is given in a justice's court in favor of anyone, for the sum of ten dollars or more, exclusive of costs or disbursements, the party in whose favor such judgment is given may, within one year thereafter, file a certified transcript thereof with the clerk of the district court, and thereupon such clerk shall immediately docket the same in the judgment docket of the district court.

Effect of same.

SEC. 982. From the time of docketing a judgment of a district court, as provided in the last section, the same shall be a lien upon the real property of the defendant, as if it were a judgment of the district court wherein it is docketed.

Setting off mutual judgment.

SEC. 983. A party against whom a judgment is given in a justice's court may, upon three days' notice to the adverse party, apply to the

justice of such court to have another judgment given in a justice's court, between the same parties and against such adverse party, set off against such first-mentioned judgment.

Conditions of judgment proposed as set-off.

SEC. 984. There must be no existing right of appeal from the judgment proposed as a set-off; and if such judgment was given in another court than the one where the application is made, the party proposing such set-off must produce a transcript of such judgment, certified by the proper justice, which certificate shall also state how much of the judgment remains unsatisfied, and that the transcript is given for the purpose of being set off against the judgment to which it is proposed as a set-off.

When transcript stays execution.

SEC. 985. The justice making such transcript and certificate shall make an entry thereof in his docket, and thereafter all proceedings to enforce such judgment shall be stayed, unless the transcript be returned, with the certificate of the proper justice indorsed thereon, to the effect that it has not been allowed to be set off.

If judgments mutual, justice must set off.

SEC. 986. If, upon the hearing of the application, the justice finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

Judgment for difference.

SEC. 987. If there is any difference in the amount of the two judgments, judgment for the difference must be given in favor of the party owning the largest judgment. If the justice refuse to allow the set-off, he shall so certify on the transcript and return it to the party making the application.

Judgment does not affect title to real property.

SEC. 988. Although the title to real property may be controverted or questioned in an action in a justice's court, the judgment in such action in no way affects or determines such title as between the parties thereto or otherwise.

Execution to enforce judgment when against real property.

SEC. 989. Execution to enforce a judgment in a justice's court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a justice has been duly docketed in the district court thereafter it must be enforced as a judgment of such district court.

Execution, when returnable, and by whom served.

SEC. 990. An execution issued by a justice must be made returnable in thirty days from the date thereof, and may be directed to the marshal or any deputy or other officer authorized to act as constable in such precinct, and must be executed by any of such officers when delivered to him.

Filing transcript in another precinct.

SEC. 991. When an execution is returned unsatisfied in whole or in part for want of goods and chattels of the defendant whereon to levy, the party entitled to the benefit of the judgment may have a certified transcript thereof and file the same with any justice in any other precinct.

Transcript of judgment, how enforced.

SEC. 992. Upon the filing of a transcript the justice must make an entry thereof in his docket, and thereafter execution may issue to enforce such judgment, or any part thereof remaining unsatisfied, as if it had been given by such justice with whom the transcript is filed.

Execution, renewal of.

SEC. 993. At any time before the expiration of the return day of the execution it may be renewed for another period of thirty days, at the request of the plaintiff, by an indorsement to that effect, made by the justice thereon. Such indorsement must be dated, and if any part of such execution has been satisfied, must state the amount then due thereon. An entry of such renewal must also be made in the docket of the justice.

Justice may enforce judgment given by his predecessor.

SEC. 994. A justice of the peace has authority and power to enforce a judgment given by his predecessor in office, or by a justice whose docket has been transferred to him, and to complete any unfinished business begun before such predecessor, or entered in such docket, as if the same had been given or begun before himself.

CHAPTER NINETY-SEVEN.

OF APPEALS FROM JUSTICE'S COURT IN CIVIL ACTIONS.

Sec.
995. Appeal, who may take, and from what judgment.
996. To what court and within what time.
997. How taken.
998. Undertaking, when to stay proceedings.
999. When proceedings stayed by undertaking for costs.
1000. Allowance of appeal and return of execution.
1001. Qualification and justification of sureties.
1002. Transcript, when filed and what constitutes.
1003. Appeal, how perfected and tried.
1004. Dismissal of appeal.
1005. Judgment in the appellate court.
1006. Defective undertaking, how cured.
1007. Amendment of pleadings in the appellate court.

Appeal, who may take, and from what judgment.

SEC. 995. Either party may appeal from a judgment given in a justice's court, in a civil action, when the sum in controversy is not less than fifty dollars, or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs in either case, except when the sum is given by confession or for want of an answer, as prescribed in this chapter, and not otherwise.

To what court and within what time.

SEC. 996. The appeal is taken to the district court, and may be taken within thirty days from the date of the entry of the judgment. The party appealing is known as the appellant and the adverse party the respondent, but the title of the action is not thereby changed.

How taken.

SEC. 997. An appeal is taken by serving a notice thereof on the adverse party or his attorney and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Undertaking, when to stay proceedings.

SEC. 998. The undertaking of the appellant must be given, with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal; but such undertaking does not stay the proceedings unless the undertaking further provides to the effect following, that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal.

When proceedings stayed by undertaking for costs.

SEC. 999. If the judgment appealed from be in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

Allowance of appeal and return of execution.

SEC. 1000. When an appeal is taken the justice must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not. When the proceedings are stayed, if an execution has been issued to enforce the judgment, the justice must recall the same by written notice to the officer holding the execution, and thereupon it must be returned and all property taken thereon and not sold released; and if the body of the defendant has been taken on execution he must be discharged from custody.

Qualifications and justification of sureties.

SEC. 1001. All sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest, and, if required by the adverse party, must justify before the justice in like manner.

Transcript, when filed and what constitutes.

SEC. 1002. Within twenty days after the allowance of the appeal the appellant must file with the clerk of the district court a transcript of the cause. The transcript must contain a copy of all the material entries in the justice's docket relating to the cause or the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the justice.

Appeal, how perfected and tried.

SEC. 1003. Upon the filing of the transcript with the clerk of the district court the appeal is perfected, and the action shall be deemed pending and for trial therein as if originally commenced in such court,

and the district court shall proceed to hear, try, and determine the same anew, without regarding any error or other imperfection in the original summons and the service thereof, or on the trial, judgment, or other proceeding of the justice or marshal in relation to the cause.

Dismissal of appeal.

SEC. 1004. The district court, on motion of the respondent, may, at any time before the action is called for trial, dismiss the appeal, if it satisfactorily appear that the transcript and original papers annexed are incomplete in any material particular, unless upon the cross motion of the appellant it makes a rule upon the justice to supply such omission, upon such terms against the appellant as may be just. At any time before the trial the court may dismiss the appeal upon the motion of the appellant.

Judgment in the appellate court.

SEC. 1005. When an appeal is dismissed the district court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and effect of it. If the appellant fail to file such transcript within the time required, the adverse party may file a transcript of the judgment of the justice, and the notice and undertaking on appeal, which, on demand, the justice shall deliver to him for that purpose, and thereupon have such appeal dismissed and judgment against the appellant and his sureties as provided in this section.

Defective undertaking, how cured.

SEC. 1006. An appeal can not be dismissed on the motion of the respondent, on account of the undertaking therefor being defective, if the appellant, before the determination of the motion to dismiss, will execute a sufficient undertaking, and file the same in the appellate court, upon such terms as may be deemed just.

Amendment of pleadings in the appellate court.

SEC. 1007. In all cases of appeal the bill of items of the account sued on, or filed as a counterclaim or set-off, or the abatement of the plaintiff's cause of action, or of the defendant's counterclaim or set-off, or other ground of defense filed before the justice, may be amended upon appeal in the appellate court to supply any defect, deficiency, or omission therein, by filing formal pleadings therein when by such amendment substantial justice will be promoted; and in all cases when required by the court, or by either party to the action, formal pleadings shall be filed on either side upon the trial of the cause on appeal; when either party requires such formal pleadings, he shall cause to be served on the opposite party a notice thereof in writing, and file the same in the court where the cause is pending by the first day of the term of such court at which such cause is to be tried; but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment.

CHAPTER NINETY-EIGHT.

OF MISCELLANEOUS PROVISIONS RELATING TO JUSTICE'S COURT.

Sec.		Sec.	
1008.	Judgment of justices may be reviewed.	1011.	Special deputies.
1009.	Appeals, where jury is demanded.	1012.	Party entitled to one hour.
1010.	Who may act as attorney.	1013.	Proceedings for contempt.
		1014.	Punishment for contempt.

Judgment of justices may be reviewed.

SEC. 1008. No provision of this code in relation to appeals or the right of appeal must be construed so as to prevent either party to a judgment given in a justice's court from having the same reviewed in the district court for errors in law appearing upon the face of such judgment or the proceedings connected therewith, as provided in chapter fifty-five.

SEC. 1009. No appeal can be taken, by the party who demanded a jury, from a judgment in a justice's court given upon the verdict of such jury, unless the judgment be for an amount of money not less than fifty dollars or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs and disbursements in either case.

Appeals, where jury is demanded.

SEC. 1010. Any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding other than a subpœna.

Who may act as attorney.

SEC. 1011. Whenever it appears to the justice that any process or order authorized to be issued or made by this code will not be served for want of an officer, such justice may appoint any suitable person, not being a party to the action, to serve the same; such an appointment may be made by an indorsement on the process or order, in substantially the following form, and signed by the justice with his name of office: "I hereby appoint A B to serve the within process, or order," as the case may be.

Special deputies.

SEC. 1012. A party is entitled to one hour in which to make his appearance after the time specified in the summons, and not otherwise; and if the justice be then actually engaged in other official business he may, on his own motion, postpone further proceedings in the case until such official business has been completed or he can be disengaged therefrom.

Party entitled to one hour.

SEC. 1013. Chapter fifty-eight of this title, defining contempts, and the proceeding for punishing a party guilty of contempt, shall apply to justices' courts, except as in this chapter otherwise specially provided.

Proceedings for contempt.

SEC. 1014. The punishment for a contempt in a justice's court shall be by fine or imprisonment, or both; but the fine shall in no case exceed twenty-five dollars, nor the imprisonment ten days.

Punishment for contempt.

CHAPTER NINETY-NINE.

OF FORCIBLE ENTRY AND DETAINER.

Sec.
1015. When entry upon real property allowed; not to be made with force.
1016. Action to recover possession of premises forcibly entered or held by force.
1017. Necessary averments and complaint.
1018. Action for, how conducted.
1019. Summons in, how served and returned.
1020. Continuance, for what time granted.
1021. Action for, trial by commissioner.
1022. Verdict of jury and judgment on.
1023. Form of execution.
1024. Appeal by defendant.
1025. Unlawful holding by force, what deemed to be.
1026. Notice to quit must be in writing; service of.
1027. Notice to quit, how long served before action brought.
1028. Action can not be maintained before expiration of period for which rent paid.
1029. Crops sown, etc., before lease expires, tenant may cultivate and harvest.
1030. Merits of title not to be questioned in action; limitation of action.
1031. Notice to quit in action under Code of Civil Procedure.
1032. Precinct defined.

SEC. 1015. No person shall enter upon any land, tenement, or other real property, but in cases where entry is given by law; and in such cases the entry shall not be made with force, but only in a peaceable manner.

When entry upon real property allowed; not to be made with force.

SEC. 1016. When a forcible entry shall be made upon any premises, or when an entry shall be made in a peaceable manner and the possession shall be held by force, the person entitled to the premises may maintain an action to recover the possession thereof before the commissioner of the precinct in which such real property is situated.

Action to recover possession of premises forcibly entered or held by force.

Necessary averments and complaint.

SEC. 1017. In such action it shall be sufficient to state in the complaint a description of the premises with convenient certainty, that the defendant is in possession thereof, that he entered upon the same with force, or unlawfully holds the same with force, as the case may be, and that the plaintiff is entitled to the possession thereof.

Action for, how conducted.

SEC. 1018. Such action, except as hereinafter especially provided, shall be conducted in all respects as other actions before commissioners.

Summons in, how served and returned.

SEC. 1019. The summons shall be served and returned as in other cases; such service shall be not less than two nor more than four days before the day of trial appointed by the commissioner.

Continuance, for what time granted.

SEC. 1020. No continuance shall be granted for a longer period than two days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient security, to be approved by the commissioner, conditioned for the payment of the rent that may accrue if judgment be rendered against the defendant.

Action for, trial by commissioner.

SEC. 1021. If the action be tried by the commissioner without a jury, and after hearing the evidence he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, or if judgment be rendered by default, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of action; if he find the complaint true in part, he shall render judgment for the restitution of such part only, and the costs shall be taxed as the commissioner shall deem just and equitable.

Verdict of jury and judgment on.

SEC. 1022. If the action be tried by a jury, and they shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find; and the commissioner shall render judgment according to the verdict.

Form of execution.

SEC. 1023. The execution, should judgment of restitution be rendered, may be in the following form:

DISTRICT OF ALASKA.

To the marshal of said district:

Whereas a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following-described premises, to wit: ———, lately tried before me, wherein ——— was plaintiff and ——— was defendant, judgment was rendered on the ——— day of ———, anno Domini ———, that the plaintiff, ———, have restitution of said premises; and also that he recover costs in the sum of ———. In the name of the United States you are therefore hereby commanded to cause the defendant to be forthwith removed from said premises, said plaintiff to have restitution of the same; also, that you levy of the goods and chattels of said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return.

Witness my hand this ——— day of ———, anno Domini ———.

———,
Commissioner.

Appeal by defendant.

SEC. 1024. If judgment be rendered against the defendant for the restitution of the real property described in the complaint, or any part thereof, no appeal shall be taken by the defendant from such judgment until he shall, in addition to the undertaking now required by law upon appeal, give an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of such

judgment until final judgment in the action, if such judgment shall be affirmed upon appeal.

Unlawful holding by force, what deemed to be.

SEC. 1025. The following shall be deemed cases of unlawful holding by force within the meaning of this chapter:

First. When the tenant or person in possession of any premises shall fail or refuse to pay any rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for ten days after demand made in writing for such possession;

Second. When, after a notice to quit as provided in this chapter, any person shall continue in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

Notice to quit must be in writing; service of.

SEC. 1026. A notice to quit must be in writing and must be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence therefrom.

Notice to quit, how long served before action brought.

SEC. 1027. An action for the recovery of the possession of the premises may be maintained in the cases specified in subdivision second of section one thousand and twenty-five when the notice to quit has been served upon the tenant or person in possession for the period of ten days before the commencement thereof, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for the period of ninety days before commencement of such action.

Action can not be maintained before expiration of period for which rent paid.

SEC. 1028. The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises before the expiration of any period for which such tenant or person may have paid the rent of such premises in advance.

Crops sown, etc., before lease expires, tenant may cultivate and harvest.

SEC. 1029. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of such lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

Merits of title not to be questioned in action; limitation of action.

SEC. 1030. In an action to recover the possession of any land, tenement, or other real property, where the entry is forcible or when the possession thereof is unlawfully held by force, the merits of the title shall not be inquired into, and three years' quiet possession of the premises immediately preceding the commencement of such action by the party in possession, or those under whom he holds, may be pleaded in bar thereof, unless the estate of such party in the premises is ended.

Notice to quit in action under Code of Civil Procedure.

SEC. 1031. In any action to recover the possession of real property, as provided in chapter thirty-two of the Code of Civil Procedure, notice to quit, when necessary, may be given as prescribed in this chapter, and nothing in this chapter shall be construed so as to prevent such action being maintained for the recovery of the possession of real property, although the entry of the defendant be forcible or his holding unlawful and with force.

Precinct defined.

SEC. 1032. That wherever the word "precinct" occurs in this Act it shall be construed to mean the neighborhood in which the commissioner resides, as designated in the order of his appointment, unless where the court by special order, duly made and entered, definitely prescribes the limits of the precinct.

CHAPTER ONE HUNDRED.

OF WITNESSES, INSPECTION AND PROOF OF RECORDS AND OF PRIVATE SEALS.

Sec.
1033. Competent witnesses.
1034. Incompetent witnesses.
1035. Competency of husband and wife.
1036. Competency of attorney.
1037. Competency of clergyman.
1038. Competency of physician.
1039. Inspection of public records.
1040. Proof of public records.
1041. Private seals abolished.
1042. Title by adverse possession.

Competent witnesses.

SEC. 1033. Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question, according to the rules of the common law.

Incompetent witnesses.

SEC. 1034. The following persons shall not be witnesses: 1. Those of unsound mind at the time of the transaction and of their production for examination. 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Competency of husband and wife.

SEC. 1035. A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards be, without the consent of the other, examined as to any communications made by one to the other during marriage, but the exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Competency of attorney.

SEC. 1036. An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, or his advice given thereon, in the course of his professional employment.

Competency of clergyman.

SEC. 1037. A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

Competency of physician.

SEC. 1038. A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

Inspection of public records.

SEC. 1039. Every person has a right to inspect any public writing or record in said district, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor, a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.

Proof of public records.

SEC. 1040. A judicial, legislative, or executive record of said district, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such person affixed thereto, if it or he have a seal, or otherwise authenticated as required by sections nine hundred and five, nine hundred and six, and nine hundred and seven of the Revised Statutes of the United States.

Private seals abolished.

SEC. 1041. Private seals and scrolls as a substitute therefor are abolished and are not required to any instrument, but the effect thereof, when used, shall remain unchanged.

SEC. 1042. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more shall be conclusively presumed to give title thereto except as against the United States.

Title by adverse possession.

CHAPTER ONE HUNDRED AND ONE.

OF INDISPENSABLE EVIDENCE.

Sec.
1043. Sale or transfer of personal property.
1044. Agreement not in writing, when void.
1045. As to representatives concerning third persons.
1046. Sale or transfer of real property.
1047. When last section to affect certain cases.
1048. Sale or transfer of boat or vessel.

SEC. 1043. Every sale or assignment of personal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration, during the time such property remains in the possession of said vendor or assignor.

Sale or transfer of personal property.

SEC. 1044. In the following cases an agreement is void unless the same or some note or memorandum thereof expressing the consideration be in writing and subscribed by the party to be charged, or by his lawfully authorized agent:

Agreement not in writing, when void.

(1) An agreement that by its terms is not to be performed within a year from the making thereof;

(2) An agreement to answer for the debt, default, or miscarriage of another;

(3) An agreement by an executor or administrator to pay the debts of his testator or intestate out of his own estate;

(4) An agreement made upon consideration of marriage, other than a mutual promise to marry;

(5) An agreement for the sale of personal property at a price not less than fifty dollars, unless the buyer accept and receive some part of such personal property, or pay at the time some part of the purchase price; but when the sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the property sold, the terms of the sale, the price, and the names of the purchaser and person for whose account the sale is made, is a sufficient memorandum.

(6) An agreement for leasing for a longer period than one year, or for the sale of real property, or of any interest therein, or to charge or encumber the same.

(7) An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing.

SEC. 1045. No evidence is admissible to charge a person upon a representation as to the credit, skill, or character of a third person unless such representation or some memorandum thereof be in writing, and either subscribed by or in the handwriting of the party to be charged.

As to representatives concerning third persons.

SEC. 1046. No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

Sale or transfer of real property.

When last section to affect certain cases.

SEC. 1047. The last section shall not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel specific performance of an agreement in relation to such property.

Sale or transfer of boat or vessel.

SEC. 1048. A sale or transfer of a boat or vessel is not valid unless it be in writing and signed by the party making the transfer.

TITLE III.

CIVIL CODE FOR THE DISTRICT OF ALASKA.

CHAPTER ONE.

OF COMMISSIONERS' PRECINCTS.

Sec.
1. Judge to divide district into precincts.
2. Additional commissioners.
3. Jurisdiction and authority of commissioners.
4. To be provided with blank books.

Judge to divide district into precincts.

SEC. 1. It shall be the duty of the judge of each division of the district court for the district of Alaska, by an order to be entered upon the journal of the court, to divide the respective divisions of the district into precincts, and he may thereafter, from time to time, alter the same and establish new precincts as the public convenience may require. He shall define the boundaries of such precincts by topographical lines or otherwise, as may be most convenient.

Additional commissioners.

SEC. 2. The boundaries of the precincts shall be so established that, considering distance and means of travel, public convenience may be promoted by requiring the appointment of commissioners by the division of the district court most readily accessible to the area embraced in the precinct. Precincts shall bear such name or number as the court in the order creating it may designate. The precinct lines shall only be regarded for purposes of convenience in fixing identity, but shall not be limitations on the jurisdiction of commissioners as established by law.

Jurisdiction and authority of commissioners.

SEC. 3. In the event of failure of the judges to include all of the district within precinct limits, the Attorney-General may, by order, cause the omitted area to be attached to or embraced in an established precinct or precincts.

To be provided with blank notes.

SEC. 4. The Attorney-General may, from time to time, make such rules and regulations, not in conflict with law, as he may deem necessary to insure the efficient administration of the law and to avoid conflicts of jurisdiction or of officials in the district.

CHAPTER TWO.

OF HUSBAND AND WIFE.

Sec.
5. Marriage a civil contract; at what age contracted.
6. Between what persons prohibited.
7. When voidable.
8. By whom solemnized.
9. How solemnized.
10. Certificate of marriage.
11. Marriages by the de facto clergymen or judicial officers.
12. Ritual of religious bodies recognized.
13. Neither husband nor wife has interest in property of the other.
14. Civil remedies against each other.
15. Contracts between husband and wife.
16. May constitute each other attorney in fact.
17. Neither liable for the other's debts.

Marriage a civil contract; at what age contracted.

SEC. 5. Marriage is a civil contract, which may be entered into by males of the age of twenty-one years and females of the age of eighteen years who are otherwise capable.

SEC. 6. The following marriages are prohibited: Between what persons prohibited.

(1) When either party thereto has a husband or wife living at the time of such marriage.

(2) When the parties thereto are related to each other within and not including the fourth degree of consanguinity, whether of the whole or half blood, computed according to rules of the civil law.

SEC. 7. When either party to a marriage shall be incapable of consenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability or upon whom the force or fraud is imposed. When voidable.

SEC. 8. Marriages may be solemnized by any minister or priest of any church or congregation in the district anywhere within the district, and by any judicial officer of the district anywhere within his jurisdiction, and commissioners as ex officio justices of the peace are to be deemed judicial officers of the district within the meaning of this section. By whom solemnized.

SEC. 9. In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of each other and of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife. How solemnized.

SEC. 10. The person solemnizing the marriage shall give to each of the parties thereto a certificate thereof, specifying therein the names and residence of the parties and of at least two witnesses present at the time and place of such marriage. Certificate of marriage.

SEC. 11. A marriage solemnized before any person professing to be a minister or priest of any church or congregation in the district or any judicial officer thereof is not void, nor shall the validity thereof be in any way affected, on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Marriages by de facto clergymen or judicial officers.

SEC. 12. Illegitimate children become legitimate by the subsequent marriage of their parents with each other; and all marriages to which there are no legal impediments solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid. Ritual of religious bodies recognized.

SEC. 13. When property is owned by either husband or wife, the other has no such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as herein provided. Neither husband or wife has interest in property of the other.

SEC. 14. Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried. Civil remedies against each other.

SEC. 15. A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons. Contracts between husband and wife.

SEC. 16. A husband or wife may constitute the other his or her attorney in fact, to control or dispose of his or her property, and may revoke the same to the same extent and manner as other persons. May constitute each other attorney in fact.

SEC. 17. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise provided, they are not liable for the separate debts of each other, nor is the rent or income of such property liable for the separate debts of the other. Neither liable for the other's debts.

CHAPTER THREE.

OF PARENTS AND CHILDREN.

Sec.
18. Parents and children liable for each other's support.
19. Maintenance of minor having property.
20. Power of mother over children.

Parents and children liable for each other's support.

SEC. 18. Parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

Maintenance of minor having property.

SEC. 19. If any minor who has a father living have property the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the commissioner, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Power of mother over children.

SEC. 20. The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

CHAPTER FOUR.

OF THE ADOPTION OF CHILDREN.

Sec.
21. Application to adopt a child.
22. Consent of parents and guardian.
23. When parent insane, etc.
24. Notice to the parent.
25. Consent of child, when necessary.
26. Decree of adoption and effect of same.
27. Status of adopted child.
28. Adoption terminates relation of parent and child.
29. Appeal from decrees of commissioners.
30. When appeal may be taken.
31. Change of name of adopted child.

Application to adopt a child.

SEC. 21. Any inhabitant of the district may petition the commissioner in the precinct in which the child resides or may be found for leave to adopt a child not his own, and, if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Consent of parents and guardian.

SEC. 22. The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or, if there is no guardian, the next of kin in the district, may give such consent; or, if there is no next of kin, the commissioner may appoint some suitable person to act in the proceeding as guardian ad litem of the child, and to give or withhold such consent.

When parent insane, etc.

SEC. 23. If either parent is insane or imprisoned in a penitentiary under a sentence for a term not less than three years, or has willfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition, or is an unfit person to have the care and custody of the child the commissioner may proceed as if such parent were dead, and in his discretion may appoint some suitable person to act in the proceeding as guardian ad litem of the child, and give or withhold the consent aforesaid; but in all cases notice to the parent not laboring under said disabilities of insanity or imprisonment mentioned in this section shall be required.

Notice to the parent.

SEC. 24. If a parent does not consent to the adoption of his or her

child the commissioner shall order a copy of the petition and order thereon served on him and the child personally, if found in the district, and, if not, that a notice thereof be published once a week for three successive weeks in such newspaper as the commissioner directs, the last publication to be at least four weeks before the time appointed for the hearing and in all cases a copy of the petition and order shall be served on the child. Like notice shall also be published when a child has no parent living and no guardian or next of kin in said district. The commissioner may order such further notice as he deems necessary or proper.

Consent of child, when necessary.

SEC. 25. If the child is of the age of fourteen years or upward the adoption shall not be made without his consent, given the commissioner on privy examination.

Decree of adoption and effect of same.

SEC. 26. If upon such petition so presented and consented to the commissioner is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability and in all respects a proper person to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner.

Status of adopted child.

SEC. 27. A child so adopted shall be deemed, for the purposes of inheritance and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to heirs of the body or bodies of the parent by adoption, nor property from the lineal or collateral kindred of said parents by right of representation.

Adoption terminates relation of parent and child.

SEC. 28. The parents of such child shall be deprived by the said proceedings of all legal rights as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects his parents.

Appeal from decrees of commissioners.

SEC. 29. Any petitioner parent or other party to the proceedings may appeal to the district court from the judgment of the commissioner on such petition in like manner as appeals may be taken from judgments of such commissioner in proceedings respecting the administration of estates of decedents; and any child made the subject of such petition may, by his guardian ad litem, appeal in like manner; but no bond shall be required of, or costs awarded against such child or guardian ad litem.

When appeal may be taken.

SEC. 30. A parent who has not, before the hearing of a petition for the adoption of his child, had personal notice thereof, may, at any time within one year after actual notice, apply to the district court to reverse the judgment and the court, after due notice, may, in its discretion, reverse or modify the same.

Change of name of adopted child.

SEC. 31. If in a petition for the adoption of a child a change of the child's name is requested, the commissioner upon adjudging the adoption may also adjudge such change of name and grant a certificate thereof without the notice required by the following sections.

CHAPTER FIVE.

OF THE CHANGE OF NAME.

Sec.
32. Application for change of name.
33. Proceedings on application.

Application for change of name.

SEC. 32. Applications for change of names of other persons may be heard and determined by the district court. No lawful change of

the name of a person, except a woman upon her marriage or divorce, shall be made in the district unless for sufficient reasons not inconsistent with the public interest and satisfactory to the court.

Proceedings on application.

SEC. 33. Before adjudging a change of name, except as provided in section forty-nine, the court shall require public notice of the application therefor to be given, that all persons may offer and show cause, if they have any, why the same should not be granted. The court shall also require public notice to be given of the change adjudged, and on return of proof thereof may grant certificate, under the seal of the court, of the name the party is to have, and which shall thereafter be his legal name.

CHAPTER SIX.

OF THE AGE OF MAJORITY.

Sec.
34. Majority of males and females.
35. Marriage of females equivalent to majority.

Majority of males and females.

SEC. 34. In the district all persons shall be deemed to have arrived at majority at the age of twenty-one years, and thereafter shall have control of their own actions and business, and have all the rights and be subject to all the liabilities of citizens of full age.

Marriage of females equivalent to majority.

SEC. 35. All female persons shall be deemed to have arrived at the age of majority upon their being married according to law.

CHAPTER SEVEN.

OF ESTATES IN DOWER.

Sec.
36. Dower of widow.
37. When dower shall be assigned by the district court.
38. Warrant for assignment of dower.
39. Proceedings and warrant of commissioner.
40. When property can not be divided.
41. Widow may occupy with heirs.
42. Dower, how barred by jointure.
43. Evidence of assent to jointure.
44. Pecuniary provision a bar to dower.
45. When widow may elect between jointure and dower.
46. When to elect between devise and dower.
47. When widow deemed to have elected.
48. When widow to be endowed anew.
49. Alien or nonresident entitled to dower.
50. Widow may remain in dwelling house one year.
51. Damages for withholding dower.
52. Damages, how estimated.
53. Not to include use of permanent improvements.
54. Damages against heirs.
55. Collusive recovery of dower not to prejudice infant heirs.

Dower of widow.

SEC. 36. The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-third part in value of all the lands whereof her husband died seized of an estate of inheritance.

When dower shall be assigned by the district court.

SEC. 37. When a widow is entitled to dower in the lands of which her husband died seized, it may be assigned to her by the district court upon application of the widow or any other person interested in the lands; notice of application shall be given to such heirs, devisees, or other persons in such manner as the court shall direct.

Warrant for assignment of dower.

SEC. 38. For the purpose of assigning such dower the district court shall direct a warrant to issue to three discreet and disinterested persons, as commissioners, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Proceedings and warrant of commissioner.

SEC. 39. The commissioners shall be sworn by any officer authorized to administer impartially oaths to discharge their duties, and shall, as soon as may be, set off the dower according to the command of such

warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the district court; and the same being confirmed by the court and recorded, and an attested copy thereof filed in the office of the commissioner of the precinct where the lands are situated, the dower shall remain fixed and certain unless such confirmation be set aside or reversed; all costs to be apportioned in the discretion of the court.

When property can not be divided.

SEC. 40. When the estate or any part thereof out of which dower is to be assigned can not be equitably divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

Widow may occupy with heirs.

SEC. 41. When a widow is entitled to dower in the lands of which her husband died seized she may, if residing thereon, continue to occupy the same, and enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

Dower, how barred by jointure.

SEC. 42. A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage: *Provided*, Such jointure consists of a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

Evidence of assent to jointure.

SEC. 43. Such assent shall be expressed, if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age by her joining with her father or guardian in such conveyance.

Pecuniary provision a bar to dower.

SEC. 44. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

When widow may elect between jointure and dower.

SEC. 45. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed of the lands of her husband, but she shall not be entitled to both.

When to elect between devise and dower.

SEC. 46. If any lands be devised to a woman, or other provision be made for her in the will of her husband, expressly in lieu of dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.

When widow deemed to have elected.

SEC. 47. When a widow shall be entitled to an election under either of the two sections last preceding she shall be deemed to have elected to take such jointure, devise, or other provision unless within one year after the death of her husband she shall file in the district court her election in writing to relinquish her rights under the jointure, devise or provision.

When widow to be endowed anew.

SEC. 48. If a woman be lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Alien or nonresident entitled to dower.

SEC. 49. A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the district shall be entitled to dower of the lands of her deceased husband lying in the district of which her husband died seized of an estate of inheritance; and the same may be assigned to her, or recovered by her, in like man-

ner as if she and her deceased husband had been residents within the district at the time of his death.

Widow may remain in dwelling house one year.

SEC. 50. A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have reasonable sustenance out of the estate for one year.

Damages for withholding dower.

SEC. 51. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband died seized, she shall be entitled also to recover damages for the withholding of such dower.

Damages, how estimated.

SEC. 52. Such damage shall be one-third of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in an action against the heirs of her husband from the time of his death, and in actions against other persons from the time of demanding her dower of such persons.

Damages not to include use of permanent improvements.

SEC. 53. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.

Damages against heirs.

SEC. 54. When a widow shall recover her dower in any lands aliened by the heir of her husband she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages from such grantee shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Collusive recovery of dower not to prejudice infant heirs.

SEC. 55. When a widow not having a right of dower shall, during the infancy of the heirs of the husband, or any of them, or of any other person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs, or such other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

CHAPTER EIGHT.

OF ESTATE BY THE CURTESY.

Sec.
56. Husband's life estate.

Husband's life estate.

SEC. 56. When any man and his wife shall be seized in her right of any estate of inheritance in lands the husband shall, on the death of his wife, hold the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

CHAPTER NINE.

OF GENERAL PROVISIONS CONCERNING ESTATES IN LANDS.

Sec.
57. Person in possession liable for rent.
58. Rent, how recovered.
59. Last two sections not to exclude other remedies.
60. Determination of estates at will and by sufferance.
61. Action for injury to inheritance.
62. Remedy of tenants in common.

Person in possession liable for rent.

SEC. 57. Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the

amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Rent, how recovered.

SEC. 58. Such rent may be recovered in an action, and the deed or demise, or any other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Last two sections not to exclude other remedies.

SEC. 59. Nothing contained in the two preceding sections shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

Determination of estates at will and by sufferance.

SEC. 60. All estates at will or by sufferance may be determined by either party, by three months' notice in writing given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months the time of such notice shall be sufficient if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Action for injury to inheritance.

SEC. 61. A person seized of an estate in remainder or reversion may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Remedy of tenants in common.

SEC. 62. A tenant in common may maintain any proper action or proceeding against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them in common; and joint tenancy is abolished, and all persons having an undivided interest in real property are to be deemed and considered tenants in common.

CHAPTER TEN.

OF THE PROPERTY OF MARRIED WOMEN.

Sec.
63. Separate property of wife not subject to husband's debts.
64. Property acquired during coverture.
65. District court may adjudge that husband has abandoned wife; effect of.
66. Return of husband not to abate action.
67. Liability for civil injuries.
68. Wife's contracts binding upon her.
69. Civil disabilities removed.
70. Register of personal property.
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72. Certified copies of register.

Separate property of wife not subject to husband's debts.

SEC. 63. The property and pecuniary rights of every married woman at the time of her marriage, or afterwards acquired by gift, devise, or inheritance, shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him.

Property acquired during coverture.

SEC. 64. All property, either real or personal, acquired by any married woman during coverture by her own labor shall not be liable for the debts, contracts, or liabilities of her husband, but shall in all respects be subject to the same exemptions and liabilities as property owned at the time of her marriage or afterwards acquired by gift, devise, or inheritance.

District court may adjudge that husband has abandoned wife: effect of.

SEC. 65. When any married man residing in the district shall abandon his wife without making suitable provision for her support for a period of one year the district court may, upon her petition setting up the facts of such abandonment, verified by her own oath, summarily proceed to hear the petition and adjudge the fact as to such abandonment, which adjudication shall be conclusive as to such fact as to third persons; and if such abandonment shall be adjudged thereupon, such married woman, during the absence of her husband, may in all respects contract in relation to, sell, convey, and deal with her separate property, real and personal, in the same manner as if she were a feme sole,

and may in her own name, without being joined with her husband, sue and be sued in relation to her separate property on any contract made by her after such adjudication and before the return of her husband.

Return of husband not to abate action.

SEC. 66. No action wherein a married woman shall be a party, under the provisions of this code, shall be abated on the return of her husband into the district, but he may, on his application, be admitted to prosecute or defend such action jointly with her.

Liability for civil injuries.

SEC. 67. 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 case where he would be jointly responsible with her if the marriage did not exist.

Wife's contracts binding upon her.

SEC. 68. Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Civil disabilities removed.

SEC. 69. All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband are hereby repealed; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to all courts for redress that the husband has.

Register of personal property.

SEC. 70. The commissioner for each precinct shall keep a register, in which he shall enter a description of the personal estates of married women, as hereinafter directed.

Effect of registration.

SEC. 71. A married woman possessed of or owning any personal property or pecuniary rights may make a descriptive list of the same, and make and subscribe on the said list an oath that the property and rights therein described belonged to her at the time of her marriage, or that she has acquired the same by her own labor, or by bequest, inheritance or by the gift of some person named other than her husband; and the list and affidavit shall be recorded in the register, and shall be prima facie evidence of the facts therein stated, and property not so registered shall be deemed prima facie to be the property of the husband rather than of the wife.

Certified copies of register.

SEC. 72. A certified copy of the register shall be original evidence equally with the original list and affidavit, and the fees for recording and for making the certified copies of the register shall be the same as in the case of deeds.

CHAPTER ELEVEN.

OF CONVEYANCES OF REAL PROPERTY.

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116. Records of such deeds receivable in evidence.
117. Defective execution of conveyances by executors; decree in such cases.
118. Transcribing records for new precinct to have the effect of the original.

Conveyance, how made.

SEC. 73. A conveyance of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

Conveyance of wife's property.

SEC. 74. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed if she were unmarried.

Effect of quitclaim.

SEC. 75. A deed of quitclaim and release of the form in common use shall be sufficient to pass all the real estate which the grantor could lawfully convey by a deed of bargain and sale.

Word "heirs" not necessary to convey fee simple.

SEC. 76. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any real estate hereafter executed shall pass all the real estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

Conveyance by tenant for life or years.

SEC. 77. A conveyance made by a tenant for life or years purporting to grant a greater estate than he possessed or could lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Covenants not implied.

SEC. 78. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

Mortgage not to imply covenant to pay money.

SEC. 79. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and when there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Conveyance of lands held adversely by another.

SEC. 80. No grant or conveyance of land or interest therein shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Joint conveyance to create cotenancy.

SEC. 81. Every conveyance or devise of lands or interests therein made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise that the grantees or devisees shall take the lands as joint tenants.

Execution and acknowledgment of deeds.

SEC. 82. Deeds executed within the district of lands or any interest in lands therein shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the persons executing such deeds may acknowledge the execution thereof before any judge, clerk of the district court, notary public, or commissioner within the district, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof and the true date of making the same, under his hand.

Same in States.

SEC. 83. If any deed shall be executed in any State, Territory, or District of the United States, such deed may be executed according to the laws of such State, Territory, or District, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer authorized by the laws of

such State, Territory, or District to take the acknowledgment of deeds therein, or before any commissioner appointed for such purpose.

Certificate of official character.

Sec. 84. In the cases provided for in the last section, unless the acknowledgment be taken before a commissioner appointed for that purpose, or before a notary public certified under his notarial seal, or before the clerk of a court of record certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, or District.

Acknowledgment of deeds in foreign country.

Sec. 85. If such deed be executed in any foreign country it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand; and if taken before a notary public his seal of office shall be affixed to such certificate.

Acknowledgment by married women.

Sec. 86. When a married woman residing in the district shall join with her husband in a deed of conveyance of real property situated within the district she shall acknowledge that she executed such deed freely and voluntarily.

Conveyance by married woman residing out of district.

Sec. 87. When any married woman not residing in the district shall join with her husband in any conveyance of real estate situated within the district the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole.

Officer taking acknowledgment must know grantor.

Sec. 88. No acknowledgment of any conveyance having been executed shall be taken by any officer unless he shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed such conveyance.

Proof of execution by subscribing witnesses.

Sec. 89. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgment of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

Proof when witnesses dead or absent.

Sec. 90. When any grantor is dead, out of the district, or refuses to acknowledge his deed, and all the subscribing witnesses to such deed shall also be dead or reside out of the district, the same may be proved before the district court, or any judge thereof, by proving the handwriting of the grantor and of any subscribing witness thereto.

Witness to execution of deed.

Sec. 91. Upon the application of any grantee, or of any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the district, or refused to acknowledge his deed, and that any witness to such conveyance refuses to appear and testify touching the execution thereof, and that such conveyance can not be proven without his evidence, any officer authorized to take the acknowledgment or proof of conveyance, except a commissioner of deeds, may issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such conveyance.

SEC. 92. Every person duly served with such subpœna who shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall forfeit to the injured party one hundred dollars, and may also be committed to prison as for a contempt by the officer who issued such subpœna, there to remain until he shall submit to answer on oath as aforesaid.

Penalty for refusing to appear or testify.

SEC. 93. Every officer who shall take the proof of any conveyance shall indorse his certificate thereon, signed by himself on the conveyance, and in such certificate shall set forth the things hereinbefore required to be done, known, or proved, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Certificate of proof to be indorsed on deed.

SEC. 94. Every conveyance acknowledged or proved or certified in the manner hereinbefore prescribed by any of the officers before named may be read in evidence without further proof thereof, and shall be entitled to be recorded in the precinct in which the lands lie.

Deed proved may be read in evidence.

SEC. 95. Separate books shall be provided by the commissioner in each recording district or precinct for the recording of deeds and mortgages, in one of which books all deeds left with such commissioner shall be recorded at full length, with the certificates of acknowledgment or proof of the execution thereon, and in the other all mortgages left with the commissioner shall in like manner be recorded.

Record of deeds and mortgages.

SEC. 96. The commissioner shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and the page where it is recorded, and every conveyance shall be considered as recorded at the time it was so received.

Certificate on conveyance.

SEC. 97. The commissioner shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter alphabetically the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

Index of records.

SEC. 98. Every conveyance of real property within the district hereafter made which shall not be filed for record as provided in this chapter shall be void against any subsequent innocent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

Unrecorded conveyance, when void as to third persons.

SEC. 99. The record of a conveyance duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have been recorded, may be read in evidence in any court in the district with the like force and effect as the original instrument; but the effect of such evidence may be rebutted by other competent evidence.

Record or transcript evidence.

SEC. 100. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the commissioner for the precinct where the lands lie.

Record of deeds of defeasance.

SEC. 101. The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee.

Record of assignment of mortgage.

SEC. 102. Any mortgage that has been or may hereafter be recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee,

Discharge of mortgage by marginal entry.

acknowledging the satisfaction of the mortgage, in the presence of the commissioner or a deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Discharge upon certificate of mortgagee.

SEC. 103. Any mortgage may also be discharged upon the record thereof by the commissioner in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Certificate of mortgagee to be recorded.

SEC. 104. Every such certificate and the proof or acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the minute of the discharge of such mortgage made by the commissioner upon the record thereof.

Penalty for refusing to discharge mortgage.

SEC. 105. If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of ten days after being thereto requested in writing, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action.

Power of attorney and contract may be recorded.

SEC. 106. Every letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands when acknowledged or proved in the manner prescribed in this title for the acknowledgment or proof of conveyances, may be recorded in the commissioner's office of any precinct in which the lands to which such power or contract relates may be situated; and when so acknowledged or proved and the record thereof when recorded, or the transcript of such record duly certified, may be read in evidence in any court in the district without further proof of the same.

Instrument so recorded, how revoked.

SEC. 107. No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

Deeds heretofore made, etc.

SEC. 108. All conveyances of real property heretofore made and acknowledged or proved in accordance with the laws of the district in force at the time of such making and acknowledgment of proof shall have the same force as evidence and be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Patents, decrees, etc., affecting lands may be recorded.

SEC. 109. Patents from the United States for lands within the district, notices of pending actions affecting title to real estate, judgments of courts in the district requiring the execution of a conveyance of real estate within the district, and approved lists of lands granted to the district or to corporations in the district, and conveyances executed by any officer of the district by authority of law of lands within said district, shall be entitled to be recorded in the office of the commissioner of the precinct in which the lands lie in like manner and with like effect as conveyances of land duly acknowledged, proved, or certified.

Record of such instrument.

SEC. 110. The record of any such patent, notice of pending action, judgment, approved lists, or deeds duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have

been recorded, may be read in evidence in any court in the district with like force and effect as the original thereof.

Defective acknowledgments cured.

SEC. 111. All defective and informal acknowledgments of deeds, powers of attorney, mortgages, or other instruments for the conveyance of land, or any interest therein, heretofore made by any person or persons in good faith, whether the acknowledgments were taken by or before any clerk, deputy clerk, or judge of any court of record within the district, or any commissioner or notary public of the district, shall be, and the same are hereby, legalized.

Exceptions.

SEC. 112. This chapter is not intended to interfere with vested rights in lands or premises, arising by adverse title, acquired in good faith since the date of such defective acknowledgments.

Other defective deeds cured.

SEC. 113. All deeds to real property heretofore executed in the district which shall have been signed by the grantors in due form shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees without any other execution or acknowledgment whatever; and such deeds so executed shall be received in evidence in all courts in the district and be evidence of the title to the lands therein described against the grantors, their heirs and assigns.

Judicial sales.

SEC. 114. All judicial sales of real property heretofore made in the district on proceedings to satisfy valid judgments or decrees of any court, and the moneys bidden thereon paid to the officer making such sale, and such sale shall have been confirmed by an order of the proper court, such sale shall be valid and sufficient in law to sustain a deed based on such sale, and when no such deed has been executed shall entitle such purchaser to such deed; and such deed, when executed, shall be sufficient to convey all the title of the judgment debtor in the premises so sold to the purchaser at the sale; and all defects and irregularities in the issuance of execution or the manner of making or conducting such sale shall be disregarded.

Defectively executed sales by executors and administrators.

SEC. 115. All sales heretofore made by executors and administrators of their decedents' real property in the district to purchasers for a valuable consideration, which has been paid by such purchasers to such executors or administrators or their successors in good faith, and such sales shall not have been set aside by the court, but shall have been confirmed or acquiesced in by such court, shall be sufficient to sustain an executor's or administrator's deed to such purchaser for such real property, and in case such deed shall not have been given shall entitle such purchaser to such deed; and such deed shall be sufficient to convey to such purchaser all the title that such decedent had in the real property; and all irregularities in obtaining the order of the court for such sale and all irregularities in making or conducting the same by such executor or administrator shall be disregarded.

Records of such deeds receivable in evidence.

SEC. 116. When such deeds so executed shall have been recorded in the records of deeds in the proper precinct, such record, duly certified by the commissioner, shall be evidence in all courts, and have the same effect as the original.

Defective execution of conveyances by executors; decree in such cases.

SEC. 117. When any real estate has been heretofore or shall be hereafter sold by any executor or administrator under or by virtue of any license or order of any commissioner in the district, and the sale shall have been approved by the commissioner, and the purchaser shall have paid the purchase money for the same, and the sale shall have been made in good faith, in order to provide for payment of the claims against the estate, and the executor or administrator shall have failed or neglected to make or execute any deed conveying such real estate to such purchaser, or if from mistake or omission in the deed or defect in its execution the same shall be inoperative, and the period of five years shall have elapsed after the making of such sale, then in such case all such sales shall be, and are hereby, confirmed and

approved, notwithstanding any irregularities or informalities in the proceedings prior to the sale; and when such facts shall be made to appear in any action of an equitable nature brought to quiet title to such real property against the heirs or their assigns of the deceased person whose property shall have been thus sold, in the proper court for such suits, then such court shall make its decree quieting such title and compelling and ordering conveyances of the same to be made to such purchaser, his heirs or assigns, as if a valid contract to convey the real property had been made by such deceased person in his lifetime; and no action shall be maintained by such heirs, or their heirs or assigns, to dispossess any such purchaser, his heirs or assigns, after the expiration of five years from any such sale.

Transcribing records for new precinct to have the effect of the original.

SEC. 118. When a new precinct shall be organized in whole or in part from an organized precinct, or from territory attached to such organized precinct for judicial purposes, all the records of deeds or other instruments relating to real property in such new precinct may be transcribed into the proper books by the commissioner of such new precinct, which records, so transcribed, shall have the same effect in all respects as original records; and the commissioner shall be paid for transcribing the same such sum as the district court may deem just and reasonable.

CHAPTER TWELVE.

OF FRAUDULENT CONVEYANCES OF REAL PROPERTY.

Sec.
119. Void as to whom.
120. Qualifications of last section.
121. Conveyance with power of revocation.
122. Conveyances by one authorized to revoke former grants.
123. Same, when conveyance before power of revocation vested.

Void as to whom.

SEC. 119. Every conveyance of interest in lands, or the rents or profits thereof, and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers shall be void.

Qualifications of last section.

SEC. 120. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Conveyance with power of revocation.

SEC. 121. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyances by one authorized to revoke former grants.

SEC. 122. Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

Same, when conveyance before power of revocation vested.

SEC. 123. If a conveyance to a purchaser under either of the last two preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall never-

theless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

CHAPTER THIRTEEN.

OF FRAUDULENT CONVEYANCES OF PERSONAL PROPERTY.

Sec.
124. What transfers void.
125. Filing of chattel mortgages.
126. Index of chattel mortgage.
127. Mortgage to become invalid at the end of one year, unless.
128. Affidavit may be renewed.
129. Copy in evidence, what it proves.

What transfers void.

SEC. 124. All deeds of gift, all conveyances, and transfers of assignments, verbal or written, of goods and chattels or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Filing of chattel mortgages.

SEC. 125. It shall be the duty of the commissioner, upon the presentation for that purpose of any mortgage or conveyance intended to operate as a mortgage of goods and chattels, or a copy of any such instrument, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

Index of chattel mortgage.

SEC. 126. Such commissioner shall enter in a book, to be provided by him for that purpose, the names of all the parties to such instrument, arranging the names of the mortgagors alphabetically, and shall note thereon the time of filing each instrument or copy.

Mortgage to become invalid at the end of one year, unless.

SEC. 127. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless within thirty days next preceding the expiration of the year the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file, as aforesaid, an affidavit setting forth the interest which the mortgagee has, by virtue of such mortgage, in the property therein mentioned, upon which affidavit the commissioner shall indorse the time when the same was filed.

Affidavit may be renewed.

SEC. 128. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against the creditors of the person making such mortgage, or subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with like effect.

Copy in evidence, what it proves.

SEC. 129. A copy of any such instrument, or a copy of any copy thereof so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the commissioner in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit was received and filed according to the indorsement of the commissioner thereon, and of no other fact.

CHAPTER FOURTEEN.

OF GENERAL PROVISIONS CONCERNING FRAUDULENT CONVEYANCES AND CONTRACTS.

Sec.
130. Conveyance with intent to defraud creditors.
131. Grant of trust to be in writing.
132. What conveyances void against heirs.
133. Fraudulent intent a question of fact.
134. Purchaser, when not affected.
135. Definition of lands, etc.
136. Definition of conveyances.

Conveyance with intent to defraud creditors.

SEC. 130. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of

any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded shall be void.

Grant of trust to be in writing.

SEC. 131. Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

What conveyances void against heirs.

SEC. 132. Every conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors, purchasers, or mortgagees.

Fraudulent intent a question of fact.

SEC. 133. The question of fraudulent intent in all cases arising under the provisions of this code shall be deemed a question of fact, and not of law.

Purchaser, when not affected.

SEC. 134. The provisions of chapters thirteen, fourteen, and fifteen of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Definition of lands, etc.

SEC. 135. The term "lands" as used in chapters thirteen, fourteen, and fifteen of this title shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in lands" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

Definition of conveyances.

SEC. 136. The term "conveyance," as used in chapters thirteen, fourteen, and fifteen of this title shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

CHAPTER FIFTEEN.

OF THE DISPOSITION OF PROPERTY BY WILL.

Sec.
137. Disposition of property by will.
138. Will, how executed.
139. When will revoked by marriage and birth of issue.
140. Marriage of woman revokes will.
141. Bond, etc., to convey property devised.
142. Charge or incumbrance upon property devised.
143. Children, etc., to have portion of estate.
144. Effect of advancement.
145. When issue of deceased devisee to take estate.
146. Canceling of second will, when to revive first.
147. Mariner or soldier may dispose of wages.
148. Nuncupative will.
149. Probate of nuncupative will.
150. Law of the place, when to govern and when not.
151. Copies of foreign wills.
152. Foreign will, how contested.
153. Devisee or legatee may prove.
154. When such witness to have share of estate.
155. If sufficient other witnesses, devisee may take.
156. Creditor may be witness.
157. Legatee, how made competent.
158. Deceased legatee, when deemed legal witness.
159. Legatee, when not entitled to legacy.
160. Estate for life, remainder in fee.
161. When fee passes.
162. Contribution among legatees.
163. Definition of will.
164. Construction of wills.
165. Life estate by will with remainder to heirs.
166. When will must be in writing.
167. How written will may be revoked or altered.

Disposition of property by will.

SEC. 137. Every person of twenty-one years of age and upwards, of sound mind, may by last will devise all his or her property, real or

personal, saving in the case of a married man to the widow her dower, and saving in the case of a married woman any rights which her husband may have as tenant by the curtesy.

Will, how executed.

SEC. 138. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

When will revoked by marriage and birth of issue.

SEC. 139. If, after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Marriage of woman revokes will.

SEC. 140. A will made by an unmarried person shall be deemed revoked by his or her subsequent marriage.

Bond, etc., to convey property devised.

SEC. 141. A bond, covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Charge or incumbrance upon property devised.

SEC. 142. A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

Children, etc., to have portion of estate.

SEC. 143. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

Effect of advancement.

SEC. 144. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

When issue of deceased devisee to take estate.

SEC. 145. When any estate shall be devised to any child or grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

Canceling of second will, when to revive first.

SEC. 146. If after making any will the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Mariner or soldier may dispose of wages.

SEC. 147. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

Nuncupative will.

SEC. 148. No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Probate of nuncupative will.

Sec. 149. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin to the deceased that they may contest the will if they think proper.

Law of the place, when to govern and when not.

Sec. 150. Any person not an inhabitant of, but owning property, real or personal, in the district may devise or bequeath such property by last will executed according to the laws in force in the district, State, or Territory in which the will may be executed.

Copies of foreign wills.

Sec. 151. If such will be probated in any State, Territory, or other district of the United States, or in any foreign country or State, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the certificate is in due form, and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in the district, and shall be admitted in evidence in the same manner and with like effect.

Foreign will, how contested.

Sec. 152. Any such will may be contested and annulled within the same time and in the same manner as wills executed and proven in the district.

Devisee or legatee may prove.

Sec. 153. If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

When such witness to have share of estate.

Sec. 154. If any such witness would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

If sufficient other witnesses, devisees may take.

Sec. 155. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this code, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

Creditor may be witness.

Sec. 156. If by any will any real estate be charged with any debt, and any creditor whose debt is so charged has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Legatee, how made competent.

Sec. 157. If any person has attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have released such bequest or legacy and renounced without valuable consideration all benefits under said will, such person shall be admitted as a witness to the execution of such will.

Deceased legatee, when deemed legal witness.

Sec. 158. If any legatee or devisee who has attested or shall attest the execution of any will shall have died or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Legatee, when not entitled to legacy.

Sec. 159. No person to whom any estate, gift, or appointment shall be given or made which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made,

and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in section one hundred and seventy-three any profit or benefit of or from such estate, interest, gift, or appointment so given or made to him by any such will, or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Estate for life, remainder in fee.

SEC. 160. If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

When fee passes.

SEC. 161. A devise of real property shall be deemed and taken as a devise of all the estate or interest of the testator therein subject to his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest; and any estate or interest in real property acquired by anyone after the making of his or her will shall pass thereby, unless it clearly appear therefrom that such was not the intention of the testator; nor shall any conveyance or disposition of real property by anyone after the making of his or her will prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

Contribution among legatees.

SEC. 162. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Definition of will.

SEC. 163. The term "will," as used in this chapter, shall be so construed as to include all codicils as well as wills.

Construction of wills.

SEC. 164. All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them.

Life estate by will with remainder to heirs.

SEC. 165. Where any estate, real or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

When will must be in writing.

SEC. 166. A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law.

How written will may be revoked or altered.

SEC. 167. A written will can not be revoked or altered otherwise than by another written will, or another writing of the testator, declaring such revocation or alteration, and executed with the same formalities required by law for the will itself; or unless the will be burnt, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person the direction and consent of the testator, and the fact of such injury or destruction shall be proved by at least two witnesses.

CHAPTER SIXTEEN.

OF THE DESCENT OF REAL PROPERTY.

Sec.
168. Real property, to whom it descends.

Real property, to whom it descends.

SEC. 168. When any person shall die seized of any real property, or any right thereto, or entitled to any interest therein in fee simple or for the life of another, not having lawfully devised the same, such real property shall descend, subject to his debts, as follows:

(1) In equal shares to his or her children and to the issue of any

deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally; or otherwise, they shall take according to the right of representation.

(2) If the intestate shall leave no lineal descendants, such real property shall descend to his wife, or if the intestate be a married woman and leave no lineal descendants, then such real property shall descend to her husband; and if the intestate leave no wife nor husband, then such real property shall descend to his or her father.

(3) If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister by right of representation; but if the intestate shall leave a mother also, she shall take an equal share with such brothers and sisters.

(4) If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, brother, nor sister, living at his or her death, such real property shall descend to his mother, to the exclusion of the issue of the deceased brothers or sisters of the intestate.

(5) If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property shall descend to his or her next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor.

(6) If the intestate shall leave one or more children, and the issue of one or more deceased children, and any of such surviving children shall die under age without having been married, all such real property that came to such deceased child by inheritance from such intestate shall descend in equal shares to the other children of such intestate, and to the issue of any other children of such intestate who shall have died, by right of representation. But if all the other children of such intestate shall be also dead, and any of them shall have left issue, such real property so inherited by such deceased child shall descend to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise, they shall take by right of representation.

(7) If the intestate shall leave no lineal decendants or kindred, such real property shall escheat to the United States.

CHAPTER SEVENTEEN.

OF THE DISTRIBUTION OF PERSONAL PROPERTY.

Sec.
169. Distribution of personal property.
170. Advancement to widow.

Distribution of personal property.

SEC. 169. When any person shall die possessed of any personal property, or of any right to or interest therein, not having lawfully bequeathed the same, such personal property shall be applied and distributed as follows:

(1) If the intestate shall leave a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered in pursuance of chapter eighty-three of the Code of Civil Procedure; and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

(2) The personal property of the intestate remaining after such allowance shall be applied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

(3) The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this code, and in the like proportion or share, except as herein otherwise provided.

(4) If the intestate shall leave a husband and issue, such husband shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a husband and no issue, such husband shall receive the whole of such residue of personal property.

(5) If the intestate leave a widow and issue, such widow shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a widow and no issue, such widow shall be entitled to receive the whole of such residue of the personal property.

(6) If there be no husband, widow, or kindred of the intestate, the whole of such residue shall escheat to the United States.

Advancement to widow.

SEC. 170. If the intestate leave a widow and issue, and any of such issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the part to be given to the widow, but such widow shall only be entitled to receive the one-half the personal property owned by the husband at the time of his death.

CHAPTER EIGHTEEN.

OF MISCELLANEOUS PROVISIONS CONCERNING THE DESCENT AND DISTRIBUTION OF PROPERTY.

Sec.
171. Status of illegitimate children.
172. Mother heir to illegitimate child; effect of marriage of parents.
173. Degrees of kindred, how computed.
174. Advancement to issue.
175. When advancement greater or less than share.
176. Rule for computing value of advancement, etc.
177. Grants and gifts to heir.
178. When value of advancement expressed.
179. Advancement to heirs.
180. Estates by courtesy and dower not affected.
181. Certain terms defined. Posthumous children.

Status of illegitimate children.

SEC. 171. An illegitimate child shall be considered an heir of its mother, and shall inherit or receive her property, real or personal, in whole or in part, as the case may be, in like manner as if such child had been born in lawful wedlock; but such child shall not be entitled to inherit or receive, as representing his mother, any property, real or personal, of the kindred, either lineal or collateral, of such mother: *Provided*, When the parents of such child have formally married, such child shall not be regarded as illegitimate within the meaning of this code, although such formal marriage shall be adjudged to be void.

Mother heir to illegitimate child; effect of marriage of parents.

SEC. 172. If an illegitimate child shall die intestate, without leaving a widow, husband, or lawful issue, the property, real and personal, of such intestate shall descend to or be received by the mother; but if after the birth of an illegitimate child the parents thereof shall intermarry, such child shall be considered legitimate to all intents and purposes.

Degrees of kindred, how computed.

SEC. 173. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

Advancement to issue.

SEC. 174. Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descendant shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant toward his share of the intestate's estate.

When advancement greater or less than share.

SEC. 175. If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, such heir shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

Rule for computing value of advancement, etc.

SEC. 176. If any such advancement is made in real property the value thereof shall, for the purposes of the last section, be considered as part of the real property to be divided; and if the advancement be either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heir so advanced, such heir shall not refund any part of it, but shall take or receive so much less out of the whole part of the estate, as the case may be, as will make the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

Grants and gifts to heir.

SEC. 177. All grants and gifts shall be deemed to be made in advancement if so expressed in the grant or gift, or if so charged, in writing, by the intestate, or acknowledged, in writing, to be so made by the child or other descendant to whom it is made, and not otherwise.

When value of advancement expressed.

SEC. 178. If the value of the property, real or personal, so advanced be expressed in the conveyance or writing whereby the same is granted or given, or in the charge thereof made by the intestate, or in the acknowledgment made by the party receiving it, in the division and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

Advancement to heirs.

SEC. 179. If any child or lineal descendant to whom an advancement is made shall die before the intestate, leaving issue, such advancement shall be deemed made to such issue, and the division and distribution of the estate shall be made accordingly.

Estates by courtesy and dower not affected.

SEC. 180. Nothing contained in this chapter shall affect or impair the estate of a husband as tenant by the courtesy, nor that of a widow as tenant in dower.

Certain terms defined.

SEC. 181. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the term "real property" includes all lands, tenements, and hereditaments, and rights thereto, and all interests therein, whether in fee simple or for the life of another. The term "personal property" includes all goods and chattels, moneys, credits, and effects of whatever nature not included in the term "real property." Inheritance "by right of representation" takes place when the lineal descendant of any deceased heir takes the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living. For the purposes of this code, a posthumous child is to be deemed living at the death of its parent.

Posthumous children.

CHAPTER NINETEEN.

OF ESCHEATS.

Sec.
182. When property escheats.
183. Proceedings to obtain possession.
184. Governor must take steps to recover.
185. Court may appoint receiver.
186. All persons claiming interest may defend.
187. Persons may claim proceeds, when; proceedings thereon.
188. Proceedings in case of personal property.
189. Escheated property held by bank.

When property escheats.

SEC. 182. When any person shall die without heirs, leaving any real or personal property in the district, the same shall escheat to and become the property of the United States.

SEC. 183. The United States may maintain any action or proceeding necessary to recover the possession of any such property, or for the enforcement or protection of its rights thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the United States attorney, by the leave and under the direction of the Attorney-General, and not otherwise.

Proceedings to obtain possession.

SEC. 184. When the governor is informed or has reason to believe that any real or personal property has escheated to the United States, he shall direct the United States attorney to file an information in behalf and in the name of the United States in the district court, setting forth a description of the estate, the name of the person last seized, the name of the occupant or the person in possession and claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof the United States has right by law to such estate. Upon such information a summons must issue to such person, requiring him to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the United States, which order must be published for at least six consecutive weeks from the date thereof, in a newspaper published in the precinct, if one be published therein, and in case no newspaper is published in the precinct, then in such newspaper in the district as the court by order may direct.

Governor must take steps to recover.

SEC. 185. The court, upon the information being filed, with and upon the application of the United States attorney, either before or after answer, upon notice to the party claiming such estate, if known, may, upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, and receive the rents and profits of the same, until the title to such estate is finally settled.

Court may appoint receiver.

SEC. 186. All persons named in the information may appear and answer, and may traverse or deny the facts stated in the information, the title of the United States to the lands and tenements therein mentioned at any time before the time for answering expires; and any other person claiming an interest in such estate may appear and be made a defendant by motion for that purpose in open court within the time allowed for answering; and if no person appears and answers within the time, then judgment must be rendered that the United States be seized of the lands and tenements in such information claimed. But if any person appears and denies the title set up by the United States, or traverses any material fact set forth in the information, the issue of the fact must be tried as issues of facts are tried in civil actions. If, after the issues are tried, it appears from the facts found that the United States has good title to the estate in the information mentioned, or any part thereof, judgment must be rendered that the United States be seized thereof, and recover costs of action against the defendant. In any judgment rendered, or that has heretofore been rendered, by any court of competent jurisdiction, escheating real property to the United States, on motion of the United States attorney the court shall make an order that the real property be sold by the marshal at public sale, and upon such terms, whether for cash or credit, or both, as shall be deemed for the best interests of the United States. And if such court shall deem it most advantageous for the United States, it may direct that the lands be surveyed into lots and sold in specific portions, upon such terms as to payments therefor as may be deemed best for the United States. After giving such notice of the time and place of

All persons claiming interest may defend.

sale as may be prescribed by the court in the order, the marshal shall, within ten days after such sale, make a report thereof to the court, and, upon hearing the report, the court may examine the same and witnesses in relation thereto, and if the proceedings of such sale are unfair, or the sum or sums bid are disproportionate to the value of the portion sold, and if it appear that a greater sum can be obtained for the property, or any portion thereof, exceeding such bid at least ten per centum, exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had, and the new sale shall be conducted in all respects as if no previous sale had taken place. But if it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum than ten per centum, exclusive of the expense of a new sale, can not be obtained, the court must make an order confirming the sale and directing the marshal in the name of the United States to execute to the purchaser or purchasers a conveyance of the property sold; and the conveyance shall vest in the purchaser or purchasers all the right and title of the United States therein; and also directing that the purchaser or purchasers shall execute and deliver to the marshal his or their note or notes, payable to the United States for the deferred payments with a first mortgage upon the property conveyed, to secure the deferred payments. And the marshal shall, out of the proceeds of such sale, pay the cost of the proceedings incurred on behalf of the United States, including the expense of making such sale, and the remainder, together with the notes and mortgages, he shall deliver to the United States attorney, taking his receipt therefor, and the United States attorney shall deposit the sum with the clerk of the district court, who shall pay the same into the Treasury of the United States in the manner provided by law for other moneys recovered in actions by the United States.

Persons may claim proceeds, when; proceedings thereon.

SEC. 187. Within ten years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the district court showing his claim or right to the property or the proceeds thereof. A copy of such petition must be served upon the United States attorney at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him; or if it has been sold and the proceeds paid into the Treasury of the United States, then it must order that a copy of the judgment be forwarded to the Secretary of the Treasury. All persons who fail to appear and file their petition within the time limited by law are forever barred, saving, however, to infants, and persons of unsound mind, the right to appear and file their petitions at any time within the time limited, or one year after their respective disabilities cease.

Proceedings in case of personal property.

SEC. 188. In all cases of personal estate, the court shall direct by order that the same be sold by the marshal, as upon execution, and the proceeds be applied to the payment of the costs incurred by the United States and the costs and charges of making such sale, and the residue to the district attorney, who shall pay the same to the clerk of the court as hereinbefore provided.

Escheated property held by bank.

SEC. 189. When the governor is informed or has reason to believe that any bank, banker, or banking institution in the district now has or holds on deposit or otherwise any fund, funds, or other property of any kind or nature which has escheated to the district, he shall direct the United States attorney to file in the district court an information or bill of discovery, with proper interrogatories to be answered

by the owner, agent, or manager of such bank or banking institution, and upon the filing of such information or bill the court shall order and direct, at a time to be designated in the bill, that the owner, agent, or manager of such bank or banking institution shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from such answer that the bank, banker, or banking institution has any property in its possession which has or may escheat to the United States, it shall direct the bank, banker, or banking institution forthwith to bring the same into such court, and the court shall proceed to dispose of the property as provided elsewhere in this chapter.

CHAPTER TWENTY.

OF PROMISSORY NOTES AND BILLS OF EXCHANGE.

Sec.
190. Promissory notes in writing payable to bearer, effect of.
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197. Damages on inland bills of exchange.

Promissory notes in writing payable to bearer, effect of.

SEC. 190. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

Action by payees, indorsees, and holders, nature and extent of.

SEC. 191. The payee and indorsee of every such note payable to him or his order, and the holder of every such note payable to bearer, may maintain an action for the sum of money therein mentioned, in like manner as in case of an inland bill of exchange and not otherwise.

Note to the order of maker or fictitious person, effect of.

SEC. 192. Such note made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer.

Grace, when allowed.

SEC. 193. On all bills of exchange payable at a future day certain within the district, and on all negotiable promissory notes, orders, and drafts payable at a future day certain within the district, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or after sight.

Qualification of last section.

SEC. 194. The provisions of the preceding section shall not extend to any bill of exchange, note, or draft payable at sight or on demand.

Acceptance to be in writing.

SEC. 195. No person within the district shall be charged as an acceptor of a bill of exchange unless his acceptance shall be in writing, signed by himself or his lawful agent.

Damages on foreign bills.

SEC. 196. Whenever any bill of exchange drawn or indorsed within the district and payable without the limits of the United States shall be duly protested for nonacceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of demand, and damages at the rate of ten per centum upon the contents thereof, together with interest on the contents, to be computed from the date of the protest; and the amount of contents, damages, and interest shall be in full of all damages, charges, and expenses.

Damages on inland bills of exchange.

SEC. 197. If any bill of exchange drawn upon any person, firm, or body corporate out of the district, but within some State or Territory of the United States, for the payment of money, shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay the bill, with legal interest, according to its tenor, and five per centum damages, together with costs and charges of protest.

CHAPTER TWENTY-ONE.

INCORPORATION OF TOWNS.

Sec.
198. Filing petition.
199. Electors and their qualifications.
200. Election board and canvass of votes.
201. Powers of town council.
202. Officers.
203. Treasurer, bond and qualifications.

Filing petition.

SEC. 198. Any community having three hundred permanent inhabitants may incorporate as provided in this Act. A petition shall first be presented to the judge of the United States district court presiding over the division wherein the community is located, signed by at least sixty bona fide residents of such community, which petition shall set forth the boundaries of the proposed corporation, and state the number of inhabitants therein, and such other facts as the court may require. The judge, by an order, shall prescribe the time and manner of giving notice of such incorporation. Such notice having been given, the court shall hear objections to the incorporation made by interested parties, and, if satisfied that the public interests require the incorporation, by order, may make changes in the boundaries, and shall set forth the name thereof and give due notice of an election for the purpose of determining whether the same shall be incorporated. At such election the qualified electors of the community may elect a common council of seven members, who shall have the qualifications of electors, such election to be under the control of a board of election composed of three bona fide residents and property owners in the corporation, to be appointed by the court or judge.

Electors and their qualifications.

SEC. 199. The qualification of an elector for the first and all subsequent municipal elections shall be as follows: He shall be a male citizen of the United States or one who has declared his intention to become such, and of the age of twenty-one years, and shall have been a bona fide resident of Alaska for one year and of the proposed corporation for six months next prior to the date of election, or any subsequent one: *Provided*, There shall be added to the foregoing qualification in any election to determine whether or not a community shall incorporate the following qualification: Every elector shall be the owner of substantial property interests in the corporation.

Election board and canvass of votes.

SEC. 200. The election board shall canvass the votes cast, and if a two-thirds majority are for incorporation they shall declare the community duly incorporated under the name and style of ———, and shall declare the seven persons receiving the highest number of votes duly elected councilmen of the corporation. The board shall file a certified copy of the order with the clerk of the district court, the secretary of the district, and the commissioner residing in the corporation. After filing such orders the corporation shall be deemed complete and the councilmen shall, after duly qualifying before the United States commissioner residing in the corporation, enter upon the duties of their office, and shall hold the same for one year or until their successors shall be elected and qualified.

SEC. 201. The council shall have the following powers: Power of town council.

First. To provide suitable rules governing their own body, and to elect one of their members president, who shall be ex officio mayor.

Second. They may appoint, and at their pleasure remove, a clerk, treasurer, assessor, and such other officers as they deem necessary.

Third. To make rules for all municipal elections: *Provided*, No officer shall be elected for a longer term than one year.

Fourth. By ordinance to provide for necessary street improvements, fire protection, water supply, lights, wharfage, sewerage, maintenance of public schools, protection of public health, police protection, and the expense of assessment and collection of taxes.

Fifth. To impose and collect a poll tax on electors, tax on dogs, a general tax on real and personal property, possessory rights and improvements, and such license tax on business conducted within the corporate limits as the council may deem reasonable: *Provided*, No such tax shall exceed one per centum on the assessed valuation of property, and all assessments made by the corporation assessor shall be subject to review by the council, and appeals may be taken from their decisions to the district court: *Provided further*, No bonded indebtedness whatever shall be authorized for any purpose.

SEC. 202. In addition to the officers heretofore provided by this Act, there shall be elected a school board of three directors, who shall have the exclusive supervision, management, and control of the public schools and school property within said corporation, and shall be elected in the same manner and for the same term as the council. Officers.

SEC. 203. The treasurer of the corporation shall be ex officio treasurer of the school board, and shall, before entering upon the duties of his office, take the oath prescribed by law and execute bonds to the corporation in an amount to be determined by the judge of the district court, which bond shall be approved by the council and the judge of the district court and filed in the office of the recorder of the corporation, and he shall give such additional bond as the council or judge of the district court may from time to time direct, but in no event shall such bonds be less than twice the amount of money in the hands of the treasurer at any one time, to be determined by the tax rolls and license books of the corporation, of the corporation clerk, and the clerk of the district court: *Provided*, That fifty per cent of all license moneys provided for by Act of Congress approved March third, eighteen hundred and ninety-nine, entitled "An Act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district," and any amendments made thereto, required to be paid by any resident, person, or corporation for business carried on within said corporation, shall be paid over by the clerk of the United States district court receiving the same to the treasurer of said corporation, upon taking his receipt therefor in duplicate, one of which duplicate receipts shall be forwarded to the Secretary of the Treasury of the United States by the clerk as a voucher in lieu of cash, and the other receipt shall be retained by the clerk. The money received by the treasurer of the corporation shall be used, under the direction of the council, for school purposes. Treasurer, bond and qualifications. Vol. 30, p. 1336.

CHAPTER TWENTY-TWO.

OF EMINENT DOMAIN.

Sec.
204. Purposes for which it may be exercised.
205. What estates in land may be acquired by condemnation.
206. Private property defined; classes enumerated.
207. Facts necessary to be found before condemnation.
208. Parties may make location and enter to make surveys.
209. Jurisdiction of the district court.
210. The complaint and its contents.
211. Summons, what to contain; how issued and served.
212. Who may defend.
213. Appointment of commissioners, etc.
214. Meeting of commissioners.
215. Date with respect to which compensation shall be assessed, and measure of damages.
216. Report of commissioners.
217. Appeal.
218. New proceedings to cure defective title.
219. Payment of damages.
220. To whom paid.
221. Final order of condemnation.
222. Putting plaintiff in possession.
223. Payment of costs.
224. Rules of practice.

Purposes for which it may be exercised.

SEC. 204. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) All public uses authorized by the Government of the United States.

(2) Public buildings and grounds for the use of the district, and all other public uses authorized by Congress or other legislative authority of the district.

(3) Public buildings and grounds for the use of any precinct, city, town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any precinct, city, town, or other municipal division, whether incorporated or unincorporated; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any precinct, city, town, or other municipal division, whether incorporated or unincorporated, or the inhabitants thereof, which may be authorized by Congress or other legislative authority of the district.

(4) Wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water.

(5) Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water.

(6) Private roads leading from highways to residences, mines, or farms.

(7) Telephone or electric-light lines.

(8) Telegraph lines.

(9) Sewerage of any precinct, city, town, village, or other municipal village, whether incorporated or unincorporated, or any subdivision thereof, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the district or to any college or university.

(10) Tramway lines.

(11) Electric power lines.

What estates in land may be acquired by condemnation.

SEC. 205. That the following is a classification of the estates and rights in lands subject to be taken for public use:

(1) A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of débris or tailings of a mine.

(2) An easement when taken for any other use.

(3) The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Private property defined; classes enumerated.

SEC. 206. The private property which may be taken under this chapter includes:

(1) All real property belonging to any person.

(2) Lands belonging to the district, or to any precinct, city, town, village, or other municipal division, whether incorporated or unincorporated, not appropriated to some public use.

(3) Property appropriated to public use; but such property must not be taken unless for a more necessary purpose than that to which it has already been appropriated.

(4) Franchises for roads, bridges, and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use.

(5) All rights of way for any and all the purposes mentioned in section two hundred and four, and any and all structures and improvements thereon, and the lands held and used in connection therewith, must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(6) All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Facts necessary to be found before condemnation.

SEC. 207. Before property can be taken it must appear:

(1) That the use to which it is to be applied is a use authorized by law.

(2) That the taking is necessary to such use.

(3) If already appropriated to some public use that the public use to which it is to be applied is a more necessary public use.

The plaintiff or defendant or any party interested in the proceedings can appeal to the United States circuit court of appeals for the ninth circuit from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter.

Parties may make location and enter to make surveys.

SEC. 208. In all cases where land is required for public use, the district, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section two hundred and thirteen. The district, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness, or malice.

Jurisdiction of the district court.

SEC. 209. All proceedings under this chapter must be brought in the district court of the district. They must be commenced by filing a complaint and issuing a summons thereon.

The complaint and its contents.

SEC. 210. The complaint must contain:

(1) The name of the corporation, association, commission, or person

in charge of the public use for which the property is sought, who must be styled plaintiff.

(2) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

(3) A statement of the right of the plaintiff.

(4) If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

(5) A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the precinct and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a precinct, town, or settlement, the chief executive officer of the same, or, if the same be unincorporated, any three citizens authorized thereunto by a written instrument, signed by not less than one-half of the whole number of male inhabitants of such precinct, town, or settlement over the age of twenty-one years, which fact shall be set forth in the complaint, may be named as plaintiff.

Summons, what to contain; how issued and served.

SEC. 211. Upon the filing of such complaint a summons shall be issued, which shall contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned, as prayed for in the complaint. Such summons shall, in other particulars, be in the form of a summons in a civil action, and shall be served in like manner upon each defendant named therein at least twenty days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants upon whom service of the summons had been made.

Who may defend.

SEC. 212. All persons named in the complaint in occupation of, or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, answer, or demur, each in respect to his own property or interest.

Appointment of commissioners, etc.

SEC. 213. The court or judge has power:

(1) To regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in subdivision five of section two hundred and six of this chapter, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law.

(2) To determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws relating to the district.

(3) To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(4) If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in the precinct, commissioners to ascertain and determine the amount to be paid by the plaintiffs to each owner or other person interested in such property as damages, by reason of the appropriation of such property, and specifying the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any per-

son as a commissioner on the same grounds that he might object to him as a trial juror.

Meeting of commissioners.

SEC. 214. The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully and impartially discharge the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

(1) The value of the property sought to be appropriated, and all improvements thereon, pertaining to the realty and each and of every separate estate and interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

(2) If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

(3) Separately, how much the portion not sought to be condemned, and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subdivision two the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

(4) If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

(5) As far as practicable compensation must be assessed for each source of damage separately.

Date with respect to which compensation shall be assessed, and measure of damages.

SEC. 215. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected. If an order be made letting the plaintiff into possession, as provided in section two hundred and twenty-two, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

Report of commissioners.

SEC. 216. Within thirty days after giving their appraisement and the assessment of damages, the commissioners must file a report of their proceedings, accompanied by a map, if a right of way be sought, showing the route, location, and termini thereof, in the office of the clerk of the court, and the clerk must notify the parties interested that such report has been filed, which notice must be served upon all the parties interested in the same manner as a summons.

Appeal.

SEC. 217. An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of the commissioners is filed, by any party interested. Such appeal must be taken within the period of thirty days after the service upon appellant of the notice of the filing of the award by the service of notice of such

appeal upon the plaintiff or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions; and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners. Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interest and costs allowed by law, if any, the right to construct and maintain such railroad, or other public work or improvement, and to take, use, and appropriate the property described in such verdict or assessment, for the use and purposes for which the land has been condemned, shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff, and his or its heirs, successors, or assigns forever. In case the party appealing from the award of commissioners in any proceeding as aforesaid, shall not succeed in increasing the amount of damages finally awarded to him in such proceeding, he shall not recover the costs of such appeal; but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant: *Provided*, Upon the trial of such appeal the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in the appeal, which was located after the preliminary survey of any such railroad seeking to condemn its right of way under and pursuant to the provisions of this Act: *Provided*, Such condemnation proceedings are begun within one year after such preliminary survey.

New proceedings to cure defective title.

SEC. 218. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

Payment of damages.

SEC. 219. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before the payment, elect to build the fences and cattle guards; and if he so elect shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eight months from the time the railroad is built on the land taken; and if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

To whom paid.

SEC. 220. The payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money can not be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Final order of condemnation.

SEC. 221. When payments have been made, and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of condemnation. A copy of the order must be filed in the office of the commissioner of the recording district wherein the land is located, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Putting plaintiff in possession.

SEC. 222. At any time after the report and assessment of damages of the commissioners has been made and filed in the court, and either before or after appeal from such assessment, or from any other order

or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiffs, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation; and that all actions and proceedings against the plaintiff on account thereof be stayed until such time: *Provided, however*, Where an appeal is taken by such defendant, the court or judge may in its or his discretion require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount of damages assessed, to give a bond or undertaking, with sufficient sureties, to be approved by the judge, and to be in such sum as the court or judge may direct, conditioned to pay defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses. The amount assessed as damages by the commissioners, or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed, or by giving security, as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or concluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute such appeal from such assessment: *Provided*, If the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action: *And provided further*, Upon any appeal from the assessment of damages by the commissioners or a jury, the jury may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners.

Bond.

Liability for excess over amount finally assessed, etc.

Appeal, etc.

SEC. 223. Costs may be allowed, or, if not so allowed, may be so apportioned between the parties on the same or adverse sides, in the discretion of the court.

Payment of costs.

SEC. 224. Except as otherwise provided in this chapter, the provisions of title two of this Act are applicable to and constitute the rules of practice of the proceedings mentioned in this Act.

Rules of practice.

CHAPTER TWENTY-THREE.

OF FOREIGN CORPORATIONS.

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225. To file copy of charter and appoint agent.
226. Consent of agent, etc.
227. Death or removal of agent.
228. Penalty for failure to comply.
229. Annual reports to be filed.
230. Existing corporations to comply.
231. Penalty for failure to comply.

To file copy of charter and appoint agent.

SEC. 225. All corporations or joint stock companies organized under the laws of the United States, or the laws of any State or Territory of the United States, shall, before doing business within the district, file in the office of the secretary of the district and in the office of the clerk of the district court for the division wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing—

(1) The name of such corporation and the location of its principal office or place of business without the district; and, if it is to have any place of business or principal office within the district, the location thereof;

(2) The amount of capital stock;

(3) The amount of its capital stock actually paid in in money;

(4) The amount of its capital stock paid in in any other way, and in what;

(5) The amount of the assets of the corporation, and of what the assets consist, with the actual cash value thereof;

(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.

Consent of agent, etc.

SEC. 226. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

Death or removal of agent.

SEC. 227. In case of the death, removal from the district, or disqualification of the person so designated, or of the revocation of his consent, it shall be the duty of the clerk of the district court to notify such corporation or company; and it shall be the duty of such corporation or company, within sixty days thereafter, to designate another person in the manner hereinbefore provided.

Penalty for failure to comply.

SEC. 228. If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any

agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the district to sue for and recover, in the name of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the Treasury of the United States.

Annual reports to be filed.

SEC. 229. Every such corporation or company shall annually, and within thirty days from the first day of July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section two hundred and twenty-five, of this chapter, which report shall be filed in the office of the secretary of the district, and a duplicate thereof in the office of the clerk of the district court for the division wherein the business of the corporation is carried on.

Existing corporations to comply.

SEC. 230. Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the district, may, within ninety days from the time this Act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this Act goes into effect shall be valid and enforceable.

Penalty for failure to comply.

SEC. 231. If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the district shall be void as to the corporation or company, and no court of the district, or of the United States, shall enforce the same in favor of the corporation or company so failing.

CHAPTER TWENTY-FOUR.

OF THE INCORPORATION OF CEMETERIES.

Sec.
232. Cemetery association may be formed.
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238. Burial lots exempt from execution and taxation.
239. Association may have plat recorded.

Cemetery association may be formed.

SEC. 232. It shall be lawful for any number of persons, not less than five, who are residents of the precinct in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society.

How formed

SEC. 233. The clerk to be elected, as provided in section two hundred and thirty-two, shall forthwith make out a true record of the proceedings of the meetings provided for by the preceding section, certify to and file a copy of the same with the commissioner of the precinct in which such meeting shall be held, and another copy of the same in the office of the clerk of the district court, together with the name by which such association desires to be known, and from and after filing such record the trustees and their associated members and successors shall be invested with the powers, privileges, and immunities incident to aggregate corporations.

Succession of trustees.

SEC. 234. The trustees who may be elected under the provisions of section two hundred and thirty-two shall have perpetual succession, and shall be capable in law of contracting and of prosecuting and defending actions.

Association may describe terms of membership, etc.

SEC. 235. All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees

and officers, and the time and manner of their election or appointment and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association.

General powers and management of such associations.

Sec. 236. Such association shall be authorized to purchase, or to take by gift or devise, and hold, land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery, not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes and in no wise with a view to the profit of the members of such association. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations, and other sources of revenue shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof deem proper. The interest or income arising from the irreducible fund provided for in any by-law, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the cemetery, and, where any by-law has been enacted for the creation of an irreducible fund as herein provided for, it can not thereafter be amended in any manner whatsoever except for the purpose of increasing such fund. After paying for the land, all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents, or otherwise, shall be applied exclusively to laying out, preserving, protecting, and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts, except for originally purchasing, laying out, and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes, and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots.

May sell unsuitable lands.

Sec. 237. It shall be lawful for said trustees whenever, in their opinion, any portion or portions of their lands are unsuitable for burial purposes to sell such portion or portions and apply the avails thereof to the general purposes of such association.

Burial lots exempt from execution and taxation.

Sec. 238. Burial lots sold by such association shall be for the sole purpose of interment and shall be exempt from taxation, execution, attachment, or any other claims, lien, or process whatsoever if used, as intended, exclusively for burial purposes and in no wise with a view to profit.

Association may have plat recorded.

Sec. 239. All such associations shall cause a plan of their grounds and of the lots by them laid out to be made and recorded in a book kept for that purpose by the clerk of such association, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve, and adorn the grounds and avenues, to erect buildings for the use of the association, and to prescribe rules for the designation and adornment of lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement, or adornment of a lot which they may deem improper. An annual statement of the financial affairs of such association shall be made by the clerk thereof.

CHAPTER TWENTY-FIVE.

OF CONTAGIOUS DISEASE AMONG ANIMALS.

Sec.
240. Penalty for bringing diseased animals into said district.
241. Diseased animals to be kept away from others.
242. Procedure against persons violating this code.
243. Proceedings in case of violation of this law.
244. Certain words defined.
245. Officers must prosecute.
246. Jurisdiction.

Penalty for bringing diseased animals into said district.

SEC. 240. Any person, persons, company, or corporation who shall bring, or cause to be brought, or aid in bringing, into the district any sheep, hog, horse, or cattle of any kind, or any domestic animal of any kind, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor, and on conviction be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

Diseased animals to be kept away from others.

SEC. 241. If any person or persons, company, or corporation owning or having possession or control of any animal affected by any such contagious or infectious disease shall fail to keep the same within an inclosure, or herd the same in some place where it will be secure from contact with other animals not so affected, or shall suffer such infected animal to range where it will be likely to come in contact with another animal not so affected, shall be guilty of a misdemeanor, and, on conviction, punished by a fine of not more than one thousand dollars for each offense.

Procedure against persons violating this code.

SEC. 242. Any person, company, or corporation violating any of the provisions of this chapter shall be liable for all damages sustained by any other person, company, or corporation through such violation.

Proceedings in case of violation of this law.

SEC. 243. Any person or persons found violating the provisions of this chapter may be arrested and held without warrant in the same manner as in cases of persons found breaking the peace; and the person or persons making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owner or owners of the animal or animals found in the charge of the person or persons arrested, and shall properly care and provide for such animal or animals until the owner or owners of such animal or animals, or a duly authorized agent of the same, shall take charge of the same: *Provided*, Such owner or owners or agent shall claim and take charge of the same within sixty days of the date of the notice; and the person or persons making such arrest shall have a lien upon such animal or animals for the expense of such care and provisions.

Certain words defined.

SEC. 244. In this chapter the word "animal" or "animals" shall be held to include all brute creatures, and the words "owner," "owners," "person," "persons," and "whoever" shall be held to include corporations as well as individuals, and the knowledge and acts of agents of and persons employed by corporations in regard to the treatment of animals transported, owned, or employed by or in the custody of such corporation or corporations shall be held to be acts and knowledge of such corporation or corporations.

Officers must prosecute.

SEC. 245. It shall be the duty of any marshal or deputy marshal to arrest any violator or violators of the provisions of this chapter, and to prosecute any violator or violators of its provisions which shall come to his knowledge or notice; and all fines and forfeitures which shall be collected for violations of any of the provisions hereof shall be paid into the office of the clerk of the district court, and such clerk shall turn the same, according to law, into the Treasury of the United States.

Jurisdiction.

SEC. 246. Commissioners within their respective precincts shall have jurisdiction over all offenses committed under the provisions of this chapter.

CHAPTER TWENTY-SIX.

OF ESTRAYS.

Sec.
247. Commissioners to keep record of estrays.
248. Householder may take up estray and post notices thereof.
249. Owner to recover estray on proof and payment of costs.
250. Statement of taking up, etc.
251. When description of estray to be published in newspaper.
252. Claim of owner after appraisal.
253. Sale of estray if not proven within six months.
254. Penalty for violating above provisions.

Commissioners to keep record of estrays.

SEC. 247. It shall be the duty of the commissioner of each precinct in the district to keep a book of suitable dimensions to be called the record of estrays.

Householder may take up estray and post notices thereof.

SEC. 248. Any householder about whose premises any estray may be running at large may take up the same, and shall immediately post notices in three public places in the district, one of which shall be in the precinct in which the estray was taken up, giving as correct a description as may be of natural and artificial marks, probable age, size, and so forth.

Owner to recover estray on proof and payment of costs.

SEC. 249. If, previous to the expiration of ten days from taking up, the owner shall prove the estray to be his, he shall be entitled to the same by paying charges, which shall be one dollar for taking up, posting, and so forth, and a reasonable rate for keeping the same. And if the owner shall further prove that the person so posting an estray knew to whom such estray belonged and yet did not notify the owner of his intention to post the estray, the person so taking and posting shall not recover for either posting or keeping.

Statement of taking up, etc.

SEC. 250. If at the expiration of ten days no one shall have made his claims known to the taker-up, it shall be his duty to make a statement to the nearest commissioner of the precinct in which such estray is taken up, under oath, of the taking up of such estray, post, and so forth, according to law; whereupon the commissioner shall appraise the estray and immediately make record of the same in the record of estrays. And such commissioner shall receive for each appraisal one dollar.

When description of estray to be published in newspaper.

SEC. 251. If the amount of such appraisement shall exceed fifteen dollars the person taking up such estray shall be further required to cause to be published, in a newspaper published in the precinct, or, if there be none, then in a newspaper of general circulation in the district, a description of the same, giving marks as above specified, the name and residence of the finder, and, as near as may be, the time at which the estray was taken up.

Claim of owner after appraisal.

SEC. 252. If the owner, or any person entitled to the possession of an estray, shall appear and make out his title thereto and pay the charges thereon within six months from the time the notice is filed with the commissioner, as provided in section two hundred and fifty, and make out his right thereto, he shall have such estray restored to him upon paying all lawful charges which have been incurred in relation to the same.

Sale of estray if not proven within six months.

SEC. 253. If the person entitled to the possession of any estray shall not appear and make out his title thereto within six months from the time of entry thereof by the commissioner, such estray shall be sold, at the request of the finder, by the marshal or any deputy marshal of the district, at public auction, upon first giving public notice thereof in writing by posting up the same in three public places in the precinct, one of which shall be at or adjoining the post-office, at least ten days before such sale, and the finder may bid therefor at such sale;

and after deducting all the lawful charges of the finder as aforesaid, and the fees of the marshal or deputy marshal, which shall be the same as upon a sale on an execution, the remaining proceeds of such sale shall be deposited with the clerk of the district court; and if the owner of the property sold, or his legal representatives, shall not, within one year after the money shall have been so deposited with the clerk of the district court, furnish satisfactory evidence to the district judge of the ownership of such property the amount so deposited with the clerk of the district court shall be paid into the Treasury of the United States.

Penalty for violating above provisions.

SEC. 254. If any person shall take up, keep, or use any estray without complying with the provisions of this code he shall be liable to a penalty of double the value of such estray, to be sued for and recovered in the district court at the suit of the United States; and it is hereby made the duty of the district attorney to prosecute an action against such offender for the violation of the provisions of this code when the same shall be within his personal knowledge or when complaint in writing, under oath, be filed with him alleging the violation of this code.

CHAPTER TWENTY-SEVEN.

OF INTEREST AND USURY.

Sec.
255. Legal rate of interest.
256. Illegal interest not to be taken.
257. May recover usurious interest paid.
258. Illegal interest, contract for.
259. Assignee of usurious contract may recover amount paid for same.
260. Mortgagor and mortgagee may agree which shall pay taxes, when.
261. Assessment, how made in such cases.

Legal rate of interest.

SEC. 255. The rate of interest in the district shall be eight per centum per annum, and no more, on all moneys after the same become due; on judgments and decrees for the payment of money; on money received to the use of another and retained beyond a reasonable time without the owner's consent, expressed or implied, or on money due upon the settlement of matured accounts from the day the balance is ascertained; on money due or to become due where there is a contract to pay interest and no rate specified. But on contracts interest at the rate of twelve per centum may be charged by express agreement of the parties, and no more.

Illegal interest not to be taken.

SEC. 256. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum or value for the loan or use of money, or upon contract founded upon any bargain, sale, or loan of wares, merchandise, goods, chattels, lands, and tenements, than in this chapter prescribed.

May recover usurious interest paid.

SEC. 257. If usurious interest, as defined by the preceding sections, shall hereafter be received or collected the person or persons paying the same, or their legal representatives, may, by action brought in any court of competent jurisdiction, within two years after such payment, recover from the person, firm, or corporation receiving the same double the amount of the interest so received or collected.

Illegal interest, contract for.

SEC. 258. If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money, property, or other valuable thing, or that any gift or donation of money, property, or other valuable thing has been made or promised to be made to a lender or creditor, or to any person for him, directly or indirectly, either by the borrower or debtor, or any person for him, the design of which is to obtain for money so loaned, or for debts due or to become due, a rate of interest greater than that specified by the provisions of this chapter, the same shall be deemed to be usurious

and shall work a forfeiture of the entire interest on the debt. The court before which such action is prosecuted shall render judgment for the amount due, without interest, on the sum loaned or the debt contracted, against the defendant and in favor of the plaintiff and against the plaintiff for costs of action, whether such action be contested or not.

Assignee of usurious contract may recover amount paid for same.

SEC. 259. Nothing in this code shall be construed to prevent the proper bona fide assignee of any usurious contract recovering against his immediate assignor, or the original usurer, the full amount paid by him for such contract, but the same may be recovered by proper action in any court having competent jurisdiction: *Provided*, Such assignee had no notice of the usury affecting the contract.

Mortgagor and mortgagee may agree which shall pay taxes, when.

SEC. 260. All contracts made and entered into in the district by and between borrower and lender, debtor, and creditor, or mortgagor and mortgagee, on which the rate of interest is eight per centum or under, whereby one party shall agree to pay the taxes on the debt, credit, or mortgage existing or entered into between such parties, be, and the same are hereby, declared legal and valid and shall not be deemed or taken to be usurious.

Assessment, how made in such cases.

SEC. 261. All contracts entered into under section two hundred and sixty, may be enforced by the parties thereto in the courts of the district: *Provided*, In making the assessments of credits, loans, or mortgages the same shall be assessed to the holder thereof.

CHAPTER TWENTY-EIGHT.

OF THE LIENS OF MECHANICS, LABORERS, AND OTHERS.

Sec.
262. Lien, to whom given.
263. Lien extends to the land.
264. Priority between liens and mortgages.
265. Owner of land charged as owner of building, when.
266. Claim of lien must be filed.
267. Commissioner must record liens.
268. Foreclosure must be commenced in six months.
269. Lien for grading street, etc.
270. Suits to enforce liens must be before commissioner.
271. Payment by owner of building does not prevent lien, when.
272. Amount of recovery not to exceed amount due on contract; exception.
273. Building materials, when not subject to attachment.
274. Definitions.
275. Existing liens and proceedings thereunder not impaired.

Lien, to whom given.

SEC. 262. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other persons performing labor upon or furnishing material, of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, shall have a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of this code.

Lien extends to the land.

SEC. 263. The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof (to be determined by the judgment of the court at the time of the foreclosure of such lien), and the mine on which the labor was performed or for which the material was furnished shall also be subject to the liens created by this code if, at the time the work was commenced or the materials for the same had been commenced to be furnished, the land belonged to the person who caused the building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein shall be subject to such lien: and in case such inter-

est shall be a leasehold interest, and the holder thereof shall have forfeited his rights thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this code, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and costs due under the lease, unless the lessor shall have regained possession of the land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereof; in which event the purchaser shall have the right only to remove the building or other improvement within thirty days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

Priority between liens and mortgages.

SEC. 264. A lien created by this code upon any parcel of land shall be preferred to any lien, mortgage, or other incumbrance which may have attached to the land subsequent to the time when the building or other improvement was commenced, or the materials were commenced to be furnished and placed upon or adjacent to the land; also to any lien, mortgage, or other incumbrance which was unrecorded at the time when the building, structure, or other improvement was commenced, or other materials for the same were commenced to be furnished and placed upon or adjacent to the land; and all liens created by this code upon any building or other improvements shall be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which the building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien, such building or other improvement may be sold separately from the land, and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed thirty days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal: *Provided*, If such removal be prevented by legal proceedings, the thirty days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal be taken.

Owner of land charged as owner of building, when.

SEC. 265. Every building, or other improvement mentioned in section two hundred and sixty-two, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this code, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon the land, or upon the building or other improvement situated thereon.

Claim of lien must be filed.

SEC. 266. It shall be the duty of every original contractor, within sixty days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, save the original contractor, claiming the benefit of this code, within thirty days after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien suf-

ficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts.

Commissioner must record liens.

SEC. 267. The recorder shall record the claim in a book kept for that purpose, which records shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

Foreclosure must be commenced in six months.

SEC. 268. No lien provided for in this code shall bind any building, structure, or other improvement for a longer period than six months after the same shall have been filed, unless suit be brought before the proper court within that time to enforce the same, or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit.

Lien for grading street, etc.

SEC. 269. Any person who shall, at the request of the owner of any lot in the district, grade, fill in, or otherwise improve the same or the street in front of or adjoining the same, shall have a lien upon such lot for his work done and materials furnished in the grading, filling in, or otherwise improving the same; and all the provisions of this code respecting the securing and enforcing the mechanic's lien shall apply thereto.

District court to try suits to enforce liens.

SEC. 270. Actions to enforce the liens created by this code shall be brought before the district court, and the pleadings, process, practice, and other proceedings shall be the same as in other cases. In case the proceeds of any sale under this code shall be insufficient to pay all lien holders under it, the liens of all persons other than the original contractor (and subcontractors) shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the subcontractor shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid to the original contractor; and each claimant shall be entitled to execution for any balance due him after such distribution, such execution to be issued by the clerk of the district court, upon demand, after the return of the marshal or other officer making the sale showing such balance due.

In all actions under this chapter the district court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien, and also a reasonable amount as attorney's fees. All actions to enforce any lien created by this code shall have preference upon the calendar of civil actions brought before the district court and shall be tried without unnecessary delay.

In all actions to enforce any lien created by this chapter all persons personally liable and all lien holders whose claims have been filed for record under the provisions of section two hundred and sixty-six shall, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien may, be made parties; but such as are not made parties shall not be bound by such proceedings. The proceedings upon the foreclosure of the liens created by this code shall be, as nearly as possible, made to conform to the proceedings of a foreclosure of a mortgage lien upon real property.

Payment by owner of building does not prevent lien, when.

SEC. 271. No payment by the owner of the building or structure to any original contractor or subcontractor, made before thirty days from the completion of the building, shall be valid for the purpose of defeating or discharging any lien created by this chapter in favor of any workman, laborer, lumber merchant, or material man, unless such payment so made by the owner of the building or structure to such original contractor or subcontractor has been distributed among such workmen, laborers, lumber merchants, or material men, or, if distributed in part only, then the same shall be valid only to the extent the same has been so distributed.

SEC. 272. Any contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a lien shall be filed under this chapter for work done or materials furnished to any contractor he shall defend any action brought thereupon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the liens the owner shall be entitled to deduct from any amount due or about to become due by him to the contractor the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the owner, in excess of the contract price, and for which the contractor was originally the party liable.

Amount of recovery not to exceed amount due on contract; exception.

SEC. 273. Whenever any mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials except a debt due for the purchase money thereof, so long as in good faith the same have been or are about to be applied to the construction, alteration, or repair of such building, structure, or other improvement.

Building materials, when not subject to attachment.

SEC. 274. The words "building or other improvement," wherever the same are used in this chapter, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," wherever the same are used herein, shall be held to include partial construction, and all repairs done in and upon any building or other improvement.

Definitions.

SEC. 275. Nothing contained in this chapter shall affect any lien heretofore acquired, but the same may be enforced by the provisions of this chapter; and where actions are now pending the proceedings, after this chapter goes into effect, may be conducted according to this chapter.

Existing liens and proceedings thereunder not impaired.

CHAPTER TWENTY-NINE.

OF LIENS ON PERSONAL PROPERTY.

Sec.
276. Liens for labor on personal property.
277. Lien of carriers, storers of merchandise, and agisters of cattle.
278. Proceedings to enforce such liens.
279. Agreements not to be interfered with.
280. Lien for labor on logs.
281. Lien on lumber for labor performed thereon.
282. Lien for stumpage.
283. Preferred liens.
284. Limitation of lien for labor.
285. Limitation of lien for stumpage.
286. Filing claim and form thereof.
287. Filing claim for stumpage.
288. Record of claim.
289. Limitation for bringing action.
290. Jurisdiction.
291. Against what timber lien may be enforced.
292. Joinder of liens.
293. Judgment lien; execution.
294. Sale when property is subject to loss or destruction.
295. Preventing the identification of timber subject to lien.

SEC. 276. Any person who shall make, alter, repair, or bestow labor on any article of personal property at the request of the owner or lawful possessor thereof shall have a lien upon such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the

Liens for labor on personal property.

material he has furnished, and such person may hold and retain possession of the same until such just and reasonable charges shall be paid.

Lien of carriers, storers of merchandise, and agisters of cattle.

SEC. 277. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, merchandise, and personal property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

Proceedings to enforce such liens.

SEC. 278. If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in a newspaper published in the precinct, if there be such publication, or by posting up notice of such sale in three public places in the precinct, one of which shall be the post-office, or adjacent thereto, for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof: *Provided*, Nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due the warehouseman on such wool, wheat, oats, or other grain: *And provided further*, If any such warehouseman shall sell, loan, or dispose of in any manner, contrary to the provisions of this chapter, without the consent of the owner thereof, any such wool, wheat, oats, or other grain, he shall, for each and every offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain a sum equal to the market value thereof, and fifty per centum of the market value in addition as a penalty, the market value to be the price such article or articles bore at the time the owner thereof made demand on the warehouseman for the same.

Agreements not to be interfered with.

SEC. 279. The provisions of the last three sections shall not interfere with any special agreement of the parties.

Lien for labor on logs.

SEC. 280. Every person performing labor upon, or who shall assist in obtaining or securing, saw logs, spars, piles, or other timber shall have a lien upon the same for the work or labor done upon or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp and any and all others who may assist in or about a logging camp shall be regarded as a person who assists in obtaining or securing the saw logs, spars, piles, or other timber mentioned herein.

Lien on lumber for labor performed thereunder.

SEC. 281. Every person performing labor upon or who shall assist in manufacturing saw logs or other timber into lumber has a lien upon such lumber while the same remains at the yard wherein manufactured, whether such work or labor was done at the instance of the owner of such lumber or his agent.

Lien for stumpage.

SEC. 282. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles, or other timber has a lien upon such logs, spars, piles, and timber for the price agreed to be paid for such privilege, or for the price such privilege or the stumpage thereon would be reasonably worth, in case there was no express agreement fixing the price.

SEC. 283. The liens provided for in this chapter are preferred liens and are prior to any and all other liens, and no sale, transfer, mortgage, or assignment of any saw logs, spars, piles, or other timber or manufactured lumber shall defeat the lien thereon as herein provided. Preferred liens.

SEC. 284. The person rendering the service or doing the work or labor named in sections two hundred and seventy-six and two hundred and seventy-seven of this chapter is only entitled to the liens as provided herein for services, work, or labor for the period of six months, or any part thereof next preceding the filing of the claims as provided in section two hundred and eighty-six of this title. Limitation of lien for labor.

SEC. 285. The person granting the privilege mentioned in section two hundred and eighty-two of this title is only entitled to the lien as provided therein for saw logs, spars, piles, and other timber cut during the six months next preceding the filing of the claim as provided in section two hundred and eighty-six. Limitation of lien for stumpage.

SEC. 286. Every person, within thirty days after the rendition of the services, or after performing the work or labor mentioned in sections two hundred and seventy-six and two hundred and seventy-seven of this title, who shall claim the benefit hereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber was cut, or in which such lumber was manufactured, a claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible, all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any; and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth, and shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person for him to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form: Filing claim. —form.

———, claimant, vs. ———, defendant.

Notice is hereby given that ——— claims a lien upon (describing property), being about ——— more or less, which were (cut or manufactured) in ——— precinct, District of Alaska, are marked thus ———, and are now lying in ———, for labor performed upon and assistance rendered in (cutting or manufacturing logs or lumber).

That the name of the owner, or reputed owner, is ———; that ——— employed said ——— to perform such labor and render such assistance upon the following terms and conditions (state contract, if any, or reasonable value); that said contract has been faithfully performed and fully complied with on the part of said ———, who performed labor and assisted in (cutting or manufacturing) for the period of ———; that said labor and assistance were so performed and rendered upon said property between the ——— day of ——— and the ——— day of ———, and the rendition of said service was closed on the ——— day of ———, and thirty days have not elapsed since that time; that the amount of claimant's demand for said services is ———; that no part thereof has been paid (except ———), and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ———, in which amount he claims a lien upon said property.

DISTRICT OF ALASKA, }
Precinct of ———, } *ss:*

I, ———, being first duly sworn, on oath say that I am the ——— named in the foregoing claim; that I have heard the same read, know the contents thereof, and believe the same to be true.

———.

Subscribed and sworn to before me this ——— day of ———.

———.

Filing claim for stumpage.

SEC. 287. Every person mentioned in section two hundred and eighty claiming the benefit thereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber were cut a claim, in substance the same as provided in section two hundred and eighty-six, and verified as therein provided.

Record of claim.

SEC. 288. The recorder must record every claim filed under the provisions of this title in books kept by him for that purpose, which records must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

Limitation for bringing action.

SEC. 289. No lien provided for in this chapter shall bind any saw logs, spars, piles, lumber, or other timber for a longer period than six months after the claim, as herein provided for, has been filed, unless an action be commenced within that time to enforce the same; and no lien of any kind or character shall be had upon any lumber or logs after the same shall have been placed in any building or upon any spars or piles after the same shall have been put in use for the purpose for which they were intended.

Jurisdiction.

SEC. 290. The liens provided for in this chapter shall be enforced by an action and shall be governed by the laws regulating the proceeding relating to the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

Against what timber lien may be enforced.

SEC. 291. Any person who shall bring an action to enforce a lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such action, has a right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, or other timber or manufactured lumber upon which he has performed labor, or which he has assisted in obtaining or securing, or which has been cut on his timber land during the six months mentioned in sections two hundred and eighty-four and two hundred and eighty-five, for all his labor upon or for all his assistance in obtaining or securing the logs, spars, piles, or other timber, or in manufacturing said lumber during the whole or any part of the six months mentioned in section two hundred and eighty-four, or for timber cut during the whole or any part of the six months mentioned in section two hundred and eighty-five.

Joinder of liens.

SEC. 292. Any number of persons claiming liens under this title may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

Judgment lien: execution.

SEC. 293. In such action judgment must be rendered in favor of each person having a lien for the amount due him, and the court shall order any property subject to the lien herein provided for to be sold by the marshal in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment pro rata, according to the amount of such judgment.

Sale when property is subject to loss or destruction.

SEC. 294. The judge of the court may, in vacation, upon motion, supported by affidavit, showing that the property is liable to loss or destruction, order any property subject to a lien as in this title provided to be sold by the marshal as personal property is sold on execution before the judgment is rendered, as provided in section two hundred and ninety-three, and the proceeds of such sale must be retained by the marshal until judgment, to be applied as in the section directed.

Preventing the identification of timber subject to lien.

SEC. 295. Any person, firm, or corporation who shall injure, impair, or destroy, or who shall render difficult, uncertain, or impossible of identification any saw logs, spars, piles, or other timber knowing the

same to be subject to a lien, as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for damages to the amount secured by his lien, which sum may be recovered by an action against such person, firm, or corporation, without bringing the suit as provided for in section three hundred and two of this code: *Provided*, In all such actions the principal debtor shall be made a codefendant.

Principal debtor to be made codefendant.

CHAPTER THIRTY.

OF UNCLAIMED PROPERTY.

Sec.
296. Consignee or depositary to enter receipt of property in book.
297. When bailee to notify owner of receipt of property.
298. When bailee may sell property.
299. Notice of sale, when to be given personally to owner.
300. Proceeding when property not claimed.
301. Inventory and order of sale.
302. Sale by marshal, notice of.
303. Return of marshal, and fees.
304. Commissioner to pay charges; balance to clerk of court.
305. Clerk to make entry.
306. Owner may claim and receive deposit from clerk within five years.
307. If proceeds not claimed.
308. Sale of decaying and perishable property.
309. Fees of commissioner and marshal.

Consignee or depositary to enter receipt of property in book.

SEC. 296. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof.

When bailee to notify owner of receipt of property.

SEC. 297. If such property shall not have been left with such consignee or bailee for the purpose of being forwarded, disposed of, or kept according to directions received by such consignee or bailee at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post-office, of the reception of such property.

When bailee may sell property.

SEC. 298. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may, at any time thereafter, proceed to sell the same in the manner provided in this chapter.

Notice of sale, when to be given personally to owner.

SEC. 299. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, or if service can not be made as above provided, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively in a newspaper if there be one published in the same precinct; if there be no newspaper published in the same precinct, then the notice shall be published in a newspaper nearest thereto in the district; the last publication of such notice shall be at least eighteen days previous to the time of sale.

Proceeding when property not claimed.

SEC. 300. If the owner or person entitled to such property shall not take the same away and pay the charges thereon within sixty days from the first publication or service of notice as above provided, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to the commissioner of the same precinct an affidavit setting forth a description of the property remain-

ing unclaimed, the time of its reception, the publication or service of the notice, and whether the owner of such property be known or unknown.

Inventory and order of sale.

SEC. 301. Upon the delivery to him of such affidavit the commissioner shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand that the property therein described be sold by the marshal at public auction.

Sale by marshal, notice of.

SEC. 302. It shall be the duty of the marshal receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more public places in such precinct, one of which shall be the post-office, or immediately adjacent thereto, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from commissioners.

Return of marshal, and fees.

SEC. 303. Upon completing the sale the marshal making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the commissioner, together with the inventory and the proceeds of sale, after deducting his fees.

Commissioner to pay charges; balance to clerk of court.

SEC. 304. From the proceeds of such sale the commissioner shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of the sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the clerk of the district court, and deliver a statement therewith containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

Clerk to make entry.

SEC. 305. The clerk of the district court shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the commissioner.

Owner may claim and receive deposit from clerk within five years.

SEC. 306. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited with the clerk of the district court, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from him the amount so deposited in his office.

If proceeds not claimed.

SEC. 307. If the amount so deposited with the clerk of the district court shall not be claimed by the owner thereof or his legal representatives within the five years, the same shall belong to the United States.

Sale of decaying and perishable property.

SEC. 308. Property of a perishable kind and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, as provided in section three hundred and two, the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, Any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a commissioner, after inspection thereof, as provided in section three hundred and two of this chapter.

Fees of commissioner and marshal.

SEC. 309. The fees allowed to any commissioner under the provisions of this chapter shall be three dollars for each day's service, and to any marshal the same fees as are allowed by law for sales upon execution, and ten cents a folio for making an inventory of property.

CHAPTER THIRTY-ONE.

OF MORTGAGES OF PERSONAL PROPERTY.

Sec.
310. Chattels may be mortgaged.
311. Requisite to validity of chattel mortgage.
312. Mortgage by partnership.
313. Acknowledgment.
314. Filing of mortgage and duty of recorder.
315. When and how mortgage to be renewed.
316. Rights of subsequent mortgagee.
317. Mode of attachment of mortgaged chattels.
318. Certified copy in case of loss of original.
319. Extent of provisions of this chapter.
320. Foreclosure.
321. Satisfaction of mortgage.
322. Penalty for selling mortgaged chattels.
323. Mortgage on growing crops.

Chattels may be mortgaged.

SEC. 310. Any interest in personal property which is capable of being transferred may be mortgaged.

Requisite to validity of chattel mortgage.

SEC. 311. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value, unless—

(1) The possession of such property be delivered to and retained by the mortgagee; or

(2) The mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent from the precinct where such mortgage is executed, at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided.

Mortgage by partnership.

SEC. 312. Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required on behalf of the firm, and the mortgage so executed and the affidavit so made is as valid as if executed and made by all the partners or their agent or attorney in fact. In case of a corporation the president, secretary, or managing agent thereof may make the affidavit on its behalf.

Acknowledgment.

SEC. 313. Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same, in the manner provided for the acknowledgment of conveyances of real property, before some officer authorized by law to take acknowledgments of deeds.

Filing of mortgage and duty of recorder.

SEC. 314. Every mortgage of personal property, together with the affidavits of the parties thereto or a copy thereof, certified to be correct by the person before whom the acknowledgment has been made, must be filed in the office of the recorder of the precinct where the mortgagor resides, and of the precinct where the property is at the time of the execution of the mortgage, or, in case he is not a resident of the district, then in the office of the recorder of the precinct where the property is at the time of the execution of the mortgage; and the recorder must, on receipt of such mortgage or copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book, properly ruled and kept for that purpose, the names of all the parties—the names of the mortgagors to be alphabetically arranged—the consideration thereof, the date of its maturity, and the time of filing the same.

When and how mortgage to be renewed.

SEC. 315. Every mortgage filed as provided in this chapter shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the term of one year a true copy of such

mortgage, with a verified statement exhibiting the interest of the mortgagee in the property at the time the same is renewed, as claimed by virtue of such mortgage, is again filed in the office where the original was filed; and the effect of such renewal shall be to extend the lien of the mortgage as against the creditors, purchasers, and incumbrancers of the property for the further term of one year.

Rights of subsequent mortgagee.

SEC. 316. Any subsequent mortgagee of personal property upon which a prior mortgage exists, which has been extended or renewed as provided in section three hundred and fifteen of this title, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, as shown by such verified statement and mortgage, or deposit the full amount thereof with the recorder of the precinct wherein such verified statement and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit shall be filed in the office and attached to said mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Mode of attachment of mortgaged chattels.

SEC. 317. Personal property mortgaged may be taken on attachment or execution issued at the action of a creditor of the mortgagor; but before the property is so taken the officer must pay or tender to the mortgagee or the assignee thereof the amount of the mortgaged debt and interest, or must deposit the amount thereof with the recorder of the precinct in which the mortgage is filed, payable to the order of the mortgagee or the assignee thereof; and when the property then taken is sold under process the officer must apply the proceeds of the sale as follows:

(1) To the repayment of the sum paid to the mortgagee or the assignee of said mortgage, with interest from the date of such payment; and

(2) The balance, if any, in like manner as the proceeds of sale under execution are applied in other cases.

Certified copy in case of loss of original.

SEC. 318. A copy of any mortgage of personal property made, acknowledged, and filed as provided in this chapter, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in the district without further proof of the execution of the original, if the original be lost or out of the power of the person wishing to use it.

Extent of provisions of this chapter.

SEC. 319. The provisions of the foregoing sections of this chapter shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property as shall have the effect of a mortgage or lien upon such property.

Foreclosure.

SEC. 320. An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the marshal to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the marshal, at the time of default, at the request of the mortgagee, must, and it is hereby made his duty to, advertise and sell the whole or any part of the mortgaged property, wherever it may be, and the mortgagee or his representative or assigns may, in good faith, purchase the property so sold, or any part thereof. The marshal may require an indemnity bond from the mortgagee or his assigns before taking possession of or selling the mortgaged property.

Satisfaction of mortgage.

SEC. 321. Whenever the debt or obligation secured by any mortgage of personal property which has been filed in the office of the recorder

as provided in this chapter shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage or copy thereof filed as aforesaid, and the fact of such discharge or satisfaction noted by the recorder in the book kept by him, as provided in section three hundred and fourteen of this title, opposite the names of the parties to such mortgage.

Penalty for selling mortgaged chattels.

SEC. 322. Any person having conveyed any goods, chattels, or personal property to another by mortgage who shall, during the existence of the lien or title created by such mortgage, sell the property or any part thereof to a third party for a valuable consideration without informing him of the existence and effect of such mortgage shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Mortgage on growing crops.

SEC. 323. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of the mortgagor.

CHAPTER THIRTY-TWO.

OF LIMITED PARTNERSHIPS.

Sec.
324. Limited partnerships, for what purpose formed.
325. General and special partners, their liability and definition of.
326. Certificate for limited partnership, what to contain and where filed.
327. Certificate to be published; effect of false statement therein.
328. Limited partnership, how continued and renewed.
329. Effect of using name of special partner.
330. Capital stock not to be reduced during partnership.
331. Actions, etc., by and against members of partnership.
332. Dissolution of partnership, notice, how filed and published.
333. When to be considered general partners.

Limited partnerships, for what purpose formed.

SEC. 324. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business may be formed within the district by two or more persons, upon the terms and subject to the conditions and limitations contained in this chapter.

General and special partners, their liability and definition of.

SEC. 325. A limited partnership may consist of one or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of one or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership except as in this chapter specially provided.

Certificate for limited partnership, what to contain and where filed.

SEC. 326. The persons forming such partnerships shall make and severally subscribe a certificate in duplicate and file one of such certificates with the recorder of the precinct in which the principal place of business of the partnership is to be. Before being filed the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds; and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Certificate to be published; effect of false statement therein.

SEC. 327. Such partnership can not commence before the filing of the certificate of partnership; and if a false statement is made in such

certificate all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four successive weeks immediately after the filing of the certificate of partnership, publish a copy of the same in some newspaper published in the precinct where the principal place of business of the partnership is, or, if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed the partnership is to be deemed general.

Limited partnership, how continued and renewed.

SEC. 328. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof in the same manner provided in this chapter for the formation of such partnership originally; and every such partnership not renewed or continued as herein provided from and after the expiration thereof according to the original certificate shall be deemed a general partnership.

Effect of using name of special partner.

SEC. 329. The business of the partnership shall be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner; or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only.

Capital stock not to be reduced during partnership.

SEC. 330. During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership the property or assets thereof are not sufficient to satisfy the partnership debts, then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively.

Actions, etc., by and against members of partnership.

SEC. 331. All actions or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join or be joined therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock as provided in the preceding section.

Dissolution of partnership, notice, how filed and published.

SEC. 332. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership, or, the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for publication of the certificate of partnership.

When to be considered general partners.

SEC. 333. In all cases not otherwise provided for in this chapter all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

CHAPTER THIRTY-THREE.

INJURY TO LIVE STOCK BY RAILROADS.

Sec.
334. Railway companies liable for killing stock, when.
335. What is lawful fencing of track.
336. Notice of animal killed or injured.
337. Penalty for failing to file notice.
338. Proof of killing or injury to be deemed conclusive evidence of negligence.
339. Service of summons in cases arising under the provisions of this chapter. Legal fence, definition of.

Railway companies liable for killing stock, when.

SEC. 334. Any person, persons, company, or corporation, or lessee or agent thereof, owning or operating any railroad within the district, shall be liable for the value of any horses, mules, colts, cows, bulls, calves, hogs, or sheep killed, and for reasonable damages for any injury to any such live stock upon or near any unfenced track of any railroad in the district, wherever such killing or injury is caused by any moving train or engine or cars upon such track. A substantial wire fence four feet high, constructed with four strands of wire or its equivalent, shall be a legal fence.

What is lawful fencing of track.

SEC. 335. No railroad track shall be deemed to be fenced within the meaning of this chapter unless such track is guarded by such fence against the entrance thereon of any such live stock on either side of the track, and not more than one hundred feet distant therefrom: *Provided*, Complete natural defenses against the entrance of such stock upon the track, such as natural walls or deep ditches, shall be deemed and held to be a fence within the meaning of this chapter when the same, in connection with other and ordinary lawful fences, form a continuous guard and defense against the entrance of such live stock upon the track.

Notice of animal killed or injured.

SEC. 336. Whenever any such live stock mentioned in section three hundred and thirty-four is so killed or injured upon the unfenced railroad track of any railroad in the district, the person, persons, company, or corporation owning or operating such railroad, or his or their lessees or agents, or some proper and authorized agent or employee thereof, shall immediately cause to be filed a notice of such killing or injury by filing a concise description of the animal or animals so killed or injured, including any and all brands, earmarks, or other marks of ownership, and, if only injured, the nature of such injury, with the railroad agents at the two extremities of the section on which such killing or injury took place; the description shall be open to inspection at all reasonable hours of each week day for one month after such killing or injury took place.

Penalty for failing to file notice.

SEC. 337. Any person, persons, company, or corporation, or his or their lessees or authorized agents, owning or operating any railroad within the district, who shall neglect or fail to file or cause to be filed the notice provided for in the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding two hundred dollars for each offense.

Proof of killing or injury to be deemed conclusive evidence of negligence.

SEC. 338. In every action for the recovery of the value of any live stock mentioned in section three hundred and thirty-four so killed, or for damages for injury to the same, as hereinbefore provided, proof of such killing or injury shall of itself be deemed and held to be conclusive evidence of negligence upon the part of the person, persons, company, or corporation, or his or their lessees or agents, owning or operating such railroad: *Provided*, Contributory negligence on the part of the plaintiff in such action may be set up as a defense: *But provided further*, The allowing of stock to run at large upon common unfenced range or upon inclosed land owned or in possession of the owner of such stock shall not be deemed or held to be such contributory

negligence: *Provided further*, In any such action proof of willful intent on the part of the plaintiff therein to procure the killing or injury of any such stock in the manner aforesaid shall defeat the recovery of any damages for such killing or injury.

Service of summons in cases arising under the provisions of this chapter.

SEC. 339. In any action authorized by this code service of summons or any other necessary process may be made upon any person, persons, company, or corporation, or his or their lessees or agents, owning or operating any railroad in the district, by personal service upon any authorized agent thereof residing or stationed in the precinct where such action is brought.

CHAPTER THIRTY-FOUR.

OF THE ESTABLISHMENT AND REGULATION OF FERRIES.

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341. Payment therefor.
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343. Notice of application for license.
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348. List of rates to be posted up near ferry.
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Ferry license.

SEC. 340. The commissioner of any precinct in the district may grant a license to any person applying therefor to keep a ferry across any lake or stream within his precinct, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioner, not exceeding five years: *Provided, however*, Nothing in this chapter shall be so construed as to empower the commissioner of any precinct in the district to grant a license for a ferry across any bay or arm of the sea.

Payment therefor.

SEC. 341. The commissioner shall tax such sum as shall appear reasonable, not less than one nor more than one hundred dollars per annum, for such license; and the person to whom such license shall be granted shall pay to such commissioner the tax for one year in advance, taking his receipt therefor; and upon the payment of such license tax the commissioner shall issue such license under the seal of his office, and deposit the sum so received with the clerk of the district court, who shall turn the same, according to law, into the Treasury of the United States.

To whom license granted.

SEC. 342. Unless otherwise provided by law no such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless the landing place of such proposed ferry shall be on government land at the end of a street in an incorporated city or town, or unless the owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the commissioner shall not grant the same unless proof be made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the precinct, at least thirty days before the application before the commissioner is made, unless the landing place of such proposed ferry shall be at the end of a street in an incorporated city or town as aforesaid.

Notice of application for license.

SEC. 343. Every person intending to apply for a license to keep a ferry at any place shall give notice of such intention by posting up notices in at least three public places in the neighborhood where the ferry is proposed to be kept thirty days prior to the time when appli-

cation shall be made: *Provided*, When application shall be made for the renewal of the license, where the former license has expired, the same may be granted or renewed without previous notice or petition.

Undertaking of applicant.

SEC. 344. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond or undertaking to the United States, with one or more sureties, to be approved by the commissioner, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep the ferry according to law, the bond to be filed in the office of the commissioner; and if default shall at any time be made in the condition of such bond or undertaking, damages, not exceeding the penalty, may be recovered by any person aggrieved.

General duties of ferry keepers.

SEC. 345. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair by cutting away the bank of the lake or stream so that persons and property may be embarked and landed without danger or unnecessary delay.

Commissioner to fix regular fare; penalty for illegal fare.

SEC. 346. Whenever the commissioner of any precinct shall grant a license to keep a ferry across any lake or stream he shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars over and above the amount which shall have been illegally received, to be recovered before any commissioner having jurisdiction.

Commissioners may alter rates of fare.

SEC. 347. The commissioners of the several precincts be, and they are hereby, authorized to fix, alter, and establish from time to time the rates of ferriage to be levied and collected at all ferries now established or hereafter to be established by law within or bordering upon the precinct lines of any of the precincts in said district.

List of rates to be posted up near ferry

SEC. 348. Every person licensed to keep a ferry shall post up in some conspicuous place near his ferry landing a written or printed list of the rates of ferriage which are chargeable by law at the ferry, which list of rates shall at all times be written in a plain, legible manner and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list it shall not be lawful to charge or take any ferriage or compensation at such ferry during the time of such delinquency.

Persons to be ferried in the order of arrival; penalty for not.

SEC. 349. All persons shall be received into the ferryboats and conveyed across the stream over which such ferry shall be established according to their arrival at the same; and if any keeper of a ferry shall act contrary to this regulation he shall forfeit and pay the sum of three dollars for every such offense to the party aggrieved, to be recovered before any commissioner having jurisdiction: *Provided*, Public officers on urgent business, postriders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over where all can not go at the same time.

Ferry keeper, exclusive right to transport.

SEC. 350. Every person licensed to keep a ferry according to the provisions of this chapter shall have the exclusive privilege of transporting all persons and property over and across the stream where

such is established, and shall be entitled to all the fare arising by law therefrom: *Provided*, Nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over any person, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

How licenses to keep ferry forfeited.

SEC. 351. If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in section three hundred and forty-five of this title, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this chapter; or if the same shall be abandoned, disused, or unfrequented for the space of six months at any one time, it shall be lawful for the commissioner of the proper precinct, on complaint being made in writing, to summon the person licensed to keep such ferry to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced and the laws of the district, which decision when made shall be valid to all intents and purposes, subject to be reviewed by the district court: *Provided*, If any ferry shall be disused by reason of the stream over which the same is established being frozen or fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section.

Penalty for keeping ferry without license.

SEC. 352. Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same shall pay a fine of ten dollars for each offense, to be collected for the use of the district by action before any commissioner having jurisdiction; and any person is hereby authorized to bring such action: *Provided*, It shall not be considered unlawful for any person to transport any other person or his property over any stream for hire when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

CHAPTER THIRTY-FIVE.

OF TRAVEL ON PUBLIC HIGHWAYS.

Sec.
353. Persons meeting on highway to turn to the right.
354. Penalty and damage for violation of preceding section.
355. Employer liable for wrongdoing of servant; action against the one a bar, etc.
356. Rules of travel for traction engines, etc.
357. Whistles not to be blown on highways and streets.
358. Driving steam engines over public bridge.
359. Penalty.

Persons meeting on highway to turn to the right.

SEC. 353. Whenever any persons driving any vehicles shall meet on any public highway in the district, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with or interrupting the other.

Penalty and damage for violation of preceding section.

SEC. 354. If any person shall willfully violate the provisions of the preceding section he shall forfeit and pay the sum of five dollars for every such violation to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation.

SEC. 355. Whenever any person driving a vehicle who shall violate the provisions of section three hundred and fifty-three is at the time in the employ of another, such other person is liable for the penalty herein provided the same as if he were the driver of such vehicle at the time of such violation; but an election to sue either the driver or employer is a bar to an action against the other.

Employer liable for wrongdoing of servant; action against the one a bar, etc.

SEC. 356. It shall be the duty of any person or persons running or propelling or in charge of any portable or traction engine over the public highways in the district to bring the portable or traction engine to a stop when within one hundred yards of any person or persons going in the opposite direction with a team or teams, and remain stationary until the team or teams shall have passed by.

Rules of travel for traction engines, etc.

SEC. 357. It shall be unlawful to blow the whistle of such portable or traction engines while upon the public highway or while passing over the streets of any city, town, or village in the district.

Whistles not to be blown on highways and streets.

SEC. 358. It shall be unlawful for any person or persons to drive any traction or portable engine of over two tons weight over any bridge or culvert on any public street or highway within the district without using on such bridge or culvert, for the purpose of securing its safety, four stout pieces of plank, each of which shall be at least ten feet in length, one foot in width, and two inches in thickness, two of the pieces of plank to be always under the wheels of the traction or portable engine while it shall be crossing the bridge or culvert.

Driving steam engines over public bridge.

SEC. 359. The penalty for the violation of any of the provisions of the three preceding sections shall be a fine of not less than one dollar nor more than fifty dollars for each offense, and in addition to such fine any person causing damage to the bridge or culvert shall be liable for all damages which may result from the crossing of such traction or portable engine.

Penalty.

CHAPTER THIRTY-SIX.

OF INSURANCE.

Sec.
360. What companies, etc., may transact business.
361. Service of process on insurance companies.
362. Fraternal and beneficial societies.
363. To whom above provisions apply.
364. Penalty for violations.
365. Fees for filing.
366. Form of oath.
367. Common law made applicable.
368. Conflicting acts repealed.

SEC. 360. No company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire, or marine insurance business in the district until he or it has filed in the office of the secretary of the district a certificate by the secretary of state or other proper officer of some State of the United States, setting forth that the said company, corporation, association, firm, or individual has been qualified to carry on the business of insurance in such State in accordance with the laws thereof.

What companies etc., may transact business.

SEC. 361. No insurance company, corporation, association, firm or individual shall be permitted to transact a life, fire, or marine insurance business in the district until it shall have filed with the clerk of each division of the district court a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of the district to receive and accept service in any proceeding in a court of justice of the district. If any attorney of any insurance company appointed under the provisions of this section shall remove from the district or become disqualified in

Service of process on insurance companies.

any manner from accepting service, and if any citizen or resident of the district shall have any claim by virtue of any insurance policy issued by any such company not represented by attorney in the district, valid service may be made on such company by service on the clerk of the district court or any division thereof: *Provided*, In such case the clerk of the district court shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service by mail, postpaid: *And provided further*, In such case no proceedings shall be had within sixty days after such service on the clerk.

Fraternal and beneficial societies.

SEC. 362. All orders or secret societies, such as Masons, Odd Fellows, Druids, Knights of Pythias, Ancient Order of United Workmen, Modern Woodmen of America and other benevolent, fraternal, or cooperative societies associated or incorporated for the sole purpose of mutual protection and relief of its members only, and for the payment of stipulated sums of money to the families of deceased members, or for property of its members only destroyed by fire, are hereby declared not to be fire or insurance companies in the sense and meaning of this chapter, and they are exempt from the provisions hereof.

To whom above provisions apply.

SEC. 363. The provisions of this chapter, under either term or designation of company, corporation, association, firm, or individual in either case, where either term or designation is used, shall apply to any insurer, company, corporation, association, firm, or individual engaged as insurers or who may hereafter engage as insurers in the district, or who may engage in offering or affording indemnity against the casualties of fire or life.

Penalty for violations.

SEC. 364. Any officer, agent, or employee of any insurance company or other person violating any of the provisions of this chapter shall be fined not less than one hundred nor more than five hundred dollars, and in default of payment of such fine shall be imprisoned not less than ten days nor more than six months.

Fees for filing.

SEC. 365. The secretary of the district shall collect from each company or person for the service provided in this chapter the following fees: For filing certificate of qualification, five dollars; for filing power of attorney, five dollars; and the secretary shall account for the same in the manner provided by law in the case of other fees collected or received by them.

Form of oath.

SEC. 366. Every officer in the district for whom a special oath is not provided by law shall, before entering upon the duties of his office, take and subscribe to the following oath:

I, ———, do solemnly swear (or affirm) that I will defend and support the Constitution of the United States, and perform all the duties of the office on which I am about to enter, and therein do equal right and justice to all men, so help me God.

Common law made applicable.

SEC. 367. So much of the common law as is applicable and not inconsistent with the Constitution of the United States or with any law passed or to be passed by the Congress is adopted and declared to be law within the district of Alaska.

Interpretation of words of singular number, etc.

SEC. 368. That in the interpretation of this Act words of the singular number shall be deemed to include their plurals, and that words of the masculine gender shall be deemed to include the feminine, as the case may be. Whenever a section of this Act refers to another section, a section of the same title is intended, unless the contrary clearly appears.

Existing rights unaffected.

Pending actions.

No person shall be deprived of any existing legal right or remedy by reason of the passage of this Act, and all civil actions or proceedings commenced in the courts of the district before or within sixty days after the approval of this Act may be prosecuted to final judgment under the law now in force in the district, or under this Act.

Repeal.

All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, June 6, 1900.