

THE
STATUTES OF CALIFORNIA,

PASSED AT THE
FIRST SESSION

OF THE
LEGISLATURE.

BEGUN THE 15th DAY OF DEC. 1849, AND ENDED THE 22d DAY OF
APRIL, 1850, AT THE CITY OF PUEBLO DE SAN JOSÉ.

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WITH AN APPENDIX AND INDEX.

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1850.

STATUTES OF CALIFORNIA.

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DECLARATION OF INDEPENDENCE.

JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

DECLARATION OF INDEPENDENCE.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us ;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states ;

For cutting off our trade with all parts of the world ;

For imposing taxes on us without our consent ;

For depriving us, in many cases, of the benefits of trial by jury ;

For transporting us beyond seas to be tried for pretended offences ;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies ;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the *forms* of our governments ;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, free and independent states ; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved ; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do

DECLARATION OF INDEPENDENCE.

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all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed and signed by the following members :—

John Adams,
Samuel Adams,
Josiah Bartlett,
Carter Braxton,
Charles Carroll, of Car'lon,
Samuel Chase,
Abraham Clark,
George Clymer,
William Ellery,
William Floyd,
Benjamin Franklin,
Elbridge Gerry,
Button Gwinnet,
Lyman Hall,
John Hancock,
Benjamin Harrison,
John Hart,
Thomas Heyward, jr.,
Joseph Hewes,

William Hooper,
Stephen Hopkins,
Francis Hopkinson,
Samuel Huntington,
Thomas Jefferson,
Francis Lightfoot Lee,
Richard Henry Lee,
Francis Lewis,
Philip Livingston,
Thomas Lynch, jr.
Thomas M'Kean,
Arthur Middleton,
Lewis Morris,
Robert Morris,
John Morton,
Thomas Nelson, jr.,
William Paca,
Robert Treat Paine,
John Penn,

George Read,
Cæsar Rodney,
George Ross,
Benjamin Rush, M.D.,
Edward Rutledge,
Roger Sherman,
James Smith,
Richard Stockton,
Thomas Stone,
George Taylor,
Matthew Thornton,
George Walton,
William Whipple,
William Williams,
James Wilson,
John Witherspoon,
Oliver Wolcott,
George Wythe.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives.

OF THE HOUSE OF REPRESENTATIVES.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant in that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and, until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during

the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and have a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

The senate shall have the sole power to try all impeachments: When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

MANNER OF ELECTING MEMBERS.

SECTION 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

CONGRESS TO ASSEMBLE ANNUALLY.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SECTION 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, &c., OF MEMBERS.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

MANNER OF PASSING BILLS, &C.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

POWER OF CONGRESS.

SECTION 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

LIMITATION OF THE POWERS OF CONGRESS.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SECTION 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

MANNER OF ELECTING.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant with the same State as themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then

the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members, from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

TIME OF CHOOSING ELECTORS.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE-PRESIDENT.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

PRESIDENT'S COMPENSATION.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

POWERS AND DUTIES.

SECTION 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions,

convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SECTION 4. The president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

OF TREASON.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

PRIVILEGES OF CITIZENS.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

CONSTITUTION OF THE UNITED STATES.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

RUNAWAYS TO BE DELIVERED UP.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SECTION 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

TERRITORIAL AND OTHER PROPERTY.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

AMENDMENTS.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

DEBTS.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

SUPREME LAW OF THE LAND.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or

affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.

CONNECTICUT.
William Samuel Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
William Livingston,
David Brearley,
William Paterson,
Jonathan Dayton.

PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.
George Reed,
Gunning Bedford, jr.,
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.
John Blair,
James Madison, jr.

NORTH CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.
John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.
William Few,
Abraham Baldwin.

Attest:

WILLIAM JACKSON, *Secretary.*

A M E N D M E N T S

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF THE FIFTH ARTICLE OF THE FOREGOING CONSTITUTION.

FREE EXERCISE OF RELIGION, &c.

ARTICLE THE FIRST. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

RIGHT TO BEAR ARMS.

ARTICLE THE SECOND. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

NO SOLDIER TO BE BILLETED, &c.

ARTICLE THE THIRD. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

UNREASONABLE SEARCHES PROHIBITED.

ARTICLE THE FOURTH. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CRIMINAL PROCEEDINGS.

ARTICLE THE FIFTH. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE THE SIXTH. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE THE SEVENTH. In suits at common law, where the value in controversy shall exceed twenty dollars, the

right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

BAIL, FINES.

ARTICLE THE EIGHTH. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RIGHTS NOT ENUMERATED.

ARTICLE THE NINTH. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

POWERS RESERVED.

ARTICLE THE TENTH. The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[The following amendment was proposed at the second session of the third Congress. It is printed in the Laws of the United States, 1st vol., p. 73, as Article 11.]

LIMITATION OF JUDICIAL POWER.

ARTICLE THE ELEVENTH. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed as amendments at the first session of the eighth Congress. They are printed in the Laws of the United States as Article 12.]

ELECTION OF PRESIDENT.

ARTICLE THE TWELTH. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

NOTE.—Another amendment was proposed as Article xiii., at the second session of the eleventh Congress, but not having been ratified by a sufficient number of states, has not yet become valid as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol. i., Laws of the United States.

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT,

BETWEEN THE UNITED STATES OF AMERICA AND THE MEXICAN REPUBLIC.

DATED AT GUADALUPE HIDALGO, 2d February, 1848.
EXCHANGED AT QUERETARO, 30th May, 1848.

RATIFIED BY THE PRESIDENT U. S., 16th March, 1848.
PROCLAIMED BY THE PRESIDENT U. S., 4th July, 1848.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS a Treaty of Peace, Friendship, Limits, and Settlement, between the United States of America and the Mexican Republic, was concluded and signed at the City of Guadalupe Hidalgo, on the second day of February, one thousand eight hundred and forty-eight, which Treaty, as amended by the Senate of the United States, and being in the English and Spanish languages, is word for word as follows:—

In the name of Almighty God:

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence, wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits, and Settlement, between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this Treaty, a convention shall be entered into between a commissioner or commissioners appointed by the General-in-Chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present Treaty by the government of the United States, orders shall be

transmitted to the commanders of their land and naval forces, requiring the latter (provided this Treaty shall then have been ratified by the government of the Mexican Republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be despatched to the persons in charge of the custom-houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this Treaty by the government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present Treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic, as about to be established by the following article, shall be definitively restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this Treaty shall be duly ratified by the government of the Mexican Republic. To this end, immediately upon the signature of this Treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this Treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the General-in-Chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this Treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored their country.

ARTICLE V.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various Acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell." Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ARTICLE VI.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall,

without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out.]

ARTICLE XI.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful

exercise of its influence and power, to rescue them, and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated, and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three: so that the Mexican republic shall be absolutely exempt for the future from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and for ever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: provided that in deciding upon the validity of each

claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners: *Provided*, That no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported

subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to re-ship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if *less* than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom-houses conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics,

they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible.

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports), to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance: conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments, for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons, nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican republic, with the previous approbation of its General

TREATY BETWEEN THE UNITED STATES AND MEXICO.

Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST,	[L. S.]
LUIS G. CUEVAS,	[L. S.]
BERNARDO COUTO,	[L. S.]
MIGL. ATRISTAIN,	[L. S.]

And whereas the said treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Querétaro on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, Commissioners on the part of the Government of the United States, and by Señor Don Louis de la Rosa, Minister of Relations of the Mexican-Republic, on the part of that Government:

Now, therefore, be it known, that I, JAMES K. POLK, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

{ L. S. } Done at the city of Washington, this fourth day of July, one thousand eight hundred and forty-eight, and of the Independence of the United States the seventy-third.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, Secretary of State.

ARTICLES REFERRED TO IN THE FIFTEENTH ARTICLE OF THE PRECEDING TREATY.

*First and Fifth Articles of the unratified Convention between the United States and the Mexican Republic
of the 20th November, 1843.*

ARTICLE I.

ALL claims of citizens of the Mexican Republic against the Government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the Government of the Mexican Republic, which for whatever cause were not submitted to, nor considered nor finally decided by, the commission, nor by the arbiter appointed by the convention of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican Republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners, thus appointed, shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.

ARTICLE V.

All claims of citizens of the United States against the Government of the Mexican Republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the eleventh April, 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed, that, if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

CONSTITUTION OF THE STATE OF CALIFORNIA.

PROCLAMATION TO THE PEOPLE OF CALIFORNIA.

THE delegates of the people assembled in Convention have formed a Constitution, which is now presented for your ratification. The time and manner of voting on this Constitution, and of holding the first general election, are clearly set forth in the Schedule; the whole subject is therefore left for your unbiassed and deliberate consideration.

The Prefect (or person exercising the functions of that office) of each District will designate the places for opening the polls, and give due notice of the election, in accordance with the provisions of the Constitution and Schedule.

The people are now called upon to form a government for themselves, and to designate such officers as they desire to make and execute the laws. That their choice may be wisely made, and that the government so organized may secure the permanent welfare and happiness of the people of the new State, is the sincere and earnest wish of the present Executive, who, if the Constitution be ratified, will, with pleasure, surrender his powers to whomsoever the people may designate as his successor.

Given at Monterey, California, this 12th day of October, A.D. 1849.

B. RILEY,

Bvt. Brig. Gen'l U. S. A., and Governor of California.

OFFICIAL: H. W. HALLECK,

Brev. Capt. and Secretary of State.

WE, the People of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SEC. 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate for ever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties; unless for capital offences, when the proof is evident or the presumption great.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny under the regulation of the Legislature), unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and in time of war no appropriation for a standing army shall be for a longer time than two years.

SEC. 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 14. Representation shall be apportioned according to population.

SEC. 15. No person shall be imprisoned for debt, in any civil action on *mesne* or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 17. Foreigners who are, or may hereafter become *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens.

SEC. 18. Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

SEC. 1. Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law : Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of the election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. 6. All elections by the people shall be by ballot.

ARTICLE III.

DISTRIBUTION OF POWERS.

The powers of the Government of the State of California shall be divided into three separate departments: the Legislative, the Executive, and Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SEC. 1. The Legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California; and the enacting clause of every law shall be as follows: "The people of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The sessions of the Legislature shall be annual, and shall commence on the first Monday of January, next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

SEC. 3. The members of the Assembly shall be chosen annually, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, unless otherwise ordered by the Legislature, and their term of office shall be one year.

SEC. 4. Senators and Members of Assembly shall be duly qualified electors in the respective counties and districts which they represent.

SEC. 5. Senators shall be chosen for the term of two years, at the same time and places as Members of Assembly; and no person shall be a member of the Senate or Assembly, who has not been a citizen and inhabitant of the State one year, and of the county or district for which he shall be chosen six months next before his election.

SEC. 6. The number of Senators shall not be less than one third, nor more than one half, of that of the Members of Assembly; and at the first session of the Legislature after this Constitution takes effect, the Senators shall be divided by lot as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the first year, so that one half shall be chosen annually.

SEC. 7. When the number of Senators is increased, they shall be appointed by lot, so as to keep the two classes as nearly equal in number as possible.

SEC. 8. Each house shall choose its own officers and judge of the qualifications, elections, and returns of its own members.

SEC. 9. A majority of each house shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

SEC. 10. Each house shall determine the rules of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 11. Each house shall keep a journal of its own proceedings, and publish the same ; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

SEC. 12. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and they shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of elections to fill such vacancies.

SEC. 14. The doors of each house shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one house may be amended in the other.

SEC. 17. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it ; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him, (Sunday excepted,) the same shall be a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return.

SEC. 18. The Assembly shall have the sole power of impeachment ; and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation ; and no person shall be convicted, without the concurrence of two thirds of the members present.

SEC. 19. The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court and Judges of the District Courts, shall be liable to impeachment for any misdemeanor in office ; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under the State ; but the party convicted or acquitted, shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried, for misdemeanors in office, in such a manner as the Legislature may provide.

SEC. 20. No Senator, or Member of Assembly, shall, during the term for which he shall have been elected, be appointed to any civil office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by elections by the people.

SEC. 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit, under this State : provided, that officers in the militia, to which there is attached no annual salary, or local officers and postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

SEC. 22. No person who shall be convicted of the embezzlement, or defalcation of the public funds of this State, shall ever be eligible to any office of honor, trust, or profit under this State ; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement, or defalcation, as a felony.

CONSTITUTION OF THE STATE OF CALIFORNIA.

SEC. 23. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys, shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 24. The Members of the Legislature shall receive for their services, a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the Members of either House shall have been elected.

SEC. 25. Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title; and no law shall be revised, or amended, by reference to this title; but in such case, the act revised, or section amended, shall be re-enacted and published at length.

SEC. 26. No divorce shall be granted by the Legislature.

SEC. 27. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. 28. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-two, and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken, under the direction of the Congress of the United States in the year one thousand eight hundred and fifty, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

SEC. 29. The number of Senators and Members of Assembly, shall, at the first session of the Legislature, holden after the enumerations herein provided for and made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of Members of Assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this State shall amount to one hundred thousand; and after that period, at such ratio that the whole number of Members of Assembly shall never be less than thirty, nor more than eighty.

SEC. 30. When a congressional, senatorial, or assembly district, shall be composed of two or more counties, it shall not be separated by any county belonging to another district; and no county shall be divided, in forming a congressional, senatorial, or assembly district.

SEC. 31. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law.

SEC. 33. The term corporations as used in this article shall be construed to include all associations and joint-stock companies, having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

SEC. 34. The Legislature shall have no power to pass any act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposit of gold and silver, but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

SEC. 35. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

SEC. 36. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.

SEC. 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

SEC. 38. In all elections by the Legislature, the members thereof shall vote *viva voce* , and the votes shall be entered on the journal.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SEC. 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of Assembly, and shall hold his office two years from the time of his installation, and until his successor shall be qualified.

SEC. 3. No person shall be eligible to the office of Governor (except at the first election) who has not been a citizen of the United States and a resident of this State two years next preceding the election, and attained the age of twenty-five years at the time of said election.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons, so having an equal and the highest number of votes, for Governor.

SEC. 5. The Governor shall be commander-in-chief of the militia, the army and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; provided it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States, or this State, exercise the office of Governor, except as hereinafter expressly provided.

SEC. 13. The Governor shall have the power to grant reprieves and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

SEC. 14. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The great seal of the State of California."

SEC. 15. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 16. A Lieutenant Governor shall be elected at the same time and places, and in the same manner as the Governor; and his term of office, and his qualifications of eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be

absent from the State, the President of the Senate shall act as Governor, until the vacancy be filled, or the disability shall cease.

SEC. 17. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any-military force thereof, he shall continue commander-in-chief of the military force of the State.

SEC. 18. A Secretary of State, a Comptroller, a Treasurer, an Attorney General, and Surveyor General, shall be chosen in the manner provided in this Constitution; and the term of office, and eligibility of each, shall be the same as are prescribed for the Governor and Lieutenant Governor.

SEC. 19. The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall keep a fair record of the official acts of the legislative and executive departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature; and shall perform such other duties as shall be assigned him by law.

SEC. 20. The Comptroller, Treasurer, Attorney General, and Surveyor General, shall be chosen by joint vote of the two houses of the Legislature, at their first session under this Constitution, and thereafter shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor.

SEC. 21. The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, and Surveyor General, shall each, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SEC. 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, and in Justices of the Peace. The Legislature may also establish such municipal and other inferior courts as may be deemed necessary.

SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum.

SEC. 3. The Justices of the Supreme Court shall be elected at the general election, by the qualified electors of the State, and shall hold their office for the term of six years from the first day of January next after their election; provided that the Legislature shall, at its first meeting, elect a Chief Justice and two Associate Justices of the Supreme Court, by joint vote of both Houses, and so classify them that one shall go out of office every two years. After the first election, the senior Justice in commission shall be the Chief Justice.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost or municipal fine is in question, and in all criminal cases amounting to felony or questions of law alone. And the said Court, and each of the Justices thereof, as well as all district and county judges, shall have power to issue writs of *habeas corpus* at the instance of any person held in actual custody. They shall also have power to issue all other writs and process necessary to the exercise of their appellate jurisdiction, and shall be conservators of the peace throughout the State.

SEC. 5. The State shall be divided by the first Legislature into a convenient number of districts, subject to such alteration from time to time as the public good may require, for each of which a district judge shall be appointed by the joint vote of the Legislature, at its first meeting, who shall hold his office for two years from the first day of January next after his election; after which, said judges shall be elected by the qualified electors of their respective districts, at the general election, and shall hold their office for the term of six years.

SEC. 6. The District Courts shall have original jurisdiction, in law and equity, in all civil cases where the amount in dispute exceeds two hundred dollars, exclusive of interest. In all criminal cases not otherwise provided for, and in all issues of fact joined in the probate courts, their jurisdiction shall be unlimited.

SEC. 7. The Legislature shall provide for the election, by the people, of a Clerk of the Supreme Court, and County

Clerks, District Attorneys, Sheriffs, Coroners, and other necessary officers; and shall fix by law their duties and compensation. County Clerks shall be, *ex officio*, Clerks of the District Courts in and for their respective counties.

SEC. 8. There shall be elected in each of the organized counties of this State, one County Judge, who shall hold his office for four years. He shall hold the County Court, and perform the duties of Surrogate, or Probate Judge. The County Judge, with two Justices of the Peace, to be designated according to law, shall hold Courts of Sessions with such criminal jurisdiction as the Legislature shall prescribe, and he shall perform such other duties as shall be required by law.

SEC. 9. The County Courts shall have such jurisdiction, in cases arising in Justices' Courts, and in special cases, as the Legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

SEC. 10. The times and places of holding the terms of the Supreme Court, and the general and special terms of the District Courts within the several districts, shall be provided for by law.

SEC. 11. No judicial officer, except a Justice of the Peace, shall receive, to his own use, any fees or perquisites of office.

SEC. 12. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person.

SEC. 13. Tribunals for conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal, in such cases as shall be prescribed by law.

SEC. 14. The Legislature shall determine the number of Justices of the Peace, to be elected in each county, city, town, and incorporated village of the State, and fix by law their powers, duties, and responsibilities. It shall also determine in what cases appeals may be made from Justices' Courts to the County Court.

SEC. 15. The Justices of the Supreme Court, and Judges of the District Court, shall severally, at stated times during their continuance in office, receive for their services a compensation, to be paid out of the treasury, which shall not be increased or diminished during the term for which they shall have been elected. The County Judges shall also severally, at stated times, receive for their services a compensation to be paid out of the county treasury of their respective counties, which shall not be increased or diminished during the term for which they shall have been elected.

SEC. 16. The Justices of the Supreme Court and District Judges shall be ineligible to any other office during the term for which they shall have been elected.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 18. The style of all process shall be "The People of the State of California;" all the prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE VII.

MILITIA.

SEC. 1. The Legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the Constitution and Laws of the United States.

SEC. 2. Officers of the militia shall be elected or appointed, in such a manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

SEC. 3. The Governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrections, and repel invasions.

ARTICLE VIII.

STATE DEBTS.

The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly, or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorized by some law for some

single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due, and also pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specified object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

ARTICLE IX.

EDUCATION.

SEC. 1. The Legislature shall provide for the election, by the people, of a superintendent of public instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the Legislature may direct.

SEC. 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all land that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A.D. 1811; and all estates of deceased persons who may have died without leaving a will, or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year, and any school neglecting to keep and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved or granted by the United States, or any person or persons, to the State for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE X.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

SEC. 1. Any amendment or amendments to this Constitution, may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. 2. And if, at any time, two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to

vote for or against the convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the Legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the Legislature.

ARTICLE XI.

PROMISCUOUS PROVISIONS.

SEC. 1. The first session of the Legislature shall be held at the Pueblo de San José; which place shall be the permanent seat of government, until removed by law: Provided, however, that two thirds of all the members elected to each house of the Legislature shall concur in the passage of such law.

SEC. 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it; or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit or to enjoy the right of suffrage under this Constitution.

SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability."

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

SEC. 4. The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State.

SEC. 5. The Legislature shall have power to provide for the election of a board of supervisors in each county; and these supervisors shall jointly and individually perform such duties as may be prescribed by law.

SEC. 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct.

SEC. 7. When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office, not fixed by this Constitution, ever exceed four years.

SEC. 8. The fiscal year shall commence on the 1st day of July.

SEC. 9. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

SEC. 10. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation; nor shall the State directly or indirectly become a stockholder in any association or corporation.

SEC. 11. Suits may be brought against the State in such manner, and in such courts, as shall be directed by law.

SEC. 12. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 13. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county, and State-taxes, shall be elected by the qualified electors of the district, county, or town, in which the property taxed for State, county, or town purposes is situated.

SEC. 14. All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 15. The Legislature shall protect by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

SEC. 16. No perpetuities shall be allowed, except for eleemosynary purposes.

SEC. 17. Every person shall be disqualified from holding any office of profit in this State, who shall have been convicted of having given, or offered a bribe, to procure his election or appointment.

SEC. 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 19. Absence from this State on business of the State, or of the United States, shall not affect the question of residence of any person.

SEC. 20. A plurality of the votes given at an election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 21. All laws, decrees, regulations, and provisions, which from their nature require publication, shall be published in English and Spanish.

ARTICLE XII.

BOUNDARY.

The Boundary of the State of California shall be as follows:—

Commencing at the point of intersection of 42d degree of north latitude with the 120th degree of longitude west from Greenwich, and running south on the line of said 120th degree of west longitude until it intersects the 39th degree of north latitude; thence running in a straight line in a south-easterly direction to the River Colorado, at a point where it intersects the 35th degree of north latitude; thence down the middle of the channel of said river, to the boundary line between the United States and Mexico, as established by the treaty of May 30th, 1848; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the 42d degree of north latitude, thence on the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and bays, along and adjacent to the Pacific Coast.

SCHEDULE.

SEC. 1. All rights, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

SEC. 2. The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect, to courts created by the same.

SEC. 3. In order that no inconvenience may result to the public service, from the taking effect of this Constitution no office shall be superseded thereby, nor the laws relative to the duties of the several officers be changed, until the entering into office of the new officers to be appointed under this Constitution.

SEC. 4. The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the Legislature at its first session.

SEC. 5. Every citizen of California, declared a legal voter by this Constitution, and every citizen of the United States, a resident of this State on the day of election, shall be entitled to vote at the first general election under this Constitution, and on the question of the adoption thereof.

SEC. 6. This constitution shall be submitted to the people, for their ratification or rejection, at the general election to be held on Tuesday, the thirteenth day of November next. The Executive of the existing Government of California is hereby requested to issue a proclamation to the people, directing the Prefects of the several districts, or in case of vacancy, the Sub-Prefects, or senior Judge of first Instance, to cause such election to be held, the day aforesaid, in the respective districts. The election shall be conducted in the manner which was prescribed for the election of Delegates

to this Convention, except that the Prefect, Sub-Prefect, or senior Judge of first Instance, ordering such election in each district, shall have power to designate any additional number of places for opening the polls, and that, in every place of holding the election, a regular poll-list shall be kept by the judges and inspectors of election. It shall also be the duty of these judges and inspectors of election, on the day aforesaid, to receive the votes of the electors qualified to vote at such election. Each voter shall express his opinion, by depositing in the ballot-box a ticket, whereon shall be written, or printed, "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These Judges and Inspectors shall also receive the votes for the several officers to be voted for at the said election as herein provided. At the close of the election, the Judges and Inspectors shall carefully count each ballot, and forthwith make duplicate returns thereof to the Prefect, Sub-Prefect, or senior Judge of first Instance, as the case may be, of their respective districts; and said Prefect, Sub-Prefect, or senior Judge of first Instance shall transmit one of the same, by the most safe and rapid conveyance, to the Secretary of State. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of a board of canvassers, to consist of the Secretary of State, one of the Judges of the Superior Court, the Prefect, Judge of first Instance, and an Alcalde of the District of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the Executive will also, immediately after ascertaining that the Constitution has been ratified by the people, make proclamation of the fact; and thenceforth this Constitution shall be ordained and established as the Constitution of California.

SEC. 7. If this Constitution shall be ratified by the people of California, the Executive of the existing Government is hereby requested immediately after the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the president of the United States, in order that he may lay it before the Congress of the United States.

SEC. 8. At the general election aforesaid, viz. the thirteenth day of November next, there shall be elected a Governor, Lieutenant Governor, Members of the Legislature, and also two Members of Congress.

SEC. 9. If this Constitution shall be ratified by the people of California, the Legislature shall assemble at the seat of Government on the fifteenth day of December next, and in order to complete the organization of that body, the Senate shall elect a President *pro tempore*, until the Lieutenant Governor shall be installed into office.

SEC. 10. On the organization of the Legislature, it shall be the duty of the Secretary of State, to lay before each House, a copy of the abstract made by the board of canvassers, and if called for, the original returns of election, in order that each House may judge of the correctness of the report of said board of canvassers.

SEC. 11. The Legislature, at its first session, shall elect such officers as may be ordered by this Constitution, to be elected by that body, and within four days after its organization, proceed to elect two Senators to the Congress of the United States. But no law passed by this Legislature shall take effect until signed by the Governor after his installation into office.

SEC. 12. The Senators and Representatives to the Congress of the United States, elected by the Legislature and People of California, as herein directed, shall be furnished with certified copies of this Constitution, when ratified, which they shall lay before the Congress of the United States, requesting, in the name of the People of California, the admission of the State of California into the American Union.

SEC. 13. All officers of this State, other than members of the Legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

SEC. 14. Until the Legislature shall divide the State into counties, and senatorial and assembly districts, as directed by this Constitution, the following shall be the apportionment of the two houses of the Legislature, viz. the districts of San Diego and Los Angeles, shall jointly elect two senators; the districts of Santa Barbara and San Luis Obispo, shall jointly elect one senator; the district of Monterey, one senator; the district of San José, one senator; the district of San Francisco, two senators; the district of Sonoma, one senator; the district of Sacramento, four senators; and the district of San Joaquin, four senators. And the district of San Diego shall elect one member of assembly; the district of Los Angeles, two members of assembly; the district of Santa Barbara, two members of assembly; the district of San Luis Obispo, one member of assembly; the district of Monterey, two members of assembly; the district of San José, three members of assembly; the district of San Francisco, five members of assembly; the district of

Sonoma, two members of assembly; the district of Sacramento, nine members of assembly; and the district of San Joaquin, nine members of assembly.

SEC. 15. Until the Legislature shall otherwise direct, in accordance with the provisions of this Constitution, the salary of the Governor shall be ten thousand dollars per annum; and the salary of the Lieutenant Governor shall be double the pay of a State senator; and the pay of members of the Legislature shall be sixteen dollars per diem, while in attendance, and sixteen dollars for every twenty miles' travel by the usual route from their residences, to the place of holding the session of the Legislature, and in returning therefrom. And the Legislature shall fix the salaries of all officers, other than those elected by the people, at the first election.

SEC. 16. The limitation of the powers of the Legislature, contained in Article 8th of this Constitution, shall not extend to the first Legislature elected under the same, which is hereby authorized to negotiate for such amount as may be necessary to pay the expenses of the State Government.

R. SEMPLE,

President of the Convention, and Delegate from Benicia.

WM. G. MAROY, *Secretary.*

J. Aram,
C. T. Botts,
E. Brown,
J. A. Carrillo,
J. M. Covarrubias,
E. O. Crosby,
P. De La Guerra,
L. Dent,
M. Dominguez,
K. H. Dimmick,
A. J. Ellis,
S. C. Foster,
E. Gilbert,
W. M. Gwin,
H. W. Halleck,
Julian Hanks,

L. W. Hastings,
Henry Hill,
J. Hobson,
J. McH. Hollinsworth,
J. D. Hoppe,
J. M. Jones,
T. O. Larkin,
Francis J. Lippitt,
B. S. Lippincott,
M. M. McCarver,
John McDougal,
B. F. Moore,
Myron Norton,
P. Ord,
Miguel Pedronena,
A. M. Pico,

R. M. Price,
Hugo Reid,
Jacinto Rodriguez,
Pedro Sansevaime,
W. E. Shannon,
W. S. Sherwood,
J. R. Snyder,
A. Stearns,
W. M. Steuart,
J. A. Sutter,
Henry A. Tefft,
S. L. Vermeule,
M. G. Vallejo,
J. Walker,
O. M. Wozencraft.

A P P E N D I X .

L A W S R E L A T I N G T O C A L I F O R N I A .

Extract from an Act to Establish certain Post Routes.

SEC. 3. And be it further enacted, That the Postmaster General be, and is hereby authorized, to establish Post-Offices, and appoint Deputy Postmasters at San Diego, Monterey, and San Francisco, and such other places on the coast of the Pacific, in California, within the territory of the United States, and to make such temporary arrangements for the transportation of the mail in said territory, as the public interest may require; that all letters conveyed to or from any of the above mentioned places on the Pacific, from or to any place on the Atlantic coast, shall be charged with forty cents postage; that all letters conveyed from one to any other of the said places on the Pacific, shall pay twelve and a half cents postage; and the Postmaster General is authorized to apply any moneys received on account of postages aforesaid to the payments to be made on the contract for the transportation of the mails in the Pacific ocean; and the Postmaster General is further authorized to employ not exceeding two agents in making arrangements for the establishment of post-offices, and for the transmission, receipt, and conveyance of letters in Oregon and California, at an annual compensation not exceeding that of the principal clerks in the Post-Office Department.

APPROVED, August 14, 1848.

A Resolution authorizing the Secretary of War to furnish Arms and Ammunition to persons emigrating to the Territories of Oregon, California, and New Mexico.

Resolved, by the Senate and House of Representatives of the United States in Congress assembled, That the Secretary of War be, and he is hereby authorized, at his discretion, and having due regard to the necessities of the public service, to furnish to such persons as may apply for the same, and who design to emigrate to the Territories either of Oregon, California, or New Mexico, such arms and ammunition from the army stores as they may require to arm themselves for such expedition: Provided, that the arms and ammunition so furnished shall not exceed a supply sufficient to arm and equip each person of such expedition: And provided further, That before the same are delivered, the actual cost to the Government of such arms and ammunition shall first be paid to the United States; and that the Secretary of War shall be satisfied that the persons so applying really and bonâ fide design them for the use aforesaid.

APPROVED, March 2, 1849.

An Act to extend the Revenue Laws of the United States over the Territory and Waters of Upper California, and to create a Collection District therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Revenue Laws of the United States be, and are hereby extended to and over the mainland and waters of all that portion of territory ceded to the United States by the "treaty of peace, friendship, and limits between the United States of America and the Mexican republic," concluded on the second day of February, in the year eighteen hundred and forty-eight, heretofore designated and known as Upper California.

SEC. 2. And be it further enacted, That all the ports, harbors, bays, rivers, and waters of the mainland of the territory of Upper California shall constitute a collection district by the name of Upper California; and a port of entry shall be, and is hereby established

for said district at San Francisco, on the Bay of San Francisco, and a collector of customs shall be appointed by the President of the United States, by and with the advice and consent of the Senate, to reside at said port of entry.

SEC. 3. And be it further enacted, That ports of delivery shall be, and are hereby established in the collection district aforesaid, at San Diego, Monterey, and at some convenient point within the territory of the United States, to be selected by the Secretary of the Treasury, as near as may be to the junction of the Rivers Gila and Colorado, at the head of the Gulf of California; and the collector of the said district of California is hereby authorized to appoint, with the approbation of the Secretary of the Treasury, three deputy collectors, to be stationed at the ports of delivery aforesaid.

SEC. 4. And be it further enacted, That the collector of said district shall be allowed a compensation of fifteen hundred dollars per annum, and the fees and commissions allowed by law; and the said deputy collectors shall be each allowed a compensation of one thousand [*dollars*] per annum, and the fees and commissions allowed by law.

SEC. 5. And be it further enacted, That, until otherwise provided by law, all violations of the Revenue Laws of the United States, committed within the district of Upper California, shall be prosecuted in the District Court of Louisiana or the Supreme Court of Oregon, which Courts shall have original jurisdiction, and may take cognisance of all cases arising under the Revenue Laws in the said district of Upper California, and shall proceed therein in the same manner and with the like effect as if such cases had arisen within the district or territory where the prosecution shall be brought.

SEC. 6. And be it further enacted, That this Act shall take effect from and after the tenth day of March next.

APPROVED, *March 3, 1849.*

An Act making Appropriations for the Naval Service for the year ending the thirtieth of June, one thousand eight hundred and fifty.—Extract.

SEC. 4. And be it further enacted, That in lieu of the pay allowed by law, a purser when, by order of the Secretary of the Navy attached to, and doing duty at, the Naval Station of California, shall receive the same pay as if attached to a frigate in commission for sea service: Provided, That not more than one purser shall, at the same time, be attached to the said station on general or special duty.

APPROVED, *March 3, 1849.*

L A W S O F T H E U N I T E D S T A T E S

R E L A T I V E T O N A T U R A L I Z A T I O N .

Chap. 28.

AN ACT to establish a uniform rule of Naturalization, and to repeal the acts heretofore passed on that subject.

Approved, April 14, 1802.

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

§ 1. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise :

1. That he shall have declared on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the States, or of the territorial districts of the United States, or a circuit, or district court of the United States, three years at least before his admission, that it was bonâ fide his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly by name, the prince, potentate, state, or sovereignty, whereof such alien may at the time be a citizen or subject.

2. That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly by name the prince, potentate, state, or sovereignty whereof he was before a citizen or subject, which proceeding shall be recorded by the clerk of the court.

3. That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held one year at least ; and it shall further appear to their satisfaction that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same : Provided that the oath of the applicant shall in no case be allowed to prove his residence.

4. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be made and recorded in the said court : Provided, that no alien who shall be a native citizen, denizen, or subject of any country, state, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States : Provided, also, that any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen on due proof made, to some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application within the state or territory where such court is at the time held, and on his declaring on oath, or affirmation, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly by name the prince, potentate, state, or sovereignty whereof he was before a citizen or subject ; and moreover on its appearing to the satisfaction of the court that during the said

An alien may become a citizen of the United States. On what conditions.

To declare on oath of affirmation, in the supreme or superior court, or district or circuit court, of some of the States, or of the United States, three years before his admission, his intention to renounce for ever his allegiance to any sovereign or state of which he is a subject.

To swear or affirm that he will support the Constitution of the United States.

That he shall have resided in the United States five years before he shall be admitted a citizen.

Shall prove that he is a man of good moral character, attached to the Constitution of the United States.

That he shall renounce every title of nobility held by him. Shall prove that he is a man of good moral character, and attached to the Constitution of the United States.

On what conditions an alien may be naturalized who resided in the United

States after the 29th January, 1795.

Proceedings to be recorded by the clerk of the court.

Provision in favor of persons residing in the United States between the 29th January, 1795, and the 18th June, 1798.

Mode of naturalization prescribed.

Free white persons arriving in the United States to be registered.

Form of register.

What courts are to be considered as capable of naturalizing aliens.

Children of persons naturalized under certain laws to be citizens of the United States.

Privilege of citizenship not to extend to children of persons who have never resided in the United States, &c. Repeal of former acts.

term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came; on his moreover making in the court an express renunciation of his title or order of nobility before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof; and provided also that any alien who was residing within the limits and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may within two years after the passing of this act be admitted to become a citizen without a compliance with the first condition above specified.

§ 2. Provided also, and be it further enacted, That in addition to the directions aforesaid, all free white persons being aliens who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry and obtain certificates in the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself, or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birthplace, age, nation, and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement; and it shall be the duty of such clerk on receiving such report to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office of such report and registry; and for receiving and registering each report of an individual or family he shall receive fifty cents, and for each certificate granted pursuant to this act to an individual or family fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of his arrival within the United States.

§ 3. And whereas doubts have arisen whether certain courts of record in some of the states are included within the description of district or circuit courts: Be it further enacted, that every court of record in any individual state having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court shall enjoy, from and after the passing of the act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

§ 4. And be it further enacted, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: Provided that the right of citizenship shall not descend to persons whose fathers have never resided within the United States: Provided, also, that no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid without the consent of the legislature of the state in which such person was proscribed.

§ 5. And be it further enacted, That all acts heretofore passed respecting naturalization be and the same are hereby repealed.

Chap. 47.

AN ACT in addition to an act entitled "An act to establish a uniform rule of Naturalization, and to repeal the Acts heretofore passed on that subject."

Approved, March 26, 1804.

Certain aliens become citizens of the United States who resided within them between the 18th day of June, 1798, and 14th April, 1802.

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

§ 1. That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States without a compliance with the first condition specified in the first

section of the act entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

§ 2. And be it further enacted, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions proscribed in the second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths proscribed by law.

After an alien shall have complied with certain directions his widow and children made citizens of the United States.

Chap. 36.

AN ACT supplementary to the acts heretofore passed on the subject of a uniform rule of Naturalization.

Approved July 30, 1813.

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

§ 1. That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law of their intentions to become citizens of the United States, or who by the existing laws of the United States were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof notwithstanding they shall be alien enemies at the time, and in the manner proscribed by the laws heretofore passed on that subject. Provided that nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Persons authorized to become citizens who were resident in the United States on 18th June, 1812, and who had made a declaration of their intention to become citizens of the United States.

Provido.

Chap. 32.

AN ACT relative to Evidence in cases of Naturalization.

Approved March 22, 1816.

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

§ 1. That the certificate of report and registry required as evidence of the time of arrival in the United States, according to the second section of the act of the fourteenth of April, one thousand eight hundred and two, entitled "An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on this subject," and also a certificate from the proper clerk or prothonotary of the declaration of intention made before a court of record, and required as the first condition according to the first section of said act, shall be exhibited by every alien on his application to be admitted a citizen of the United States in pursuance of said act, who shall have arrived within the limits and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length in the record of the court admitting such alien, otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States; and any pretended admission of an alien who shall have arrived within the limits and under the jurisdiction of the United States since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen, after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid.

Evidence to be exhibited by aliens to become citizens of the United States.

Admissions without a recital of the preceding of no validity.

§ 2. Provided, and be it enacted, That nothing herein contained shall be construed to exclude from admission to citizenship any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act, entitled 'An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject.'" Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so

Rights of persons heretofore settled in the United States between the 18th June, 1798, and 14th April, 1802.

Residence of the applicant to be naturalized.

Certificate of naturalization.

admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Chap. 186.

AN ACT in further addition to "An act to establish a uniform rule of Naturalization, and to repeal the Acts heretofore passed on that subject."

Approved May 26, 1824.

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

Conditions on which an alien, being a free white person and a minor, may become a citizen of the United States.

Proviso.

No certificate heretofore obtained from any court to be deemed invalid, 1816, cap. 22.

Declaration of the former act to be valid on certain conditions.

A declaration of intention made two years before his admission shall be sufficient.

§ 1. That any alien being a free white person, and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission: Provided such alien shall make the declaration required therein at the time of his or her admission, and shall further declare on oath, and prove to the satisfaction of the court, that for three years next preceding it has been the bonâ fide intention of such alien to become a citizen of the United States, and shall, in all other respects, comply with the laws in regard to naturalization.

§ 2. And be it further enacted, That no certificates of citizenship or naturalization heretofore obtained from any court of record within the United States shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the act entitled "An Act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

§ 3. And be it further enacted, That the declaration required by the first condition, specified in the first section of the act to which this is in addition, shall, if the same has been bonâ fide made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts respectively.

§ 4. And be it further enacted, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act or in any subsequent act to the contrary, notwithstanding.

Chap. 116.

AN ACT to amend the Acts concerning Naturalization.

Approved May 24th, 1828.

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

Second section of the act of April 14, 1802, ch. 22, and March 22, 1816, ch. 22, repealed.

Any alien, residing within the limits, &c., between Ap 14 1802 and June 18 1812, to become a citizen.

§ 1. That the second section of the act entitled, "An Act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two; and the first section of the act entitled, "An Act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be and the same are hereby repealed.

§ 2. And be it further enacted, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same may be admitted to become a citizen of the United States, without having made any previous declaration of his

intention to become a citizen: Provided, That whenever any person, without a certificate of such declaration of **Proviso.** intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the Court that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the Court admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Chap. 72.

AN ACT to repeal in part the twelfth section of the act entitled, "*An Act for the regulation of seamen on board the public and private vessels of the United States.*"

Approved June 26, 1848.

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

That the twelfth section of the act approved March 3d, 1813, entitled, "*An Act for the regulation of seamen on board the public and private vessels of the United States*" (which said twelfth section is in the following words, viz.: "*That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission as aforesaid, have resided within the United States, without being at any time during the said five years out of the territory of the United States*") be, and the same hereby is, modified, and in part repealed, by striking out the words, "*without being at any time during the said five years out of the territory of the United States.*"



L A W S

OF THE

STATE OF CALIFORNIA,

PASSED AT THE FIRST SESSION OF THE LEGISLATURE, BEGUN THE FIFTEENTH DAY OF DECEMBER, 1849, AND ENDED ON THE TWENTY-SECOND DAY OF APRIL, 1850, AT PUEBLA DE SAN JOSÉ.

Chapter 1.

AN ACT concerning the Public Archives.

Passed January 5, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the Secretary of State be and is hereby instructed to call upon, ask, and receive of the late Secretary of the State of California, all public records, registers, maps, books, papers, rolls, documents, and other writings, which he may have in his possession, which appertain to, or are in any wise connected with the political, civil, and military history, and past administration of the Government in California; the titles to bonds within the territory, or to any other subject which may be interesting, or valuable as references or authorities to the Government, or people of the State. And that the Secretary of State be directed to classify, and safely keep, and preserve the same, in his office.

§ 2. This Act shall be in force from and after its passage, and a certified copy thereof shall be filed in the office of the Secretary of State.

Certain Documents to be obtained from late Secretary of State.

And to be classified, &c.

Commencement of Act, and copy to be filed.

Chap. 2.

AN ACT to create the office of State Printer, and define his duties.

Passed January 8th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the office of State Printer be, and is hereby created, who shall be elected by, and under the entire control of the Legislature, and whose term of office shall be the same as that of the Comptroller and Treasurer of State, and whose duty it shall be to execute all of the printing and

Office of state printer created, term of office, duties, and compensation.

binding of the two branches of the Legislature, and of the several departments of the State Government, and all other work required of the State Printer by law, for such prices for each specific description of work as shall be hereafter fixed by law.

To give bond.

§ 2. Said State Printer, previous to entering upon the discharge of his duties, shall execute a bond for the skilful and faithful performance of said work, in the penal sum of ten thousand dollars, acceptable to the Governor, and payable to the State of California, which bond shall be deposited in the office of the Secretary of State, for safe keeping.

Commencement of act.

§ 3. This Act to be in force from and after its passage, and a certified copy filed in the office of Secretary of State.

Chap. 3.

AN ACT in relation to the appointment of Pilots for the different Ports and Harbors of California.

Passed January 8, 1850.

The People of the State of California, represented in the Senate and Assembly, do enact as follows :

Pilots to be appointed. Proviso.

§ 1. The Governor, by and with the advice and consent of the Senate, is hereby authorized to appoint competent Pilots for the Ports and Harbors of California: Provided that not more than six pilots shall be appointed for each port, except the Port of San Francisco, where not more than twelve shall be appointed.

Pilots to give bond.

§ 2. The pilots appointed under this Act, shall first severally enter into bonds, with security, to be approved by the Governor, in the penalty of ten thousand dollars, for the faithful discharge of their duties; said bonds shall be made payable to the State of California, and deposited with the Secretary of State, for the benefit of parties injured by the forfeiture of said bonds.

At least one boat for each six pilots to be kept.

§ 3. It shall be the duty of the pilots appointed for the several Ports of California, to keep for the purpose of piloting as aforesaid, at least one boat or vessel for every six pilots, in good condition and seaworthy, sufficiently large to cruise in heavy weather, to be exclusively employed as a pilot boat.

Compensation to pilots.

§ 4. The said pilots appointed under this Act, shall be authorized to charge and receive for piloting every ship or vessel into or out of any port or harbor of California, the sum of eight dollars per foot draught.

Pilot entitled to half pilotage where master refuses to take a pilot. Certain vessels not liable to pilotage. Where pilots are to cruise.

§ 5. When the master or person in charge of any ship or vessel shall refuse to take a pilot, the pilot first offering his services shall be entitled to half pilotage: Provided, always, that any vessel running or trading between the different ports of California shall not be liable to any charge for pilotage, except when the services of a pilot have been actually accepted.

Compensation to pilots when detained by bad weather.

§ 6. It shall be the duty of the pilots appointed under this Act, to cruise at least ten marine miles seaward from the headlands, at the entrance of the several ports of California.

§ 7. For every day which any one of the said pilots shall be detained by head winds or bad weather, or other causes beyond his control, on any ship or vessel, he shall be entitled to, and charge and receive the sum of six dollars per day, in addition to his or their pilotage as aforesaid.

Suspension or removal of pilots.

§ 8. The Governor shall have power to suspend or remove from office any pilot appointed under this Act, for incompetency, neglect of duty, or other good cause in his opinion shown therefor.

Pilots appointed under this act subject to any subsequent act.

§ 9. The pilots appointed under the provisions of this Act, shall conform to and be governed by any law hereafter enacted by the Legislature of this State, regulating or prescribing their duties, liabilities, qualifications, and term of office.

Commencement of act.

§ 10. This Act shall take effect from and after its passage, and a certified copy thereof filed in the office of the Secretary of State.

Chap. 4.

AN ACT concerning the office of Comptroller.

Passed January 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

- § 1. The Comptroller shall be commissioned by the Governor, and shall reside and keep his office at the seat of Government. He shall not absent himself from the State without leave of absence obtained from the Legislature. Comptroller—how commissioned, where to reside and keep his office.
- § 2. Before entering upon the duties of his office, he shall give bond to the State, with such sureties as shall be approved by the Governor, in the penal sum of fifty thousand dollars, conditioned for the true and faithful performance of the duties enjoined by law, and for the safe delivery to his successor in office of all books, papers, documents, maps, vouchers, and other effects belonging or appertaining to the office of Comptroller. To give bond.
- § 3. He shall digest, prepare, and report to the Governor, on the fifteenth day of December annually, to be laid before the Legislature at the commencement of each regular session, a complete statement of the condition of the revenues, and the amount of the expenditures for the preceding fiscal year; a full and detailed statement of the public debt, estimates of the revenues and expenditures for the succeeding fiscal year; a tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended; a tabular statement, showing the amount of revenue chargeable to each county for the preceding year; the aggregate amount of each object of taxation, together with the tax due on the same; and shall report such plans as he may deem expedient for the support of the public credit, for promoting frugality and economy in the public offices, for lessening the public expenses, and generally for the better management and more perfect understanding of the fiscal affairs of the State. To report annually to Governor.
- § 4. It shall be the duty of the Comptroller to keep an account between the State and State Treasury, between the State and the United States, and between the State and every other State, sovereignty, officer, or person with whom the State may have dealings; and he shall have power to administer all oaths or affirmations required or allowed by law, in matters touching the duties of his office. To keep an account of the dealings of the State. May administer oaths.
- § 5. He shall examine, adjust, and settle all claims against the State, payable out of the Treasury, excepting only such claims as may be expressly required by law to be examined and settled by other officers and persons. To examine and settle claims against the State.
- § 6. He shall draw all warrants upon the Treasury for money, except only in cases otherwise provided by law; but every warrant shall express the particular fund out of which the same is to be paid. To draw warrants for money, and form of warrants.
- § 7. He shall direct prosecutions in the name of the State for all official delinquencies in relation to the assessment, collection, and payment of the revenue, against all persons who by any means become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the State. To direct prosecutions against State debtors.
- § 8. He shall give information in writing to either House of the Legislature, whenever required, upon any subject relating to the fiscal affairs of the State, or touching any duty of his office, and shall perform all such other duties not enumerated in this Act, as may be required by law. To report to Legislature on request.
- § 9. He shall, when he goes out of office, deliver to his successor all books, files, letters, papers, accounts, and other things belonging to his office. Duty on quitting office.
- § 10. All the books, papers, files, letters, and transactions pertaining to the office of Comptroller, shall be open to the inspection of the Governor, to the inspection of committees of the Legislature, or either branch thereof, or that of any other person authorized by law. Documents in office to be open to inspection.

Vacancies—how supplied.

§ 11. In case of the death, sickness, absence from the State, removal from office, or impeachment of the Comptroller, unless such absence or disability occur within six months of the close of the term for which he shall have been elected, the Governor shall immediately issue his proclamation, appointing a day for the election of a Comptroller, to fill the office for the remainder of the unexpired term; which election shall be held at the places, and in the manner prescribed by law.

Temporary vacancy—how supplied.

§ 12. In case of such vacancy, absence, or disability, the Governor shall make an appointment of some suitable person to perform the duties of the office of Comptroller until a successor shall be elected and qualified, or until such absence or disability shall cease; and such person shall take the oath, and give the bond required of the Comptroller, and shall receive the same compensation as is allowed by law to the Comptroller, in proportion to the time he shall be employed in such service.

Willful neglect of duty a misdemeanor in office.

§ 13. If the Comptroller shall wilfully neglect, or refuse to perform any duty enjoined by law, or by color of his office shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of a misdemeanor in office.

To have official seal, and employ a clerk.

§ 14. The Secretary of State shall procure and deliver to the Comptroller a seal of office, with some suitable device, and having engraved around the margin thereof the words "Office of the Comptroller, California," a description of which seal shall be retained in the office of the Secretary of State, as a record; said seal shall be used for the authentication of all drafts and warrants drawn by the Comptroller, and of all copies of papers issued from his office; and until such seal is procured, he shall use his private seal: The Comptroller is hereby authorized to employ a clerk in his office, who shall receive for his services such salary as may be fixed by law.

Office hours.

§ 15. The office of Comptroller shall be opened for the transaction of business from 10 o'clock A.M. to 2 o'clock P.M. of every day in the year, Sundays excepted.

Commencement of act.

§ 16. This Act shall be in force from and after its passage.

Chap. 5.

AN ACT concerning the office of State Treasurer.

Passed January 24th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Where to reside and keep office.

§ 1. The Treasurer shall reside and keep his office at the seat of Government, and not absent himself from the State without leave of absence from the Legislature.

To be commissioned and take oath of office, and give bond.

§ 2. He shall be commissioned by the Governor, but before such commission shall issue, and before entering on the duties of his office, he shall take the oath of office prescribed by the Constitution, to be endorsed on his commission, and shall execute and deliver to the Governor a bond, payable to the State, in the sum of two hundred and fifty thousand dollars, with sureties to be approved by the Governor, conditioned for the faithful performance of all the duties which may be required of him by law, and for the delivery to his successor in office of all books, papers, moneys, vouchers, securities, evidences of debt, and effects belonging to his said office.

To have and use official seal.

§ 3. The Secretary of State shall procure and deliver to the Treasurer a seal of office, with some suitable device, and having engraved around the margin thereof the words, "Office of the Treasurer—California;" a description of which said seal shall be retained in the office of the Secretary of State as a record: said seal shall be used to authenticate all writings, papers, and documents certified from such office. Until such seal is procured, the Treasurer is authorized to use his private seal.

To receive and disburse public moneys, and keep account.

§ 4. He shall receive and keep all moneys of the State, not expressly required by law to be received and kept by some other person; shall disburse the public moneys upon warrants drawn upon the

Treasury according to law, and not otherwise; and shall keep a just, true, and comprehensive account of all moneys received and disbursed; and shall deliver to his successor in office all moneys, records, books, papers, and other things belonging to his office, in good order; and keep his office open for the transaction of business from 10 o'clock A.M. to 2 o'clock P.M., of every day of the year, Sundays excepted.

To deliver moneys, &c., to successor.
Office hours.

§ 5. He shall deliver to the Governor, on the fifteenth day of December annually, a full exhibit of all moneys received by him into and paid out of the Treasury, showing, under separate and appropriate heads, on what account and from what sources received, and for what particular object or service the same has been paid out by him; and shall give information in writing to either House of the Legislature, whenever required, upon any subject connected with the Treasury, or any duty of his office.

To report annually.

§ 6. The books, papers, and transactions of his office shall be open at all times for the inspection of the Governor, Comptroller, of either House of the Legislature, or of any committee thereof, or persons authorized by law.

Records of office to be open to inspection.

§ 7. If the Treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of a misdemeanor in office.

Wilful neglect of duty a misdemeanor in office.

§ 8. In case of the death, sickness, absence from the State, removal from office, or impeachment of the Treasurer, unless such absence or disability shall occur within six months of the close of the term for which he shall have been elected, the Governor shall immediately issue his proclamation appointing a day for the election of a Treasurer for the balance of the unexpired term, which election shall be held at the places and in the manner prescribed by law.

Vacancy—how filled.

§ 9. In case of the absence or disability of the Treasurer, the Governor shall make an appointment of some suitable person to perform the duties of the office until a successor shall be elected and qualified, or until such absence or disability shall cease; and such person shall take the oath of office and execute the bond required of the Treasurer, and shall receive the same compensation as is allowed by law to the Treasurer, in proportion to the time he shall be engaged in such service.

Temporary vacancy—how supplied.

§ 10. The Treasurer is authorized to employ a clerk in his office, who shall receive for his services such compensation as may be allowed by law.

May employ a clerk.

§ 11. He shall have power to administer all oaths or affirmations required or allowed by law in matters touching the duties of his office; and shall perform all duties not enumerated in this act, which may be enjoined by law.

May administer oaths.

§ 12. This act shall be in force from and after its passage.

Commencement of act.

Chap. 6.

AN ACT concerning the office of the Secretary of State.

Passed January 24, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The Secretary of State, before entering upon the discharge of any of the duties of his office, shall make and execute his bond to the State of California, in the penal sum of ten thousand dollars, with at least two sufficient sureties, conditioned for the faithful performance and discharge of the several duties and trusts imposed upon him by the Constitution and laws of this State: Provided, that this section shall not apply to the Secretary of State heretofore appointed, who shall have ten days after the passage of this Act, in which to take the oath of office and execute his bond.

Before taking office to give bond.

Present secretary to have ten days to qualify, &c.

§ 2. Said bond and sureties shall be approved by the Governor, and such bond shall be by him deposited in the office of the Recorder for the county in which the seat of government is situated, and there recorded.

Bond, &c., to be approved and recorded.

- To have custody of all State papers.** § 3. The Secretary of State shall have the custody of, and carefully preserve the enrolled copy of the Constitution of the State of California, the description of the State seal, and other seals of which a description may be required to be deposited in his office; the manuscripts containing the enrolled Acts, and joint resolutions, and journals of the Legislature; and all the books, records, parchments, maps, registers, and papers that may be deposited in his office; all deeds and conveyances belonging to the State; all official bonds of officers approved by the Governor, except the bond of said Secretary; and all written contracts to which the State is a party, unless required to be deposited elsewhere.
- Exception.**
- Duties as secretary.** § 4. It shall be the duty of the Secretary of State to keep a fair register of, and attest all the official acts and proceedings of the Governor, and affix the seal of the State with such attestations, to all commissions, pardons, and other public instruments to which the signature of the Governor is required; to lay all papers, minutes, and vouchers relative to the official acts and proceedings of the Governor, before either House of the Legislature, when required by such House; to permit all the books, bonds, deeds, registers, papers, and transactions of his office to be open at all times to the inspection and examination of any committee of either branch of the Legislature; to furnish information in writing upon any subject relating to the duties of his office to the Governor, whenever required; to deliver up in good order and condition to his successor, all the records, books, papers, and other things belonging to his office, and to perform all such other duties as may be enjoined upon him by the Constitution and laws of this State.
- To furnish copies of laws, records, &c., on request.** § 5. The Secretary of State shall furnish on demand to any person paying the proper legal fee or fees therefor, a duly certified copy of all or any part of any law, act, record, or other instrument of writing on file or deposited in his office, and of which a copy may be properly given.
- Original laws and joint resolutions of Legislature to be bound, &c.** § 6. Immediately after the adjournment of each session of the Legislature, the Secretary of State shall cause the original laws and joint resolutions passed and adopted at such session, with the journals of the Senate and Assembly, to be bound with substantial leather binding, in a volume or volumes of such size as he may find convenient, and shall cause the title thereof, with the session at which the same shall have been passed, to be written or printed on the back of such volume or volumes.
- To deliver to State printer copies of all acts, joint resolutions, &c., and to superintend printing and distribution thereof. May appoint a deputy and employ clerks.** § 7. It shall be the duty of the Secretary of State to deliver to the Printer for the State, at the earliest day practicable, copies of all Acts, and Joint Resolutions, and Journals passed or adopted by the Legislature, to superintend the printing and correct the proof sheets of the Acts, Joint Resolutions, and Journals required by law to be printed, and to attend to the distribution thereof.
- § 8. Whenever the Secretary of State shall, by reason of sickness, necessary absence, or inability, be prevented from discharging in person the duties of his office, he shall have power under his hand and seal to appoint a deputy, who may perform all the duties belonging to the office of Secretary of State; and whenever it may in his opinion be necessary, he may employ any number of clerks, not exceeding four, to aid and assist in making copies of Acts and Joint Resolutions to be delivered to the Printer.
- To be ex officio State librarian—his duties as such.** § 9. The Secretary of State shall be *ex officio* State librarian; he shall procure a suitable place for the library of the State, and take charge of the same in a manner best calculated to subserve the object of said library; he shall transmit copies of all volumes of laws, journals, reports, and other documents, and of maps which may be authorized by this State, to each of the departments of the United States at Washington, and to each of the States of the Union, and receive in return such books, maps, &c., which may be sent to this State by the government of the United States and the several States; it shall be his duty to distribute to the several counties of this State, and the different officers thereof, the laws and documents sent to this State by the United States, intended for distribution among the several counties, in such numbers as he may be directed by law.
- Where to keep office, and office hours.** § 10. The Secretary of State shall keep his office at the seat of government, and shall not absent himself from the State without leave granted by the Legislature, and shall attend the same either in person or by his deputy every day in the year, Sundays excepted, from the hours of ten o'clock of the forenoon until two o'clock in the afternoon.
- Commencement of act.** § 11. This Act shall be in full force from and after its passage.

Chap. 7.

AN ACT *fixing the time for Acts and Joint Resolutions to take effect.*

Passed January 24, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. All Acts and Joint Resolutions shall take effect, from and after their passage, unless some other time is expressly stated therein.

§ 2. This Act shall be in force from and after its passage.

Acts and joint resolutions—when to take effect. Commencement of act.

Chap. 8.

AN ACT *creating the office of State Translator.*

Passed January 31, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. There shall be a State Translator, who shall be chosen by joint vote of the two Houses of the Legislature, and whose duty it shall be to make correct translations in Spanish of all laws, decrees, and documents required to be translated, by any law or any order of either House of the Legislature.

§ 2. The State Translator, before entering on the duties of his office, shall take the oath prescribed by the Constitution. He shall hold office for the term of one year; and shall receive for his services such compensation as shall be allowed by law.

State translator to be chosen—his duties.

To take oath of office, term of office, and compensation.

Chap. 9.

AN ACT *prescribing the mode of receiving, keeping, and paying out the Public Funds.*

Passed January 31, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That whenever any officer, or other person or persons, or Corporation, has received moneys belonging to the State, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging in like manner to, or held in trust by the State, and shall fail to render an account thereof to, and make settlement with the Comptroller within the time prescribed by law, or when no particular time is specified, shall fail to render such account and make settlement upon being required so to do by the Comptroller, within twenty days after such requisition, it shall be the duty of such Comptroller to state an account of such officer, or person or persons, or Corporations charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from the time of failing to render an account and settle as aforesaid.

§ 2. Whenever any officer, or other person or persons, or Corporation, shall be indebted to the State, and fail or refuse to make settlement with the Comptroller as in this Act required, and shall fail to pay over to the Treasurer, on the printed or written order of the Comptroller, according to the provisions of this Act, the amount or balance to be paid by such officer, or other person or persons, or Corporation, into the Treasury, or to such person or persons entitled by law to receive the same within the time

Penalty on persons or corporations intrusted with State moneys, and failing duty to account therefor.

State debtors to be sued.

prescribed by law, or if no time be prescribed by law then within twenty days after; the Comptroller shall notify such officer, or other person or persons, or Corporation, to settle and pay the same; said Comptroller shall, upon being informed or notified, or coming to his knowledge from any source whatever of such failure, shall cause suit to be instituted against such officer, or other person or persons, or Corporation, thus in default, for the recovery of the amount thus due and unpaid, with damages and interest thereon.

In such action certified copy of the account to be *prima facie* evidence.

§ 3. A copy of the account in such case made out and certified by the Comptroller, with his official seal affixed thereto, shall be sufficient evidence to support an action in any court of competent jurisdiction for the amount or balance stated therein to be due, without proof of the signature or official character of such Comptroller; subject, however, to the right of the defendant to plead and give in evidence, as in other actions, all such matters as shall be legal and proper for his defence or discharge.

In such action defendants shall be liable for the costs. Exception.

§ 4. The party thus sued shall be subject to the costs and charges of suit, whether the ultimate decision be against him or in his favor, except in cases in which he shall have rendered a true account, and shall also have paid the full amount to the proper person authorized by law to receive the same, before the commencement of said suit; or when the suit is brought to recover against a deceased debtor to the State, before the expiration of the time prescribed by law, within which representatives are allowed by law to qualify on estates.

The defendant in such actions liable to costs, where on the trial he gives evidence which he withheld from comptroller.

§ 5. If any defendant in any suit prosecuted at the instance of the Comptroller under the provisions of this Act, shall at the trial give any evidence which existed prior to the time, and within the knowledge of the defendant at the time of such adjustment and settlement of his accounts, and which was not produced to said Comptroller at the time of said settlement, such defendant shall be subject to the costs and charges of said suit, whether the ultimate decision be against him or in his favor.

To keep an account of State debtors, and enforce payment.

§ 6. The Comptroller shall charge and enter in a proper book or books, to be provided for that purpose, under distinct heads, for each debtor, or disburser, or holder of public moneys, or dues to the State, of all and every description whatever, with a suitable index arranged in alphabetical order, of all such persons, Corporations, States, or the United States, as soon as such liabilities or indebtedness shall come officially to his knowledge, charging such officer, person or persons, Corporations, States, or the United States, with the amount or amounts of such liabilities, stating whether such dues be in money, property, or securities of any kind; and particularly of all collectors of the public revenues of the State, and all dues to the State, whether money, property, securities, or other things from any and all sources whatever; and as soon as the same is due by law, or if no time be stipulated or fixed by law, then as soon after twenty days' notice as said Comptroller shall require the same to be paid, said Comptroller shall audit and state, and require payment thereof; and if not paid to proceed as directed by this Act by suit for the collection of the same, provided he shall not institute suit against any State or the United States without instructions from the Legislature.

Proviso.

How State debtors may obtain an adjustment and discharge of their accounts.

§ 7. Whenever any such debtor or debtors to the State have any such dues to the State ready to pay over, it shall be the duty of such debtor or debtors to call on the Comptroller for settlement of his or their account; and after such settlement it shall be the duty of the Comptroller to issue his written or printed order, beginning with number one and running in numerical order until the end of the fiscal year, and directed to the Treasurer, to receive from such person making such payment, stating in such written or printed order the amount of money to be paid in such forms as he may prescribe, and hand said written or printed order to said debtor or person offering to pay money, who shall take the same to the Treasurer, and pay over to him the amount specified in said written or printed order, and take from the Treasurer a receipt for the said amount; and on the delivery of said receipt to the Comptroller it shall be his duty to give to said debtor a discharge for the said amount, and the Comptroller shall immediately charge the Treasurer with the same; and in no case shall a discharge be granted to any debtor, but on the delivery to the Comptroller of the Treasurer's receipt, predicated on a previous and corresponding written or printed order to pay such amount into the Treasury in the manner prescribed in this Act.

§ 8. It shall be the duty of the Comptroller to open and keep in a suitable book or books, to be provided for that purpose, an account with the Treasurer, charging him in the manner hereinbefore prescribed, with all the moneys for which the Treasurer may grant receipts, and with no other.

Comptroller to keep account with the treasurer of receipts for money granted by him. How money drawn from treasury.

§ 9. Whenever any person is entitled to draw or to receive any money from the Treasury, the Comptroller shall draw a warrant in his favor on the Treasurer, and deliver the same to the person entitled thereto, taking his receipt for the same in a book of receipts to be provided for that purpose, numbering the receipt the same as the warrant; and shall give the Treasurer credit for all such warrants in the order in which he issues the same in such manner as to show the date thereof, in whose favor it was drawn, the nature of the claim upon which it is founded, with a reference to the law under which it is drawn.

§ 10. It shall be the duty of the Comptroller to number all the written or printed orders he issues to the Treasurer to receive money, beginning with number one at the beginning of each fiscal year, and running in numerical order until the end of that fiscal year; the present fractional year to constitute the first fiscal year. It shall likewise be the duty of the Comptroller to see before filing the Treasurer's receipt that they are numbered with the corresponding number of the written or printed order on which the receipt was predicated, and to number on the back of each receipt the number thereof, and for what fiscal year, and carefully file away and preserve the same.

Comptroller's duty respecting orders on treasury and treasurer's receipts.

§ 11. A joint Committee of the Legislature, or a Committee of either House, shall have power to examine the Comptroller's and Treasurer's office books and papers, and the joint Committee shall cancel such warrants, or written or printed orders of the Comptroller, when found correct, up to the end of the preceding fiscal year, in such way as not to render them unintelligible, which shall be carefully preserved by the Comptroller after such cancellation.

Comptroller's and treasurer's books may be examined, and comptroller's warrants cancelled.

§ 12. If errors in the accounts of the Comptroller or Treasurer shall be detected, amounting in the opinion of said Committee to malfeasance or misfeasance in office, the said Committee shall report the fact to the Legislature or to the House by which the Committee was appointed.

Errors in comptroller's or treasurer's accounts to be reported in Legislature.

§ 13. It shall be the duty of the Treasurer to receive and take charge of, and safely keep in his official character, all moneys directed by the Comptroller on his written or printed order to receive into the Treasury, crediting the particular fund therefor, specified in said order, in a proper book or books to be provided for that purpose, and shall grant his receipt to the person paying the same, specifying in said receipt what fund has credit for it, numbering the receipt the same as the order on which said receipt is predicated, and shall carefully file away and preserve the said orders, endorsing the number thereon. On the payment of any warrant by the Treasurer, drawn by the Comptroller on him, he shall take the receipt of the person to whom the money is paid on the back of the warrant, and carefully file away and preserve the same, endorsing thereon the number thereof.

Treasurer to take charge of moneys paid into treasury.

§ 14. It shall be the duty of the Comptroller to provide suitable blanks and books, and furnish the Assessors and Collectors of each County with the same, in such form and manner as will best effect the object of the Statutes providing for the assessment and collection of the public revenues of the State.

Comptroller to furnish county assessor and collectors with suitable blanks and books.

Chap. 10.

AN ACT creating a Temporary State Loan.

Passed February 1, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The Treasurer of the State is hereby authorized and required, as soon as practicable, to issue the bonds of the State in sums of one hundred Dollars, two hundred and twenty-five Dollars, five hundred dollars, and one thousand dollars, payable six months after date, and not exceeding in the aggregate

Treasurer to issue State bonds.

three hundred thousand dollars, in the following form to wit: Temporary State Loan. Bond No. — § ———. Six months after date the State of California promise to pay to the order of the Governor of the State, _____ dollars, with three per cent. interest thereon per month from the date for value received. Comptroller. Treasurer.

Bonds to bind State.

Duties of the governor, comptroller, and treasurer, respecting such bonds.

§ 2. All such bonds shall be signed by the Treasurer with his proper name, affixing his official character thereto; which shall bind the State for the said bond so signed under the provisions of this Act. The said bonds shall be endorsed by the Governor with his proper name, and affixing his official character thereto; and the Comptroller shall countersign the same with his proper name, affixing his official character thereto. It shall be the duty of the Comptroller, after so countersigning said bonds, to make a register of the same with the number and amount thereof, and deliver the same to the Treasurer, charging him the amount under a head to be called the *Temporary Loan*. The Treasurer shall also keep a register of said bonds, and shall, at least once in every month, cancel all such bonds as may have been paid into the Treasury, or redeemed, in the presence of the Governor and Comptroller, noting such cancellation in the registry of the corresponding number and amount; and shall carefully preserve the same for the examination of any Committee of the Legislature, and subject to such disposition as said Committee may prescribe. The Treasurer shall tender in payment to any creditor of the State such bonds, if he has no coin in the Treasury, to pay such claims, but shall pay out no bonds if he has cash sufficient in the Treasury applicable to such demands; and said bonds shall pass by the endorsement of the Governor, as aforesaid.

Bonds not to be paid out at less than par value, and to be receivable at par for all State dues.

Date of bonds.

Treasurers and collectors to exchange for bonds and interest.

Bonds not to be deposited in treasury to create indebtedness against State. Expenses of carrying out act.

Penalty on collectors refusing to exchange.

Advertising for bonds to be bought in for redemption.

§ 3. That said bonds shall be receivable for all taxes or other State dues, with the interest which may have accrued thereon. The Treasurer shall not pay out said bonds for less than the par value thereof, but he shall receive them for the par value, and all the interest which may have accrued thereon, from all persons, including all public collectors, up to the time of the receipt thereof. All bonds shall be dated at the date of their issue.

§ 4. The Treasurer and all collectors of any public money in hand, not otherwise specifically appropriated to other purposes, shall exchange for said bonds, and all interest which may have accrued thereon at the time of such exchange. If such exchange shall be made by the Treasurer, it shall be a redemption of such bonds not again to be used in circulation; but to all other holders of public money, making such exchange, said bonds so exchanged, shall be used as that much money in hand of such collector. The Treasurer shall not allow a deposit of any bonds in the Treasury, so as to create an indebtedness against the State with a view of redeeming the same at a future time.

§ 5. The necessary amount of money for covering the expenses of carrying out the provisions of this Act is hereby authorized to be paid out of any money in the Treasury, not otherwise appropriated.

§ 6. If any Collector of the public revenue or State dues, having money in hand sufficient, shall refuse to exchange for such bonds, when applied to for that purpose by any bondholder, he shall be fined, in any competent Court in the State, in a sum not exceeding four hundred dollars.

§ 7. It shall be the duty of the Treasurer, as soon as sufficient money shall be paid into the Treasury, to advertise, by giving six months' notice in some newspaper, requiring them to be brought in for redemption, and any such bonds which shall not be returned to the Treasury in that time, shall cease to bear interest.

Chap. 11.

AN ACT concerning the office of Attorney General.

Passed February 2, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The Attorney General shall reside and keep his office at the seat of government, and shall not depart from the State without leave of absence from the Legislature. He shall be commissioned by the Governor, and shall take the oath of office prescribed by the Constitution; and shall give bond with security, to be approved by the Governor, in the sum of twenty thousand dollars, conditioned for the faithful performance of the duties of his office.

Attorney General
—where to reside and keep his office.
Not to leave State without leave.
To be commissioned, take oath, and give bond.

§ 2. The Attorney General shall attend each of the terms of the Supreme Court, and there prosecute or defend, as the case may be, all causes to which the State may be a party; also all causes to which any officers of the State, in their official capacity; may be a party; also all causes to which any county may be a party, other than those in which the interest of the county may be adverse to the State, or any officer of the State, acting in his official capacity; and after judgment obtained in any such cause, he shall direct such proceedings, and sue out such process as may be required to carry the same into execution. He shall account for and pay over to the proper officer any money which may come into his hands belonging to the State or any county. It shall also be his duty to assist in all impeachments which may be tried before the Senate.

To prosecute or defend certain causes specified.

§ 3. When required, the Attorney General shall give his opinion in writing, without fee, to the Legislature, or either House thereof, upon any question of law, and to the Governor, the Secretary of State, Comptroller, Treasurer, Surveyor General, the Trustees or Commissioners of State Hospitals or Asylum, and any District Attorney, upon any question of law relating to their respective offices.

To account for all moneys received.

To assist in all impeachments.

To give written opinions without fee in certain cases.

§ 4. The Attorney General shall supervise the District Attorneys of the State in all matters pertaining to the duties of their office. He shall, from time to time, in his discretion, require of the District Attorneys such a report as to the condition of public business intrusted to their charge, as may be prescribed by law, regulating the duties of District Attorneys. He shall keep a docket of all causes to which the State, or any officer of the State in his official capacity, or any county may be a party, which docket shall at all times in business hours be open to the inspection of the public, and shall set forth the county, district, and court, in which said causes shall have been instituted, tried, and adjudged, and whether civil or criminal causes; if civil causes, the nature of the demand, the stage of the proceedings, and when prosecuted to judgment, a memorandum of the judgment of the process, if any issued thereon, and whether satisfied or not, and if not satisfied, the return of the Sheriff on said process; and if criminal causes, the nature of the crime, the mode of prosecution, the stage of the proceedings, and when prosecuted to sentence, a memorandum of the sentence, and of the execution thereof, if the same shall have been executed, and if not executed, of the reasons of the delay or prevention of execution.

To supervise district attorneys and perform certain other duties specified.

§ 5. The Attorney General shall also, on the fifteenth day of December annually, report to the Governor the condition of the affairs of his department, and in said report make such suggestions as shall appear to him calculated to improve the laws of the State. The reports shall be accompanied and verified by the reports which he shall have received from the District Attorneys of the State, and by a transcript from the docket which he is herein commanded to keep. He shall communicate to the Governor or either House of the Legislature, whenever requested, any information concerning his office.

To report annually to governor.

§ 6. It shall be the duty of the Attorney General, whenever in his opinion required by the public service, or when directed by the Governor, to repair to any district in the State and assist the District Attorney in the discharge of his duties.

To assist district attorneys in certain cases.

Election of attorney general.

§ 7. The Attorney General shall be elected in the manner prescribed by the Constitution and the law regulating elections.

Compensation.

§ 8. The Attorney General shall receive such compensation as prescribed by law.

Commencement of act.

§ 9. This Act shall be in force from and after its passage, and a certified copy thereof filed in the office of the Secretary of State.

Chap. 12.

AN ACT authorizing the Secretary of State, Comptroller, Treasurer, Surveyor General, and Attorney General, to rent offices, and procure the necessary office furniture for their respective offices.

Passed February 9th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Certain officers authorized to rent and furnish offices.

§ 1. The Secretary of State, Comptroller, Treasurer, Surveyor General, and Attorney General, are hereby authorized to each rent suitable room or rooms, in which to transact their official business; as also, each of said officers to procure the furniture necessary for his office, and all necessary books, paper, and stationery for the same.

Rent of rooms to be paid out of State treasury

Proviso.

§ 2. The amount of rent of the room or rooms by said officers, shall be paid by the State Treasury, out of any money not otherwise appropriated on the warrant of the Comptroller of State, drawn for that purpose; provided that the rent of each of said offices does not exceed the sum of four thousand dollars per annum.

Term for which rooms may be rented.

§ 3. The renting of said room or rooms shall not extend beyond the time that suitable places may be provided by the State to transact the official business of said officers.

Commencement of act.

§ 4. This Act to be in force from and after its passage, and a certified copy thereof filed in the office of the Secretary of State.

Chap. 13.

AN ACT appropriating money out of the general fund, to defray the expenses of the Government of the State of California.

Passed February 12th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Appropriation of \$750,000.

And \$250,000.

The sum of seven hundred and fifty thousand dollars shall be, and is hereby, appropriated to defray the expenses of the Government of the State of California, for the fractional fiscal year, ending on the last day of June, one thousand eight hundred and fifty; and the further sum of two hundred and fifty thousand dollars shall be, and is hereby appropriated to defray in part, the expenses of the Government of the State, for a part of the fiscal year commencing on the first day of July, one thousand eight hundred and fifty; to be expended from and after that date; both said sums of money to be paid out of the general fund, not otherwise specially appropriated by law.

Chap. 14.

AN ACT to organize the Supreme Court of California.

Passed February 14, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. There shall be held at the time and place, and during the terms hereinafter appointed, a Court of Record, the name and style whereof shall be the Supreme Court of California.

Court to be held, and style thereof.

§ 2. The Supreme Court shall consist of a Chief Justice, and two Associate Justices, any two of whom shall constitute a quorum. The said Justices shall reside in the State, and shall not absent themselves for a longer period than thirty days, without leave of absence granted by the Legislature.

Judges of court, and where they are to reside.

§ 3. Each Justice of the Supreme Court shall be commissioned by the Governor. Before entering upon the duties of his office, he shall, before any officer competent to administer oaths, take and subscribe the oath prescribed by the Constitution, which oath shall be filed in the office of the Secretary of State, and a certificate thereof endorsed on his commission.

Judges—how commissioned; to take oath of office.

§ 4. The Justices of the Supreme Court shall be elected at general elections by the qualified electors of the State. One of said Justices shall be chosen at the general election of the year one thousand eight hundred and fifty-one, and at the general election every second year thereafter; and shall hold his office for the term of six years from the first day of January next after his election.

Election of judges; their terms of office.

§ 5. When, from any cause, a vacancy or vacancies shall accrue in the office of Justice or Justices of the Supreme Court, it shall be the duty of the Governor to fill the same, by granting a Commission, which shall expire at the next general election by the people: at which election a Justice or Justices shall be chosen for the balance of such unexpired terms.

Vacant judge-ships—how supplied.

§ 6. No Justice of the Supreme Court, who is interested in the event of any suit, or related to either party within the fourth degree, or shall be the father-in-law, son-in-law, or brother-in-law of such party, or who shall have been attorney or counsellor in any suit or proceeding, shall sit on the determination thereof: *Provided*, that when one of said Justices is disqualified from any of the above enumerated causes, and there is a disagreement of opinion between the remaining two Justices, so that no decision can be rendered in any suit or proceeding, upon certificate of such fact from said Court, entered upon the records of the Court, the Governor shall appoint some person, learned in the law, to take the place of the Justice so disqualified, who, together with the remaining two Justices, shall, after re-hearing, determine said suit or proceedings.

Judge interested in suit, or related to either party, &c. not to take part therein. Governor may in certain events fill the place of a judge so disqualified.

§ 7. The Supreme Court shall have appellate jurisdiction in all cases where the matter in dispute exceeds two hundred dollars; in all cases wherein the legality of any tax, toll, or impost, or municipal fine is in question; and in all criminal cases amounting to felony, on questions of law alone. And the said Court, and each of the Justices thereof, shall have power to issue writs of Habeas Corpus, of Mandamus, of Injunction, Certiorari, Supersedeas, and such other writs and processes known to the law, as may be necessary in the exercise of their jurisdiction, and shall be conservators of the peace throughout the State.

Appellate jurisdiction.

Court or a judge may issue certain writs specified.

§ 8. There shall be held at the city of San Francisco, on the first Monday of March next, a special term of the Supreme Court: and thereafter there shall be held, at the seat of Government, two regular terms in each year, to commence severally on the first Monday of June and December. Each term shall continue for eight weeks, unless all causes and proceedings ready for hearing shall be sooner disposed of; and may continue until the first day of the next succeeding term.

Terms of the court.

§ 9. There shall be no discontinuance of any suit, process, proceeding, or matter returnable to, or depending in, the Supreme Court, although a majority of the Judges shall fail to attend, on the first, or any subsequent day of the term; but in such case, any Justice of said Court, or the Sheriff, or in his absence, the Clerk attending the same, may adjourn the Court from day to day, for twenty days suc-

Suit not to abate by Judges failing to attend.

Proceedings where Judges fail to attend.

- sively ; and if a majority of said Justices shall not attend on the twenty-first day, or if a majority shall attend, at any day of the term, and shall afterwards fail to attend for twenty successive days, the Court shall stand adjourned to the next regular term ; and the said Court shall have power, at any time during the term, to adjourn for any number of days not exceeding ten.
- Adjournment of court.** § 10. The concurrence of a majority of the Justices of the Supreme Court shall be necessary to pronounce a judgment. If a majority do not concur, the case or proceeding shall be re-heard and determined in the manner prescribed in this Act.
- Judgment—how pronounced.**
- Report to governor after each term.** § 11. Within ten days after the expiration of every term, the Clerk shall certify to the Governor the number of causes and proceedings on the calendar, the number tried or heard, the number decided, the number remaining undisposed of, and the duration of the term ; which certificate or certificates the Governor shall cause to be published in at least two newspapers printed in this State, and report the same to the next Legislature.
- Seal of the court.** § 12. The Supreme Court shall have a Seal, devised by the Justices thereof, a description of which, in writing, together with a design, shall be deposited in the office of the Secretary of State, and remain a public record. And until such seal be procured, the private seal of the Clerk of said Court shall be the seal thereof.
- Clerk of the court.** § 13. There shall be a Clerk of the Supreme Court, who shall keep his office at the place of holding said Court, and shall perform such duties as may be prescribed by law, and the rules of said Court.
- Sheriff or his deputy to attend court.** § 14. The Sheriff of the county in which the Supreme Court is held, shall, either in person or by deputy, attend upon said Court at every term, and perform such duties as may be prescribed by law, and the rules of said Court.
- Clerk pro tem.** § 15. The Legislature shall have power to appoint some person to perform the duties of Clerk until the Clerk of the Supreme Court is elected by the people, and qualified.
- Power to punish for contempt.** § 16. The Supreme Court shall have power to punish, by fine and imprisonment, or either, for contempt offered by any person to said Court while in Session, and for disobeying any of its processes, rules, and orders, issued or made : *Provided*, that such fine shall not exceed the sum of one thousand dollars, and such imprisonment shall not exceed the term of thirty days, for any one offence ; and the judgment, decrees, and determinations of said Court, in such cases, shall be final and conclusive.
- Rules for government of the supreme and district courts.** § 17. Said Court shall have power to make rules, not inconsistent with the Constitution and laws of the State, for its own government, and the government of the District Court ; but no rules made for the government of the District Court shall be in force until they shall have been published and distributed to the Clerk and Judge of said Courts.
- Power of court on appeal.** § 18. The Supreme Court may reverse, affirm, or modify, the judgment or order appealed from, and its judgment shall be remitted as soon as practicable, after judgment pronounced, to the Court below, to be enforced according to law.

Chap. 15.

AN ACT subdividing the State into Counties and establishing the Seats of Justice therein.

Passed February 18th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Boundaries and seats of justice of counties.

San Diego.

§ 1. The following shall be the boundaries and seats of justice of the several Counties of the State of California, until otherwise determined by law.

§ 2. SAN DIEGO COUNTY—Commencing on the coast of the Pacific, at the mouth of the creek called San Mateo, and running up said creek to its source ; thence due north to the northeast boundary of the State ; thence following said boundary in a southeasterly direction to the Colorado river ; thence

down the middle of the channel of said river to the mouth of the Gila river; thence following the boundary line as established by the treaty of the thirtieth of May, one thousand eight hundred and forty-eight, between the United States and Mexico, to the Pacific Ocean, and three English miles therein; thence in a northwesterly direction, running parallel with the coast, to a point due west of the mouth of the creek San Mateo, and thence due east to the mouth of said creek, which was the place of beginning. The seat of justice shall be at San Diego.

§ 3. COUNTY OF LOS ANGELES—Beginning on the coast of the Pacific at the southern boundary of the farm called Trumfo, and running thence along the summit of the ridge of hills called Santa Susana to the northwestern boundary of the farm called San Francisco; thence along the northern and northeastern boundary of said farm of San Francisco to the farm called Piro; thence in a line running due northeast to the summit of the Coast Range; thence along the summit of said range to the western boundary of San Diego County; thence in a due southerly direction along said boundary to the source of the creek San Mateo; thence down said creek San Mateo to the coast and three English miles into the sea; thence in a northwesterly direction parallel with the coast to a point three miles from land and opposite to the southern boundary of the farm called Trumfo; and thence to the shore at said boundary, which was the point of beginning, including the islands of Santa Catalina and San Clement. The seat of justice shall be Los Angeles. Los Angeles.

§ 4. COUNTY OF SANTA BARBARA—Beginning on the sea coast, at the mouth of the creek called Santa Maria, and running up the middle of said creek to its source; thence due northeast to the summit of the Coast Range, the farm of Santa Maria falling within Santa Barbara county; thence following the summit of the Coast Range to the northwest corner of Los Angeles county; thence along the northwest boundary of said county to the ocean, and three English miles therein; and thence in a northwesterly direction, parallel with the coast, to a point due west of the mouth of Santa Maria creek; thence due east to the mouth of said creek, which was the place of beginning, including the islands of Santa Barbara, San Nicholas, San Miguel, Santa Rosa, Santa Cruz, and all others in the same vicinity. The seat of justice shall be at Santa Barbara. Santa Barbara.

§ 5. COUNTY OF SAN LUIS OBISPO—Beginning three English miles west of the coast, at a point due west of the source of Nacimiento river, and running due east to the source of said river; thence down the middle of said river to its confluence with Monterey river; thence up or down, as the case may be, the middle of Monterey river to the parallel of thirty-six degrees of north latitude; thence due east, following said parallel to the summit of the Coast Range; thence following the summit of said range in a southeasterly direction to the northeast corner of Santa Barbara county; thence following the northern boundary of Santa Barbara county to the ocean, and three English miles therein; and thence in a northwesterly direction, parallel with the coast, to the place of beginning. The seat of justice shall be at San Luis Obispo. San Luis Obispo.

§ 6. COUNTY OF MONTEREY—Beginning at the mouth of Pajaro river, on the bay of Monterey, and running thence up the middle of said stream to its source in the small lake called San Felipe; thence along the northern and western banks of said lake to the creek San Felipe; thence on a line due east to the summit line of the Coast Range; thence along the summit of the Coast Range to the northeast corner of San Luis Obispo county; thence following the northern boundary of San Luis Obispo county to the Pacific Ocean, and three English miles therein; and thence parallel with the coast to the place of beginning. The seat of justice shall be at Monterey. Monterey.

§ 7. COUNTY OF BRANCIORTE—Beginning in the ocean, three English miles from land, at a point due west of the head of San Francisquito creek, and running due east to the summit of the Santa Cruz mountains; thence in a southeasterly direction along the summit of said mountains to the Pajaro river; thence down the middle of said river to the Bay of Monterey and three English miles into the ocean; and thence in a northwesterly direction, parallel with the coast, to the point of beginning. The seat of justice shall be at Santa Cruz. Branciforte.

§ 8. COUNTY OF SAN FRANCISCO—Beginning at a point in the Santa Cruz mountains, at the San Francisco

source of San Francisquito creek, and running thence due west to the Pacific Ocean and three English miles therein; thence following a line of the coast in a northerly direction to a point at low water mark on the north side of the entrance of the Bay of San Francisco; thence along said low water mark, following the western shore, to a point opposite Golden Rock; thence due east to low water mark of Contra Costa county; thence along low water mark to a point opposite the mouth of San Francisquito creek; thence in a direct line to the mouth of San Francisquito creek; thence up the middle of said creek to its source, to the point of beginning, including Alcatrazes, Yerbabuena, and the Rock Islands of the harbor known as the Farallones. The seat of justice shall be at San Francisco.

Santa Clara.

§ 9. COUNTY OF SANTA CLARA—Beginning at the northeast corner of San Francisco county; thence following the boundary line of San Francisco westwardly to the middle of the Bay of San Francisco; thence down the middle of said bay, in a northwesterly direction, to a point opposite the mouth of Alameda creek; thence following up the middle of said creek to its source in the Coast Range; thence due east to the summit of the Coast Range; thence in a southeasterly direction, following the summit of said range, to the northeast corner of Monterey county; thence in a westerly direction, following the northern boundary of Monterey county, to the southeast corner of Branciforte county; thence in a northwesterly direction along the boundary of said county to the place of beginning. The seat of justice shall be at the city of San José

Contra Costa.

§ 10. COUNTY OF CONTRA COSTA—Beginning at the mouth of Alameda creek and running thence in a southwesterly direction to the middle of the Bay of San Francisco; thence in a northerly or northwesterly direction, following as near as may be the middle of the bay to the Straits of San Pablo; thence up the middle of the Bay of San Pablo to the Straits of Carquinez; thence running up the middle of said straits to the Suisun bay, and up the middle of said bay to the mouth of the San Joaquin river; thence following up the middle of said river to the place known as Pescadero or lower crossing; thence in a direct line to the northeast corner of Santa Clara county, which is on the summit of the Coast Range, near the source of Alameda creek; thence down the middle of said creek to its mouth, which was the place of beginning, including the islands of San Pablo, Coreacas, and Tesoro. The seat of justice shall be at the town of Martinez.

Marin.

§ 11. COUNTY OF MARIN—Beginning on the seacoast, at the mouth of the inlet called Estero Americano, and running up the middle of said Estero to its head; thence following the road which leads from Bodega to San Rafael, passing between the two rocks known by the name of Dos Piedros, to the Laguna of San Antonio; thence through the middle of said Laguna to its outlet, which forms the creek of San Antonio; thence following down the middle of said creek to its entrance into Petaluma creek; thence following down the middle of said creek to the Bay of San Pablo, and into said bay to the boundary of Contra Costa county; thence following said county boundary to the boundary of San Francisco county; thence along the boundary of said county to the mouth of the Bay of San Francisco, and three English miles into the ocean; thence in a northerly direction, parallel with the coast, to the place of beginning, including two small islands called Dos Hermanos and Marin islands. This county shall be attached, for judicial purposes, to Sonoma county, until a county government shall be organized for the same in the manner to be prescribed by law.

Sonoma.

§ 12. COUNTY OF SONOMA—Beginning on the sea coast, at the mouth of Russian River, and following up the middle of said river to its source in the range of mountains called Mayacmas; thence in a direct line to the northwestern corner of Napa County; thence down and along the western boundary of Napa County to its termination in Carnero Mountain; thence in a direct line to the nearest point of Carnero Creek; thence down said creek to its entrance into Napa River; thence down the middle of Napa River to its mouth; thence due south to the north line of Contra Costa County; thence down the middle of said bay to the corner of Marin county; thence following the boundary of said county to Petaluma Creek; thence up said creek, following the boundary of Marin County to the Ocean, and three English miles therein; thence in a northerly direction, parallel with the coast, to a point opposite the mouth of Russian River, and thence to said river, which was the place of beginning, including the islands called Yegua or Mare Island. The county seat shall be at Sonoma.

§ 13. COUNTY OF SOLANO—Beginning at the mouth of Napa Creek, and running up the middle of its channel to the mouth of Suscol Creek; thence following up said Creek to the eastern boundary line of Napa County; thence along said boundary line to the northeast corner of Napa County; thence in a direct line to the nearest point of Puto Creek; thence down the middle of said creek to its termination in the Tule marsh; thence in a direct line to the head of Merritt's slough; thence down the middle of said slough to its mouth; thence down the middle of Sacramento River to its mouth; thence down the middle of Suisun Bay to the Straits of Carquinez; and thence through the middle of said straits to the place of beginning. The seat of justice shall be at Benicia. Solano.

§ 14. COUNTY OF YOLA—Beginning on the line which forms the northern and eastern boundary of Solano County at a point due west of the northwest corner of Sutter County, and running due east to the corner of said county, on the Sacramento River; thence down the middle of said river to the northern boundary of Sacramento County; thence due west to the northwest corner of Sacramento County; thence in a southerly direction, following the western boundary of Sacramento County, to the northeast corner of Solano County; thence along the northeastern boundary line of Solano County to the place of beginning. The seat of justice shall be at the town of Fremont. Yola.

§ 15. COUNTY OF NAPA—Commencing in the Napa River, at the mouth of Suscol Creek, and running up said creek to the point of said creek nearest to the range of mountains dividing Napa Valley from Suisun Valley; and thence in a direct line to the nearest point of said range; thence along the summit of said range northwardly to its northern extremity; thence due north to the fortieth parallel of north latitude; thence due west twenty miles; thence southwardly to the nearest point of the range of mountains dividing Napa Valley from Sonoma Valley; thence southwardly along said range of mountains to its termination in Carnero Mountain; thence in a direct line to the nearest point of Carnero Creek; thence down said creek to its junction with Napa River; and thence to the place of beginning. The seat of justice shall be at Napa City. Napa.

§ 16. COUNTY OF MENDOCINO—Beginning on the parallel of forty degrees of north latitude, at a point in the ocean three English miles from land, and running due east on said parallel to the summit of the Coast Range; thence in a southerly direction following the summit of the Coast Range and passing Cache Creek, to Puto Creek; thence following up said creek to its source in the mountain called Mayaemas; thence along the summit of said mountain to the head of Russian River; thence down the middle of said river to its mouth, and three English miles into the ocean; and thence in a northerly direction, parallel with the coast, to the point of beginning. This County shall be attached, for judicial purposes, to Sonoma County, until a county government shall be organized for the same in the manner to be prescribed by law. Mendocino.

§ 17. COUNTY OF SACRAMENTO—Beginning at a point ten miles due north of the mouth of the American River, and running thence in an easterly direction to the junction of the north and south forks of said river; thence up the middle of the principal channel of the south fork to a point one mile above the head of Mormon Island, so as to include said island in Sacramento County; thence in a southerly direction to a point on the Cosumne River eight miles above the house of William Daylor; thence due south to Dry Creek; thence down the middle of said creek to its entrance into the Moquelumna River, or into a large slough in the Tule marsh; thence down the middle of said slough to its junction with the San Joaquin River; thence down the middle of said river to the mouth of the Sacramento River, at the head of Suisun Bay; thence up the middle of the Sacramento to the mouth of Merritt's slough; thence up the middle of said slough to its head; thence up the middle of the Sacramento River to a point due west of the place of beginning, and thence east to the place of beginning. The seat of justice shall be at Sacramento City. Sacramento.

§ 18. COUNTY OF EL DORADO—Beginning at the junction of the north and south forks of the American River, and running thence up the middle of the north fork to the mouth of the middle fork; thence up the middle of said fork to its source; thence in a due easterly direction to the boundary of the State; thence in a southeasterly direction, following the boundary of the El Dorado.

State, to the northeast corner of Calaveras County; thence in a westerly direction along the northern boundary of said county to the southeast corner of Sacramento County; thence in a northerly direction along the boundary of said County to the south fork; and thence down the middle of said fork to its mouth, which was the place of beginning. The seat of justice shall be at Culloma or at Placerville, whichever place shall be chosen by the qualified electors of this County at the first election to be held therein for County Judges.

Sutter. § 19. COUNTY OF SUTTER—Beginning on the Sacramento River at the northwest corner of Sacramento County, and running thence up the middle of said river to a point due west of the mouth of Honeycut Creek; thence due east to the mouth of said creek; thence down the middle of Feather River to the mouth of Bear Creek; thence up Bear Creek to a point six miles from its mouth; thence in a direct line to the junction of the north and middle forks of the American River; thence down the north fork to the junction of the south fork; and thence in a westerly direction, following the northern boundary of Sacramento County, to the place of beginning. The seat of justice shall be at Oro.

Yuba. § 20. COUNTY OF YUBA—Beginning at the mouth of Honeycut Creek, and running up the middle of the same to its source; thence following the dividing ridge between Feather and Yuba Rivers to the summit of the Sierra Nevada; thence east to the boundary of the State; thence south following said boundary to the northeast corner of El Dorado County; thence in a westerly direction, following the northern boundary of said county, to the junction of the north and middle forks of the American River; thence in a northwesterly direction, following the boundary of Sutter County to the mouth of Bear Creek; thence running up the middle of Feather River to the mouth of Honeycut Creek, which was the place of beginning. The seat of justice shall be at Marysville.

Butte § 21. COUNTY OF BUTTE—Beginning on the Sacramento River at the Red Bluffs, in latitude forty degrees thirty-two minutes and twenty-three seconds north, and running thence due east to the dividing ridge which separates the waters flowing into the Sacramento River below the Red Bluffs, and into Feather River, from those flowing into the Sacramento above the Red Bluffs; thence following the top of said ridge to the Sierra Nevada; thence due east to the boundary of the State; thence due south, following said boundary, to the northeast corner of Yuba County; thence following the northwestern boundary of Yuba County to Feather River; thence due west along the northern boundary of Sutter County to the Sacramento River; thence running up the middle of said river to the place of beginning. The seat of justice shall be at Butte, or at Chico, whichever place shall be chosen by the qualified electors of this County at the first election to be held therein for County Judges.

Colusa. § 22. COUNTY OF COLUSA—Beginning at a point on the summit of the Coast Range due west from the Red Bluffs, and running thence due east to said Bluffs on the Sacramento River; thence down the middle of said river to the northwest corner of Sutter County; thence due west, along the northern boundary of Yola County, to the summit of the Coast Range; thence in a northwesterly direction, following the summit of said range, to the point of beginning. This County shall be attached for judicial purposes to Butte County, until a County government shall be organized for the same in the manner to be prescribed by law.

Shasta. § 23. COUNTY OF SHASTA—Beginning on the summit of the Coast Range in latitude forty-two degrees north, and running thence due east to the northeast corner of the State; thence due south, following the boundary of the State, to the northeast corner of Butte County; thence, following the northwestern and northern boundaries of Butte County, to the Sacramento river; thence in a due west direction along the summit of the Coast Range; thence in a northeasterly direction, following the summit of said range, to the place of beginning. The Seat of Justice shall be at Reading's Ranch.

Trinity. § 24. COUNTY OF TRINITY—Beginning on the parallel of forty-two degrees north latitude at a point in the ocean three English miles from shore, and running due east on said parallel to the summit of the Coast Range; thence in a southerly direction to the parallel of forty degrees north latitude; thence due west to the ocean, and three English miles therein; and thence in a northwesterly direction, parallel with the coast, to the point of beginning. This County shall be attached to Shasta County until a County government shall be organized in a manner to be prescribed by law.

§ 25. COUNTY OF CALAVERAS—Beginning at the corner of Sacramento and San Joaquin Counties, Calaveras. thence up the middle of Dry creek to its source; thence following the summit of the dividing ridge between Moquelumne and Cosumne rivers; thence due east to the State boundary line; thence in a southeasterly direction, along the boundary of the State, to the parallel of thirty-eight degrees of north latitude; thence due west to the summit of the Sierra Nevada; thence in a northerly direction, along said summit, to the source of the Stanislaus river; thence down the middle of said river to a point one mile north of Knight's Ferry; thence along the eastern boundary of San Joaquin County to the place of beginning. The County Seat shall be at Pleasant Valley.

§ 26. SAN JOAQUIN—Beginning at the junction of the San Joaquin river, and the large slough San Joaquin. which is the outlet of the Moquelumne river and Dry creek; thence following up the middle of said slough to the mouth of Dry creek; thence up Dry creek to the corner of Sacramento County; thence south to a point one mile north of Lemon's Ranch; thence south to a point one mile north of Knight's ferry on the Stanislaus river; thence down the middle of the Stanislaus river to its confluence with the San Joaquin river; thence due southwest to the summit of the Coast Range; thence in a northwesterly direction, following the summit of said range, to the southern boundary of Contra Costa County; thence in a northeasterly direction, following the boundary of Contra Costa County, to the San Joaquin river; thence down the middle of said river to the place of beginning. The Seat of Justice shall be at Stockton.

§ 27. COUNTY OF TUOLUMNE—Beginning on the summit of the Coast Range at the southwest Tuolumne. corner of Calaveras County, and following in an easterly direction the southern boundary of said county to the summit of the Sierra Nevada; thence in a southeasterly direction, following the summit of the Sierra Nevada, to the dividing ridge between the Tuolumne and Merced rivers; thence following the top of said ridge down to the plains at a point equally distant between the said rivers; thence in a direct line to the San Joaquin river, at a point seven miles below the mouth of the Merced river; thence up the middle of the San Joaquin river to the mouth of the Merced river; thence in a due southwest direction to the summit of the Coast Range, and thence in a northwesterly direction, following the summit of said range, to the place of beginning. The Seat of Justice shall be at the town of Stewart, formerly known as the Sonoranian Camp.

§ 28. COUNTY OF MARIPOSA—Beginning on the summit of the Coast Range at the southwest Mariposa. corner of Tuolumne County, and running thence along the southern boundary of said county, to the summit of the Sierra Nevada; thence along the summit of the Sierra Nevada to the parallel of thirty-eight degrees of north latitude; thence due east, on the said parallel, to the boundary of the State; thence in a southeasterly direction, following said boundary, to the northwest corner of San Diego County; thence due south, along the boundary of San Diego County, to the northeast corner of Los Angeles County; and thence in a northwesterly direction, along the summit of the Coast Range, to the place of beginning. The Seat of Justice shall be at Aqua Fria.

Chap. 16.

AN ACT concerning the revenue, funds, expenditure, and property of the State, and management thereof.

Passed February 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. That all money, debts, and other property belonging to the Treasury proper, together with the General fund. increase and revenue thereof, and the addition which may be made thereto, shall be known and denominated as the general fund.

Proceeds of sales of State lands to form part of general fund.
Moneys paid by general government to form part of general fund.
Penalties and forfeitures to form part of general fund.
Proceeds of any property of the State to form part of general fund.
Specific funds.

§ 2. All money arising from the sale of any land belonging to the State and not otherwise appropriated, or may hereafter belong to it, shall be paid into the State Treasury, and constitute a part of the general fund.

§ 3. All money paid by the General Government, from any other source not otherwise appropriated, shall be paid into the State Treasury, and constitute a part of the general fund.

§ 4. All money received by any public officer for penalties or forfeitures, and not especially appropriated to any other fund, shall also be deemed to be a part of the general fund.

§ 5. All money received for any property of the State, and not specially appropriated, shall be deemed part of the general fund.

§ 6. All other funds not included in the general fund shall be denominated specific funds, and kept under appropriate heads by the Comptroller and Treasurer.

Salaries of government officers.

§ 7. There shall be allowed to the several officers and persons, hereinafter mentioned, their annual salaries as established by law, to be paid quarterly out of any moneys in the Treasury belonging to the general fund and not otherwise specially appropriated by law; that is to say—there shall be paid to, 1st, the Governor ten thousand dollars; and his Private Secretary such salary as may be fixed by law. 2d, To the Secretary of State; 3d, To the Comptroller of State; 4th, To the Treasurer of State; 5th, To the Attorney General; 6th, To the Surveyor General; 7th, To the Justices of the Supreme Court; 8th, To the Judges of the District Courts; 9th, To the Superintendent of public instruction; 10th, To the State Translator: *Provided*, That nothing contained in this Section shall be construed to prevent the Justices of the Supreme Court and the Judges of the District Courts from receiving their first quarterly payment in advance.

Pay in advance to Judges.

Salaries—when to be paid

§ 8. The salaries specified and fixed by law shall be payable for the present fractional fiscal year on the fifteenth day of February, thirty-first day of March, and thirtieth day of June, the several amounts due respectively on those days, and thereafter in quarterly payments on the last days of September, December, March, and June in every year; all such payments shall be made at the Treasury on the warrant of the Comptroller.

Salaries of lieutenant governor and speaker of assembly.

§ 9. There shall be allowed and paid to the Lieutenant Governor double the pay of the members of the Senate. And there shall be allowed and paid to the Speaker of the House of Assembly double the pay of the members of the Assembly for each day's attendance as presiding officer of the House of Assembly.

Pay of president *pro tem.* of senate and speaker *pro tem.* of assembly.

§ 10. The President *pro tempore* of the Senate and the Speaker *pro tempore* of the Assembly shall, while discharging the duties of those offices, be entitled to the *per diem* pay of the presiding officers of the Senate and Assembly.

Certain expenses of public officers to be paid out of general fund.

§ 11. The expenses of the necessary furniture, stationery, firewood, bookbinding, printing, and postage of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Superintendent of Public Instruction, Surveyor General, and State Translator, shall be paid out of the general fund according to law.

Certain expenses of clerk of supreme court to be paid out of general fund.

§ 12. The expenses of the necessary furniture, firewood, blank-books, and stationery of the Clerks of the Supreme and District Courts shall be paid out of the general fund according to law, certified to by the Judges of such courts respectively.

Contingent expenses of government.

§ 13. There shall be paid annually out of the general fund to the order of the Governor, a sum not exceeding five thousand dollars, to defray the contingent expenses of administering the government of the State.

Other charges on general fund.

§ 14. In addition to the salaries and contingent expenses above mentioned, there shall be chargeable to, and from time to time paid out of the general fund,—1st, The compensation fixed in the Constitution of sixteen dollars per day to each of the members of the Senate and Assembly while in attendance, and for mileage for travelling to and going from the seat of government—to be computed according to the distance on the route most usually travelled, at the season of the year when the Legislature is directed to convene—at the rate of sixteen dollars for every twenty miles, and a like allowance for mileage shall be

paid the Lieutenant Governor; 2d, the contingent expenses of each House certified by the principal officers of each House; 3d, the compensation allowed to the officers of each House, as fixed by each House respectively; 4th, the compensation allowed by law for criminal prosecutions, and in keeping and conveying criminals to the place of confinement in the several counties of this State, to be paid on the certificate of the Judges of each court respectively, where such expenses may be incurred; the expenses of all printing done for the State; all moneys directed by law to be paid out of the Treasury not specially charged to any other fund.

Chap. 17.

AN ACT defining the amount of revenue to be collected to defray the expenses of the Government of the State of California, for the year eighteen hundred and fifty.

Passed February 25, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

There shall be levied and collected in the manner prescribed by law, the sums of money hereinafter specified, to defray the expenses of the government of the State of California for the year eighteen hundred and fifty, to wit; on each one hundred dollars' worth of taxable property, fifty cents; and a poll tax of five dollars on every male inhabitant of this State over twenty-one years of age and under fifty years, and not exempt from the payment of a poll tax by law.

Property and poll tax to be levied.

Chap. 18.

AN ACT to establish Pilots and Pilot Regulations for the Port of San Francisco.

Passed February 25, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. It shall be the duty of the Governor to appoint two resident merchants, and two experienced and resident shipmasters, who, together with the harbor master of the port, shall constitute a board of Pilot Commissioners for the Port of San Francisco.

Board of pilot commissioners.

§ 2. The persons thus appointed shall take an oath for the faithful discharge of their duties, and shall hold their office for the term of one year, and until their successors are appointed and qualified.

Commissioners to take oath. Term of office.

§ 3. The Commissioners shall keep an office at San Francisco, and shall meet therein on the first Monday of each month; a majority shall constitute a quorum for the transaction of business.

Commissioners to keep an office, and meet once a month.

§ 4. They shall appoint a Secretary, who shall hold his office for one year. He shall give bond with security to be approved by the Commissioners, payable to the State of California, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duty, which bond shall be filed in the office of the County Clerk, and be for the use of the party aggrieved.

Commissioners may appoint a secretary.

§ 5. The Commissioners shall make by-laws and rules for their own government, not inconsistent with the provisions of the laws of this State or the United States.

By-laws.

§ 6. The Commissioners shall have power to purchase an iron safe for the keeping of money, papers, books, or other things of value belonging to their office.

Iron safe.

§ 7. It shall be the duty of the Secretary to keep correct minutes of all the proceedings of the Commissioners in books provided for that purpose. To receive all money and pay out the same, when

Duties of secretary to commissioners.

ordered so to do by the board, and shall register the names of all pilots, with the date of their licenses; their registers and books shall always be open to public inspection.

Monthly record of arrival and departure of pilot boats, &c., to be kept.

§ 8. He shall keep a monthly record of the arrival and departure of the pilot boats, names and residences of all Pilots, and perform such other duties as the board may direct.

Compensation to secretary.

§ 9. The Secretary shall receive for his compensation such sum as the Commissioners shall deem just.

Commissioners not to be interested in earnings of pilots.

§ 10. Neither the Commissioners nor the Secretary shall have any interest directly or otherwise in any pilot boat or the earnings thereof.

Commissioners may appoint pilots.

§ 11. The Commissioners shall have power to appoint in the manner prescribed in this Act, such number of pilots for said port as they may deem necessary.

Qualification of applicants for license to act as pilots.

§ 12. Persons applying for license to act as pilots for the port of San Francisco shall be American citizens, and not under the age of 21 years; and in presence of one or more licensed pilots shall be rigidly examined by the Commissioners, touching their qualifications concerning their knowledge of the management of square rigged vessels; of the tides, soundings, bearings, and distances of the different shoals, rocks, bars, and points of land, and night lights of the harbor and bay, and if deemed to be qualified shall receive a license as pilot which shall expire at the end of twelve months.

Pilots to give bond.

§ 13. Every licensed Pilot, previous to entering on his duties, shall give bond to the amount of five thousand dollars payable to the State of California, for the faithful discharge of his duty; which bond and security shall be approved of by the Commissioners, and shall be filed in their office.

Pilots may be suspended, or their licenses revoked.

§ 14. The Commissioners shall have full power to suspend Pilots or revoke their licenses, on proof of incapacity or misconduct.

Pilot boats to be numbered and recorded.

§ 15. As soon as a sufficient number of pilots are associated to keep a boat, such boat shall be numbered by the commissioners in the order of application, and her name and number duly recorded by the Secretary, and such number shall be distinctly painted in black figures, to be at least two feet long, and above the balance reef of the foresail of such boat; the pilots shall then select one from their number, whose duty it shall be to make reports to the Commissioners.

One pilot to be selected to make reports.

§ 16. On the first Monday of every month, the person so selected shall pay over to the Secretary the amount of per centage assessed by the Commissioners for the purpose defined in this act, and report the names of the vessels, and amount received from each, verified by his signature.

Pilot selected to report monthly and pay per centage.

§ 17. Every pilot on boarding a vessel, when required by the master thereof, shall exhibit his license to such master, and on refusal so to do, shall be liable to a penalty of fifty dollars.

Pilots to exhibit license.

§ 18. Any pilot absenting himself from his duty for more than two months, except on leave granted by the Commissioners, or by sickness, shall be considered as having forfeited his license.

Pilot's license forfeited by his absenting himself.

§ 19. In case a pilot does not apply at the end of the time for which his license was granted, for a renewal of the same, he shall be considered as suspended.

License suspended if renewal not applied for.

§ 20. If any licensed pilot shall become intoxicated whilst having charge of any vessel as pilot, he shall be suspended or dismissed as the Commissioners may elect.

Pilots may be suspended or dismissed for being intoxicated.

§ 21. Not more than six pilots shall be in co-partnership, or interested at any one time in the business of piloting, and for any infringement of this section shall be subject to such penalty as may be determined by the Commissioners.

Not more than six pilots to be in one copartnership.

§ 22. The Commissioners may require pilots to renew their bonds and securities whenever it is deemed necessary, and they may take away the license of any pilot for wilful infringement or violation of his duty, or negligently losing any vessel, or for mental derangement, or habitual drunkenness, provided due notice in writing be given to such pilot, and an opportunity be afforded him of being heard in his own defence.

Pilots may be required to renew their bonds.

Proviso.

§ 23. For carelessly or negligently losing a vessel, on conviction thereof, the pilot having charge of said vessel at the time shall be incapable ever after of acting as pilot, and shall moreover be liable for damages on his bond. If a vessel be run ashore by a pilot, no pilotage shall be charged, and if negligently done, the pilot shall be liable for all damages.

Penalty on pilot for carelessly losing a vessel.

Vessel run ashore by pilot.

§ 24. It shall be the duty of every pilot in charge of a vessel arriving in the harbor, to have the vessel safely moored in such position as the master of the vessel or harbor master of the port may direct.

Pilot to have vessel safely moored.

§ 25. When complaint is lodged with the Commissioners against a pilot for misbehavior or neglect of duty, it shall be reduced to writing and sworn to; notice thereof must be then given to the pilot, and he shall be notified to appear within fifteen days to answer the complaint. If the answer be not satisfactory, he may be fined not exceeding five hundred dollars or deprived of his license, at the discretion of the Commissioners. An appeal may be made by the pilot within fifteen days from the decision of the Commissioners to the County Court of San Francisco.

Complaints against pilots, and proceedings thereon.

§ 26. Each and every pilot boat shall keep on board a journal noting in detail all incidents of weather, and all discoveries which may be made of rocks, shoals, or bars, in the Bay of San Francisco and vicinity, such as may be considered dangerous to navigation; false entries therein shall subject the parties so offending to fine or loss of license, or both, at the discretion of the Commissioners; and the said journals shall be open to the inspection of the Commissioners.

A journal to be kept on board each pilot boat.

§ 27. No person except those licensed by the Commissioners, shall pilot vessels in or out the Harbor or Bay of San Francisco for hire, under the penalty of five hundred dollars for each and every offence. This penalty is not incurred when the master of a vessel acts as his own pilot, or in case of distress.

Only licensed persons to act as pilots.
Exception.

§ 28. Applications for pilots for vessels outward bound shall be made at the office of the Commissioners. The Secretary shall then direct a pilot to such duty, giving preference to the pilot who brought the vessel in, and a pilot refusing or neglecting, shall be fined not exceeding five hundred dollars, or suspended, according to the discretion of the Commissioners.

Pilots for vessels outward bound.

§ 29. The Commissioners may make all needful rules and regulations for the government of the pilots, and establish penalties for the breach thereof, and shall prepare printed instructions for pilots, and furnish each of them with a copy of such rules, regulations, and instructions, together with a copy of this act.

Rules for regulating pilots may be made.

§ 30. The pilot boats on the station, whenever a pilot is discharged from an outward bound vessel, shall give all reasonable aid for taking out and receiving such pilot, as also for sending him to the city or quarantine.

Pilot boats to aid pilots discharged from outward-bound vessels to return to the city or quarantine.
Fees to pilots.

§ 31. The following fees shall be charged by the pilots of the Port of San Francisco:—

1. For bringing in a vessel from or within a line of San Pedro, Farrallones, and Point de Los Reyes into the harbor, shall be eight dollars per foot draught.
2. For bringing in a vessel beyond the above-mentioned line, ten dollars per foot draught.
3. For piloting a vessel out of the harbor, eight dollars per foot draught.
4. Foreign vessels not entitled to equality by treaty shall pay one fourth more than the above rates.
5. American or foreign men of war, twelve dollars per foot draught, either inward or outward bound.

§ 32. The pilotage from quarantine to the anchorage opposite San Francisco, and for piloting vessels about the harbor, shall be at such rates as may be agreed on between the parties.

Pilotage in certain cases depends on agreement of parties.

§ 33. Any vessel with a pilot on board being detained more than twenty-four hours by contrary winds, bad weather, or other cause not the fault of the pilot, shall pay to such pilot the sum of eight dollars per day, exclusive of his regular fees, for each day's detention, whether such vessel be inward or outward bound.

Per diem allowance to pilots where vessel detained by bad weather.

§ 34. The pilot first offering his services to any vessel shall be entitled to half pilotage, though his services may be rejected; provided that all vessels engaged in the coasting trade of this State or Oregon, not exceeding one hundred and seventy-five tons burden, shall not be liable to the provisions of this section.

Pilot offering his services and rejected to have half pilotage.
Proviso.

§ 35. Pilots blown off or carried to sea against their will, when a boat is in attendance to receive them, shall be entitled to receive the sum of eight dollars per day while absent, which, if not paid by the master or owners, shall be collected from the consignee or consignees, or either of them.

Pilots carried to sea entitled to per diem allowance.

Pilots to be compensated for extra services.

§ 36. The master, owner, or consignee of any vessel to whom any pilot may have rendered, upon request of either of them, any extra service for the preservation of such vessel, while in distress, shall pay such pilot, in addition to his regular fees, such amount as the Commissioners shall determine to be a reasonable and just reward; provided no special agreement shall have been made between such master, owner, or consignee of such vessel and the pilot.

Pilot to have full pilotage on board vessel signalling for a pilot.

§ 37. A pilot boarding any vessel having a signal for a pilot, shall be entitled to receive full pilotage.

Cases of vessels unable to obtain a pilot, and afterwards lost, to be investigated.

§ 38. If a vessel, bound to San Francisco, be lost within the line of San Pedro, Farrallones, and de Los Reyes, having had a signal for a pilot, and been in sight of either of the above named points, and not having been able to procure a pilot, the Commissioners shall cause inquiry into the facts, when, if it shall appear that the pilots have been neglecting their duty, the Commissioners shall suspend or displace the parties guilty, and shall publish the result of their investigations.

Assessment and application of penalties.

§ 39. The Commissioners shall have power to assess all fines, and penalties, either on the pilots or any other person or persons, for a violation of any of the provisions of this act, and shall have power to sue for and collect the same in their own name; the money so collected shall be appropriated to the use and benefit of the Marine Hospital, which may be established at San Francisco, and paid to such person as may be entitled by law to receive the same.

Charge for pilot license.

§ 40. The Commissioners shall be entitled to charge for each and every license to a pilot not exceeding the sum of fifty dollars, and any master of a coasting vessel, being an American citizen, can, upon application to the Pilot Commissioners, obtain a special license for the use of such vessel only, by paying unto said Commissioners for the same at the rate of one dollar per ton; all such vessels to be under one hundred and seventy-five tons.

Special license.

Commissioners entitled to a per centage on earnings of pilots.

§ 41. The Commissioners shall be entitled to receive a per centage, which they shall determine, upon the joint earnings of the pilots, sufficient only to pay all necessary expenses for the employment of Secretary, rent of office, stationery, lights, and fuel; at the end of twelve months, any surplus of such per centage over and above such expenses, shall be held in trust, and paid as prescribed in section thirty-nine of this act.

Claims against commissioners.

§ 42. All claims against said Commissioners shall be considered at a stated meeting, and if correct shall be allowed and paid.

Commissioners to publish account of receipts and expenditures, Pilots to go to vessel nearest the shore or in the most distress.

§ 43. At the expiration of every six months the Secretary shall cause to be published in a newspaper published in San Francisco, a full account of all receipts and expenditures for the said time.

§ 44. When cruising off or standing out to sea, Pilots shall go to the vessel nearest shore, or in the most distress, under a penalty of one hundred dollars, and for refusing to go on board a vessel when required, a like penalty of one hundred dollars shall be imposed, and in either case upon complaint and conviction, the Pilot may be suspended or expelled at the discretion of the Commissioner.

Pilots to keep at all times a seaworthy boat.

§ 45. Pilots shall at all times keep a boat in good condition and seaworthy, and of sufficient capacity to cruise seaward beyond the headlands of the harbor, also such boarding or row boats as shall be necessary.

Loss sustained by pilot in endeavoring to assist a vessel in distress to be reimbursed to him.

§ 46. If any Pilot, in endeavoring to assist or relieve any vessel in distress, shall suffer loss or damage in his boats, sail, tackle, rigging, or appurtenances, the master, owner, or consignee of such vessel shall pay the value of such loss or damage to be assessed by the Commissioners.

Pilots heretofore appointed subject to this act.

§ 47. Pilots heretofore appointed, or who may hereafter be appointed, shall conform to and be governed by the provisions of this Act and such quarantine laws as may hereafter be enacted.

Repeal of former act.

§ 48. That the Act entitled "an Act in relation to the appointment of Pilots for the different ports and harbors of California," approved January the eighth, one thousand eight hundred and fifty, so far as relates to the Port of San Francisco, be, and the same is hereby repealed.

Chap. 19.

AN ACT authorizing a loan on the faith and credit of the State, to pay the expenses of the civil government thereof.

Passed February 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That by virtue of the power granted to the Legislature in the sixteenth section of the schedule of the Constitution of this State, a loan not exceeding one million of dollars is hereby authorized to be negotiated, on the faith and credit of the State, to be paid at the expiration of twenty years, but payable at any time after ten years from the date thereof, or any part thereof, at the pleasure of the State; said loan to bear an interest not exceeding ten per centum per annum, payable semi-annually in New York, and not to be negotiated for less than the par value thereof.

Loan not exceeding \$1,000,000 authorized.

§ 2. The bonds to be issued for the payment of the loan authorized by this Act, shall be signed by the Governor, countersigned by the Comptroller, and endorsed by the Treasurer, and authenticated with the great seal of the State of California. The coupons or certificates for the payment of the interest shall be attached to said bonds in such manner that they may be taken off without injury to the bonds.

Bonds—how to be signed, &c.

§ 3. Sealed proposals or bids may be made to the Treasurer up to the noon on such day as he may designate, not exceeding twenty days, from the day on which this Act shall receive the approval of the Governor, for any part or the whole of said loan; the said bids or proposals must state distinctly the rate of interest, the amount, and the terms, whether the whole loan bid for is to be paid in cash or in instalments, and the conditions of so paying, and the guarantees for the faithful performance of the contract, stating substantially what the security is proposed to be given, and to state also, that additional security will be given if required. No bids shall be received for a less sum than ten thousand dollars, nor for any fractional part thereof. The Treasurer shall give notice through two public newspapers published in San Francisco, of the time and place of receiving such bids, and two weekly publications shall be made before the day fixed for receiving such bids.

Proposals for loan—how and when to be made.

§ 4. The Treasurer shall, immediately after the closing of said bids, or as soon thereafter as convenient, open the whole of any bids or proposals in the presence of the Governor, and any joint committee of both Houses of the Legislature who may be present for that purpose, but the presence of such Committee shall not be indispensable to the opening of said bids, but the Treasurer and Governor shall proceed to open the said bids in their absence.

Notice of time and place of receiving proposals.

Proposals—how and when to be opened.

§ 5. The Governor and Treasurer shall proceed to consider all such proposals and select such as they may deem best for the interest of the State, and should any bids be made payable in monthly instalments, commencing not later than the first day of July, one thousand eight hundred and fifty, in such sums as the wants of the State demand, the Governor and Treasurer may accept said bids, to be paid in monthly instalments with such guarantees as they may prescribe.

Governor and treasurer to select proposals to be accepted.

§ 6. As an earnest that such bidder or bidders will take and comply with any bid or bids under the provisions of this Act, it is hereby required that he or they shall, as a pre-requisite, pay into the Treasury, at least twenty days previous to the adjournment of the present session of the Legislature, ten per cent. of the amount bid for in cash or bonds of the temporary State loan.

Ten per cent. of amount bid for to be paid into treasury.

§ 7. If the bidder or bidders make it a condition in taking said loan, that a larger amount of bonds shall be advanced to them than is paid for at the time, the Governor, and Treasurer, and Comptroller, are hereby authorized to make such advance of bonds, not exceeding at any one time one hundred and fifty thousand dollars; but said advance in no instance shall be made until such bidder or bidders shall execute a bond or bonds payable to the State of California in double the amount of bonds thus advanced, with such surety or sureties as may be required by the Governor, and Treasurer, and Comptroller.

An advance of bonds, not exceeding \$150,000 at one time, may be made.

Bonds—form of, and interest thereon.

§ 8. Such bonds shall be of such form as the Treasurer may adopt, and shall bear interest from their date, and in the event of an advance of the same to any contractor or contractors, as in the foregoing section of this Act prescribed, said contractor or contractors shall pay to the State Treasurer all interest that may accrue on said bonds between the date thereof and the time of payment of the principal.

No bond for less than \$5,000.

§ 9. No bond issued by virtue of the provisions of this Act shall be of a less denomination than five thousand dollars.

Bonds given by contractors for loan to be deposited with treasurer; his duty respecting same.

§ 10. The bond or bonds executed by the Contractor or Contractors, shall be deposited with the Treasurer of State, and in the event of a breach of the condition therein specified, said Treasurer shall deliver the same to the Comptroller, whose duty it shall be to cause suit or suits to be instituted thereon according to law; or the contracting party when the conditions thereof have been fully complied with.

Form of obligations for advance of bonds.

§ 11. Said obligations for the advance of bonds, as aforesaid, shall contain such stipulations for the faithful performance of the undertaking to pay the amount of bonds that may be advanced with such conditions as the Governor and Treasurer may prescribe, and shall be attested by the Comptroller.

Governor and treasurer may receive back bonds.

§ 12. The Governor and Treasurer of State may at any time in their sound discretion receive back any bonds advanced by virtue of the provisions of this Act remaining unsold, or the sale of which may not be required to meet the expenditures chargeable on the Treasury by virtue of appropriations made by law.

Treasurer to provide for interest on loan.

§ 13. The Treasurer shall provide for and pay out of the first money in the Treasury arising from the public revenue, the interest semi-annually on said bonds at the place stipulated by the parties.

What may be received in payment of loan.

§ 14. If a loan is contracted under this Act the Treasurer shall receive gold and silver coin at the United States value, and gold dust at sixteen dollars per ounce, Troy, and any liability of the State in payment, and nothing else.

Part of loan may be conditional as to amount.

§ 15. If bids or offers are made for a sufficient amount in any of the modes prescribed in this Act, and under the restrictions imposed, to pay and meet all the public expenditures of the State for the present year, up to the first day of January one thousand eight hundred and fifty-one, including any appropriations which may be made for public buildings, such amount shall be secured and contracted for and no more, as near as the Governor, and Treasurer, and Comptroller may be able to ascertain, and they may make a part of said loan conditional for such amount as may thereafter be ascertained.

State credit and lands and revenues pledged for payment of loan and interest.

§ 16. The faith and credit of the State, and all the public lands which may be granted to the State by Congress, not heretofore otherwise appropriated, and all public revenues, are hereby pledged to pay the interest punctually and redeem the principal of said loan.

Chap. 20.

AN ACT to incorporate Sacramento City.

Passed February 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Boundaries of city.

§ 1. All that tract of land lying within the limits and boundaries hereinafter mentioned, that is to say: Beginning at the junction of the American Fork with the Sacramento River; thence down said Sacramento River to Y Street, as designated on the map or plan of Sacramento City on file in the Recorder's office in said City; thence along said Y Street east to the point where said Y Street intersects Thirty-first Street, as designated on said map; thence along the said Thirty-first Street until the same intersects the American Fork; thence along the American Fork to the place of beginning, the said boundaries extending to the middle of said Sacramento River and American Fork, shall henceforth be known by the name of Sacramento City.

§ 2. For the Government of said City, there shall be a Mayor, Recorder, and Council to consist of nine members, one of whom shall be elected President; the said Mayor, Recorder, and Councilmen shall be a body politic and corporate, by the name and style of "the Mayor, Recorder, and Common Council of Sacramento City," and by that name, they and their successors shall be known in law, have perpetual succession, sue, and be sued, in all Courts, and in all actions whatsoever, may grant, purchase, hold, and receive property, real and personal, within said City, and may lease, sell, and dispose of the same for the benefit of the City, and may have a common seal, and alter the same at pleasure; *Provided*, that they shall purchase, or receive, no real estate, other than such land or lots within the same as shall be necessary for the erection thereon of public buildings, or for the laying out of streets, or public grounds, or such lands without the City, as may be required for burial grounds.

Government of city vested in mayor, recorder, and common council.

Proviso.

§ 3. There shall be elected in said City, at the time, and in the manner hereinafter prescribed, a Mayor, Recorder, nine Councilmen, a City Marshal, a City Attorney, Assessor, and Treasurer; but no person shall be eligible to any of said offices, nor to any other office which may be established by ordinance, nor shall any person be entitled to vote for the same, who shall not be a qualified elector according to the Constitution and Laws of this State, and who shall not have resided in said City for thirty days next preceding the election.

Election of municipal officers.

§ 4. The members of the Common Council elected under this Act, shall assemble within five days after their election, and choose a presiding officer of their number, and some other suitable person as Clerk. In case of the absence of the President, they may elect a President *pro tempore*, who shall have the power, and perform all the duties of President. They shall by ordinance fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as the Council may previously, by ordinance, have prescribed. They shall judge of the qualifications, elections, and returns of their own members, and the other officers, elected under this Act, and determine contested elections. They may determine rules for their own proceedings, punish any member, or other person, for disorderly conduct in their presence, and with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause. They shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on any question, and their proceedings shall be public.

Meeting of common council, and their powers.

To keep a journal.

§ 5. The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and Laws of the United States, or of this State; to prevent and remove nuisances; to provide for licensing, and regulating, and restraining theatrical and other amusements within the City; to provide for licensing all business not prohibited by law; to fix the amount of license tax for the same, provided it shall not exceed the amount of the State tax for similar business, and shall be proportioned to the amount of business done by each person; to regulate and establish markets; to establish a Board of Health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances; and to provide for the punishment of breaches of the City ordinances, provided that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than ten days; to levy and collect taxes; to lay out, and extend, alter, or widen streets and alleys; to establish and regulate a police; to make appropriations for any object of City expenditures; to erect and maintain Poor Houses and Hospitals; to prevent the introduction and spreading of diseases; to erect, repair, and regulate wharves and the rates of wharfage; to regulate the landing and stationing of steamboats, rafts, and all water craft; and to pass such other by-laws and ordinances for the regulation and police of said City, as they shall deem necessary, which by-laws or ordinances shall be published in some newspaper printed in said City.

Common council may make by-laws for the purposes specified.

§ 6. The City Council shall have power to borrow money, and pledge the faith of the City

City council may borrow money.

thereupon. *Provided*, the aggregate amount of the debts of the City shall never exceed its annual estimated revenues.

Amount of taxes to be levied.

§ 7. The aggregate amount of taxes levied by said Council shall not exceed the sum of one hundred thousand dollars per annum, without the assent of the inhabitants expressly given. If, in the opinion of the said Common Council more money shall be required for the necessary purposes of the municipal government of said City than is authorized to be levied and collected, as above specified, it shall be the duty of the said Council to request the Mayor to issue his proclamation to the people, stating the amount thus required, and the purposes and objects for which it is to be expended, at least ten days before the same shall be voted upon by the qualified electors of the City, and if they shall, by a majority of votes, authorize the collection of said sum, the said sum shall be collected, and not otherwise.

Demands on city to be audited by president of the common council.

§ 8. All accounts and demands against said City shall be audited by the President of the Common Council; and no money shall be drawn from the City Treasury, unless upon the certificate of the President by order of said Council. Whenever any demand is just and payable, he shall issue his certificate in favor of the person to whom the same is payable, signed with his hand, upon the Treasurer of said City, specifying the fund out of which the same is payable, and the Treasurer shall pay the same out of any money in his hands belonging to said fund.

Common council to fix and publish the salaries and fees of the mayor and other city officers.

§ 9. It shall be the duty of the Common Council to establish and fix the salaries of the Mayor and other city officers, and also to establish and fix a tariff of fees for the officers entitled to such, designating the fee which shall be allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by said Common Council.

Ordinances to be approved by mayor.

§ 10. Every ordinance which shall have been passed by the Common Council shall, before it becomes effective, be presented to the Mayor for his approbation; if he approves he shall sign it, if not he shall return it, with his objections in writing, to the Common Council, who shall cause the same to be entered upon the journal, and shall proceed to reconsider the same; if after such reconsideration two thirds of all the members of the Common Council elect shall agree to pass the same, it shall become an ordinance. In all such cases the votes shall be taken by yeas and nays; and the names of the members voting for and against the same shall be entered on the journal of the Common Council. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective, as if the Mayor had signed it.

Approval of mayor dispensed with.

Mayor to report to common council at least once a year on condition of city.

§ 11. It shall be the duty of the Mayor to communicate to the Common Council at least once a year, and oftener if he shall deem it expedient, a general statement of the situation and condition of the City in relation to its government, finances, and improvements; to recommend to the Common Council the adoption of all such measures connected with the police, health, cleanliness, and ornament of the City, and the improvement of its government and finances, as he shall deem expedient; to be vigilant and active in causing the laws and ordinances of the government of the City to be duly executed and enforced; to exercise a constant supervision and control over the conduct and acts of all subordinate officers; to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same; and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filled as hereinafter mentioned.

Other duties of mayor.

Jurisdiction of recorder as to offences committed within the city.

§ 12. The Recorder, as to offences committed within the limits of the City, shall have the same jurisdiction as is or may be conferred upon Justices of the Peace, and shall have the same power as a Justice of the Peace to examine and commit persons brought before him charged with the commission of crimes within the limits of the City; to take recognisances to appear or to keep the peace, and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices of the Peace.

Further jurisdiction of recorder.

§ 13. The Recorder shall also have jurisdiction over all violations of City ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison persons found guilty of any violation thereof.

§ 14. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all processes issued by the Recorder, or directed to him by any legal authority, and to attend upon the Recorder's court regularly; he may appoint one or more Deputies, who shall possess the same power and authority as the Marshal; he shall arrest all persons guilty of a breach of the peace and violation of City ordinances, and bring them before the Recorder for trial, and he shall possess a superintending control over the City Police. He shall also, until otherwise provided by ordinances, perform all the duties of collector of City taxes.

Duties of city marshal.

§ 15. It shall be the duty of the Assessor, in addition to the duties that may be prescribed to him by the Common Council, to make out within such time as the Council shall order, a correct list of all the property taxable by law within the limits of said City, with the valuation thereof, which list certified by him shall be returnable to the Common Council. The mode of making out said list, and ascertaining the valuation of property, and collecting all taxes, shall be the same as that prescribed by law for assessing and collecting the State tax.

Duties of assessor.

§ 16. It shall be the duty of the City Attorney to attend to all suits, matters, and things that the City may be legally interested in, to give his advice in writing, if requested, to the Mayor or Common Council, and do and perform all such things touching his office, as by the Common Council may be required of him.

Duties of city attorney.

§ 17. It shall be the duty of the Treasurer to receive all moneys that shall come to said city, either by taxation or otherwise, and to pay the same out on the certificate of the President of the Common Council: and to do and perform all such other acts, as shall be prescribed to him by the Common Council. He shall, on the first day of January, April, July, and October of each year, make out and present to the Mayor, a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published in some newspaper printed in the city.

Duties of treasurer.

§ 18. The Common Council shall have power to create the office of City Collector, Harbor Master, and such other officers as they may deem necessary, and to prescribe the duty of all city officers subject to the provisions of this act.

Common council may create certain offices.

§ 19. All city officers, before entering upon the duties of their office, shall take the oath of office. The Marshal, Attorney, Assessor, and Treasurer, shall also give bond with securities to be approved by the Mayor, payable to the "Mayor, Recorder, and Common Council of Sacramento City," in such penalty as may be prescribed by ordinance conditioned for the faithful performance of the duties of their office; and the like bond may be required of any officer, whose office may be created by ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

All city officers to take oath of office, and certain to give bond.

§ 20. On the thirtieth day after the passage of this act, unless it fall on Sunday, then on the thirty-first day after its passage, there shall be held in Sacramento City, an election to fill all the offices created by this charter. At said election, the electors present shall appoint three persons to act as judges, who shall, with two clerks, to be appointed by them (the said officers having been first sworn), conduct the election, and declare the result. The persons who shall have received a plurality of votes for the several offices, shall be declared duly elected. An election shall be held for the several officers provided for in the third section of this act, and the Mayor, Recorder, and Councilmen chosen at said election shall be qualified within three days thereafter, and shall enter upon the discharge of their duties. The other officers elected shall qualify within ten days after the day of election. The said officers shall hold their offices until the first Monday of May next, and until their successors are elected and qualified.

Election of officers.

§ 21. After the first election, the officers mentioned in the second section of this act, and all others whose offices may be created by ordinance, shall be elected on the first Monday in May of each year; and shall hold office for the term of one year, and until their successors are chosen and qualified. In case of a vacancy in any city office, an election shall be ordered, to fill the same. It shall be the duty of the council to order all elections, and to designate the place of holding the same; to give at least

Subsequent election of officers.

ten days' notice thereof, and to appoint three persons to act as judges, at each place of voting; said judges shall appoint two clerks, and shall conduct such election according to the general regulations prescribed by law, concerning elections. In case any of said judges fail to attend, the electors present may appoint others in their stead. The returns of all elections shall be made to the council, who shall declare the result.

Offices—when deemed vacant.

§ 22. If any person elected to any city office, shall remove from the city, absent himself therefrom for more than thirty days, without leave from the council, or shall fail to qualify within ten days after the day of election, his office shall be deemed vacant.

Debts contracted by president and city council prior to Oct. 13, 1849, to be presented to common council, who may allow or reject same. Rejection of claim to be no bar to action therefor.

§ 23. All debts contracted by the President and City Council of Sacramento City, under the charter adopted by the people of said city, on the thirteenth day of October, A.D. 1849, shall be presented for allowance to the Common Council, created by this charter, and if said Council shall be satisfied of the justice of any such claim, it shall allow and audit it, and make provision for its speedy payment. If any claim be rejected, the party offering it shall have the right to bring suit thereon, against the corporation in any court of competent jurisdiction, and if adjudged to be just and equitable in said court, the corporation shall pay the same, with the right to either party to appeal as in ordinary cases.

Chap. 21.

AN ACT concerning the Official Bonds of Officers.

Passed February 28, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

How official bonds to be approved and filed.

§ 1. The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the Secretary of State shall be approved by the Governor, and filed and recorded in the office of the County Clerk of the County in which the seat of Government is fixed; the official bond of the Attorney General, Surveyor General, Comptroller, Treasurer, State Printer, and Clerk of the Supreme Court shall be approved by the Governor, filed and recorded in the office of the Secretary of State; the official bond of each District Attorney shall be approved by the Judge of the District, filed and recorded in the office of the County Clerk of any one of the Counties in the District which may be designated by said Judge; the official bonds of Sheriffs, Coroners, Justices of the Peace, and all other County Officers shall be approved by the County Judge, filed and recorded in the office of the County Clerk of their respective Counties; the official bonds of County Clerks shall be approved by the County Judge and filed and recorded in the office of County Recorder.

Approval to be endorsed, &c.

§ 2. The approval of every official bond shall be endorsed thereon, and signed by the Court or Officer approving the same.

Bond not to be filed until approved.

§ 3. No Officer, with whom any official bond is required to be filed, shall file and take charge of such bond until approved as prescribed by law.

Penalty for entering on duties of office without executing and filing bond.

§ 4. If any person, elected or appointed to any office, shall perform any of the duties thereof without having executed and filed in the proper office any bond required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand dollars, and his office be declared vacant.

Officer with whom bonds filed to preserve same and give certified copies.

§ 5. It shall be the duty of every officer, with whom said bonds shall be filed, carefully to record, keep, and preserve the same, and give certified copies thereof, sealed with the seal of his office, to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

Form of official bonds.

§ 6. All official bonds, required by law of Officers, shall be in form, joint and several, and made payable to the State of California, in such penalty, and with such conditions as shall be required by law.

§ 7. Every official bond, executed by any Officer pursuant to law, shall be deemed and taken to be in force, and obligatory upon the principal and sureties therein, for any and all breaches of the condition or conditions thereof, committed during the time such Officer shall continue to discharge any of the duties, or hold such office.

Continuance in force of official bonds.

§ 8. Every such bond shall be deemed to be in force, and obligatory upon the principal and sureties therein, for the faithful discharge of all duties which may be required of such Officer by any law enacted subsequently to the execution of such bond, and such condition shall be expressed therein.

Subsequently enacted laws to apply to such bonds.

§ 9. Every official bond, executed by any Officer pursuant to law, shall be in force, and obligatory upon the principal and sureties therein, to and for the State of California, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such Officer in his official capacity; and any person, so injured or aggrieved, may bring suit on such bond, in his own name, without an assignment thereof.

Suit may be brought on such bond by person aggrieved without any assignment being made thereof.

§ 10. Any such bond shall not be void on the first recovery of a judgment thereon; but suit or suits may be afterwards brought on said bonds, from time to time, and judgment recovered thereon by the State of California, or by any person to whom a right of action may have accrued against such officer and his sureties on said bond, until the whole penalty of said bond shall be exhausted.

Suits may be brought on such bonds until whole penalty exhausted.

§ 11. Whenever any such official bond shall not contain the substantial matter, or condition or conditions required by law, or there shall be any defects in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be equitably bound to the State or party interested, and the State or such party may, by action instituted as other suits on official bonds, in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his proper and equitable demand or damages from such officer and the person or persons who intended to become and were included as sureties in such bond.

Defects in filing or approval of bond not to render same void.

§ 12. A copy of any official bond, certified to be correct by the officer having the custody thereof, shall be received as evidence in all courts in this State, in like manner as the original.

Certified copy of bond receivable as evidence.

§ 13. All the provisions and requirements of this Act shall apply to the official bond of any officer whose office shall be established hereafter, unless the contrary shall be expressly provided.

This act to apply to bonds of officers after created.

§ 14. Whenever the sureties, or any one of them, in the official bond of any County Clerk, Sheriff, Coroner, Justice of the Peace, or other county officer, shall remove without the State, become insolvent, or insufficient, or the penalty of such bond shall become insufficient, on account of recoveries had thereon, or otherwise, it shall be the duty of the County Judge of the proper county, of his own motion, or on the showing of any person supported by an affidavit, to summon any such officer to appear before him, at a time stated, not less than three days after service of such summons, and show cause why he should not execute an additional official bond, with good and sufficient surety or sureties.

Certain officers may be summoned to show cause why additional bonds should not be given.

§ 15. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence; if said judge shall be of opinion, after examination, that the bond of such officer has become insufficient from any of the causes enumerated in the preceding section of this Act, he shall require a further bond, with such security as may be deemed necessary, to be executed and filed within such time as he may order.

Officer failing to appear, matter may be inquired into in his absence, and additional bond ordered.

§ 16. Whenever the official bond of the Clerk of the Supreme Court or of any District Attorney shall become insufficient from any of the causes enumerated in the fourteenth section of this Act, the like proceedings may be had before the Supreme Court in reference to the Clerk thereof, and before the District Court in reference to the District Attorney thereof; and whenever the official bond of the Attorney General, Surveyor General, Comptroller, Treasurer, or State Printer shall become insufficient from any of the said causes, the like proceeding may be had before the District Court for the county in which the seat of government is located; provided, that such proceedings shall be commenced by motion of any person made in open court and supported by affidavit, or as to the official bond of said Clerk of the Supreme Court, District Attorneys, Surveyor General, Comptroller, Treasurer, or State Printer, upon the relation of the Attorney General.

Official bonds of clerk of supreme court and district attorneys.

Attorney general, surveyor general, comptroller, treasurer, or State printer.

Failing to file a new bond when required.

Form of additional bonds.

Their effect.

Additional bond not to discharge original.

Officer and sureties liable on both bonds.

Separate judgments on both bonds.

One surety may recover contribution for the other.

Discharge of sureties.

Number of sureties.

Commencement of act.

§ 17. If any officer, when required so to do, shall fail to file a new bond, his office shall be deemed vacant.

§ 18. Such additional bond shall be in such penalty as shall be directed by the court, and shall be in all other respects similar to the original bond, and shall be approved before and filed with the same officer as required in case of the approval and filing of such original bond. Every such additional bond, filed and approved as aforesaid, shall be of like force and obligation upon the principal and sureties therein from the time of its execution, and shall subject the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

§ 19. In no case provided in the preceding sections of this Act shall the original be discharged or affected when additional bond has been given, as herein required, but the same shall remain of like force and obligation as if such additional bond had not been given.

§ 20. Such officer and his sureties shall be liable to any party injured or aggrieved by any breach or breaches of any condition or conditions of any such official bond, after the execution of such additional bond, upon either or both of said bonds, and such party may bring his action in such case upon either bond, or he may bring separate actions on said bonds respectively, and may assign the cause or causes of action, and recover judgment therefor in each suit.

§ 21. If separate judgments shall be recovered on said bonds by such party for the same cause or causes of action, he shall be entitled to have execution issued on such judgments respectively, but he shall only collect, by execution or otherwise, the amount actually adjudged to him on such like cause or causes of action, in one of said suits, together with the costs of both suits.

§ 22. Whenever the sureties in either bond shall have been compelled to pay any sum of money on account of the principal obligor therein, they shall be entitled to recover, in any court of competent jurisdiction, of the sureties in the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other, and to the sums thus paid respectively.

§ 23. Whenever any sureties for any officer wish to be discharged from their liability, they and such officer may procure the same to be done, if such officer will file a new bond, with sufficient sureties, in like form and penalty and with like conditions as the original bond of said officer, to be approved and filed as such original bond. Upon the filing and approval of such new bond such first sureties shall be exonerated from all further liability, but their bond shall remain in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond shall in all respects be the same and may be enforced in like manner as the liability of the sureties in the original bond.

§ 24. Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer.

§ 25. This Act shall be in force from and after its passage.

Chap. 22.

AN ACT authorizing the Clerk of the Supreme Court to rent a Court Room in the City of San Francisco.

Passed February 28, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Clerk of supreme court may hire and furnish a court-room.

§ 1. The Clerk of Supreme Court of this State shall be and is hereby authorized to rent a suitable room in which to hold the March Term eighteen hundred and fifty of said Court, in the City of San Francisco, and provide the necessary furniture, stationery, and fuel for said court room ; provided the rent of said room shall not exceed one thousand dollars per month.

§ 2. The amount required for the rent of said room, and for the purchase of such furniture, stationery, and fuel, shall be paid out of the general fund, on the warrant of the Comptroller, founded on the certificate of said Clerk. Rent, &c., to be paid out of general fund.

Chap. 23.

AN ACT to supersede certain Courts, and to regulate Appeals therefrom to the Supreme Court.

Passed February 28, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The Courts known and distinguished as the Courts of Second Instance and the Courts of Third Instance, are hereby declared to be superseded; and all laws conferring jurisdiction upon them, or either of them, or relating to their powers and proceedings, are abolished. Courts of second and third instance superseded.

§ 2. The Courts of First Instance, heretofore established and now acting as such, are recognised as existing Courts of this State, and they shall continue to possess the jurisdiction and exercise the powers conferred on them by law, until they shall be superseded as hereinafter provided. Courts of first instance continued until superseded, as after provided.

§ 3. Appeals from any judgment, order, or determination of the Court of Second Instance, or of any Court of First Instance, which have heretofore been taken in any cause or proceeding, civil or criminal, and which remain undecided, and all business of the said Court of Second Instance and of the said Court of Third Instance, which has not been disposed of, and all judgments and orders of such last mentioned Courts which have not been executed, are hereby transferred to and vested in the Supreme Court, which shall hereafter have exclusive jurisdiction thereof. Appeals from courts of first or second instance and business of courts of second and third instance, transferred to supreme court.

§ 4. All books, papers, and documents, and all bonds, recognisances, and other securities, in any way relating to the business of said Courts of Second and Third Instance, or to judgments, orders, suits, or legal proceedings therein, shall be delivered to the Clerk of the Supreme Court, on his application therefor, and shall be by him deposited and kept in his office, subject to the order of the Supreme Court. Books, &c., relating to business of courts of second and third instance to be delivered to clerk of supreme court.

§ 5. All appeals from any judgment, order, or determination, which shall hereafter be made or rendered by any Court of First Instance, shall be taken to and vested in the Supreme Court. Appeals from court of first instance to supreme court.

§ 6. Such appeal shall be made by the service of a notice in writing on the adverse party or his attorney, and on the Judge or Clerk with whom the judgment or order appealed from is entered, stating the appeal from the same or some specified part thereof. The appeal may be taken from any final judgment of any Court of First Instance, rendered since the first day of January, A. D. one thousand eight hundred and forty-seven, or from any judgment or order of said Court which may be rendered at any time hereafter, and such appeal may be taken at any time within one year after the passage of this Act; but no reversal of any judgment or order of said Court by the Supreme Court shall take away or impair rights acquired by third persons in good faith under such judgment while it was in force. Notice of appeal.
From what judgments appeal may be taken.

§ 7. To render an appeal hereafter made effectual for any purposes, a written undertaking must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding five hundred dollars, or that sum must be deposited with the Judge of First Instance with whom the judgment or order was entered, to abide the event of the appeal; but such undertaking or deposit may be waived by a written consent on the part of the respondent. When to be taken.
Reversal of judgment not to affect rights of third persons.
Undertaking on appeal.

§ 8. If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to Deposit in lieu of undertaking.
Waiver of security.
Stay of execution on judgment directing payment of money.

which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal.

Stay of execution on judgment directing execution of deed.

§ 9. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal, until the instrument shall have been executed and deposited with the Judge of the Court of First Instance with whom the judgment or order is entered, to abide the judgment of the Supreme Court.

Stay of execution on judgment directing any other act.

§ 10. If the judgment or order appealed from direct the performance of any act other than the payment of money or the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by appeal, unless a written undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the Judge of First Instance, or one of the Justices of the Supreme Court shall, on notice to the respondent of at least one day, direct, to the effect that the appellant will obey the judgment or order of the Supreme Court upon the appeal.

Qualification of sureties.

§ 11. The sureties must be residents of the county or district over which the jurisdiction of the Judge of First Instance extends, and each must be worth of property within such county or district the amount specified in the undertaking, or the whole number of sureties, if more than two, must be worth of such property, in the aggregate, double such an amount. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties that they have the qualifications required in this section.

Affidavit of sureties.

Undertaking and affidavit to be filed.

§ 12. The undertaking upon an appeal, and the affidavit accompanying it, must be filed with the Judge with whom the judgment or order appealed from was entered.

Appeal when perfected to stay all proceedings in court below. Exception.

§ 13. Whenever an appeal shall be perfected as prescribed in Sections eighth, ninth, and tenth, it shall stay all further proceedings in the Court below upon the judgment or order appealed from, and upon any execution or process to enforce it. But the Court of First Instance may proceed upon any other matter included in the action and not affected by the judgment appealed from, or by such part thereof as shall be appealed from.

Exception to sureties.

§ 14. The respondent may except to the sufficiency of the sureties on the appeal, within five days after notice of the appeal, by serving a notice of exception on the adverse party or his attorney, and unless such sureties, or other sureties to a new undertaking, justify before the Judge of the Court below, or one of the Justices of the Supreme Court, within four days of such notice of exception, the appeal shall be regarded as if no understanding had been given. The justification shall be upon a notice of not less than two days.

Sureties to justify.

How sureties to justify.

§ 15. For the purpose of justification, each of the sureties shall attend before the Judge at the time and place mentioned in the notice of justification, and may be examined on oath, on the part of the respondent, touching his sufficiency, in such manner as the Judge in his discretion may think proper.

Allowance of sureties.

§ 16. If the Judge find the sureties sufficient, he shall make a certificate of his allowance of them, and such certificate, together with their examination, shall be filed with the Judge of First Instance.

Amendment of proceedings on appeal.

§ 17. When a party has given, either verbally or in writing, or shall hereafter give in the manner prescribed in this Act, in good faith, notice of appeal from a judgment or order, and has omitted or shall omit through mistake to do any other act necessary to perfect the appeal or to stay proceedings, the Supreme Court, and each of the Justices thereof in vacation, may permit an amendment, on such terms as may be just.

When a case to be made.

§ 18. When an appeal shall be taken from a judgment or order hereafter rendered or made, on the ground of error in the proceedings at the trial, a case shall be prepared by the appellant, containing such portion of the testimony, decisions of the Court, and other proceedings, as shall be necessary to present clearly to the appellate Court the alleged ground of error.

Case—when and how to be prepared, served, and settled.

§ 19. The case shall be prepared and a copy thereof served on the adverse party within thirty days after the trial; the respondent may, within three days thereafter, prepare amendments thereto and serve a copy on the appellant, who may then within two days thereafter serve the opposite party with a notice to appear within not more than four nor less than two days, before the Judge who tried the

cause, to have the case and amendments settled, and such Judge shall thereupon correct and settle the case as he shall deem to consist with the truth of the facts, and cause the same to be filed in the proper office.

§ 20. If the appellant shall omit to make a case within the time above limited, he shall be deemed to have waived his right thereto; and when a case is made and the parties shall omit within the several times above limited, the one party to propose amendments and the other to notify an appearance before the Judge, they shall respectively be deemed, the former to have agreed to the case as proposed, and the latter to have agreed to the amendments as proposed.

Right to make a case when deemed to be waived.

§ 21. The several periods of time limited in the nineteenth section, may be enlarged, upon good cause shown, by the Judge before whom the cause was tried, or by one of the Justices of the Supreme Court.

Time to make a case may be enlarged.

§ 22. It shall be the duty of the Court from whose judgment, order, or determination, an appeal has been or shall be taken, to make a return to the Supreme Court, and file the same with the Clerk thereof at the earliest day practicable; which return shall comprise the judgment, order, or determination appealed from, all pleadings and papers connected therewith, together with the testimony and proceedings at the trial, or the case, when one shall have been made, and if the return be defective, the Supreme Court may direct a further or amended return as often as may be necessary.

Court below to make a return.

§ 23. At the first term of the Supreme Court to be held in March next, the hearing of appeals shall be noticed for any day of the term, by a notice of at least six days, given by either party in a cause, to the opposite party or his counsel. The party giving such notice shall, at least two days before the day specified in the notice of agreement, file with the Clerk a note of issue containing the title of the cause, the date of the judgment or order appealed from, and the names of the attorneys of the respective parties. The Clerk shall immediately enter the cause in a calendar of the causes to be argued. At all subsequent terms causes shall be entered on the calendar and brought to a hearing in such manner as may be prescribed by law.

Notice of hearing appeals.

Note of issue to be filed.

Entry of cause on calendar.

§ 24. The appellant shall, at least six days before the day set for a hearing, furnish the opposite party, and shall also at the opening of the argument furnish each of the Justices and the Reporter with a copy of the pleadings, case, or other papers whereon the appeal is founded, which shall be numbered by the folio continuously, from the beginning to the end of the papers, so that all the copies shall correspond; and each party shall, at the opening of the argument, furnish each of the Justices, the Reporter, and the adverse party, with a note of the points or questions intended to be made, with reference to the authorities intended to be cited.

Points to be furnished to court and reporter.

§ 25. The Supreme Court, and each of the Justices thereof in vacation, shall have power, upon the application of either of the parties to an appeal heretofore taken, to order a stay of all proceedings in the Court below, and to require security or additional security to be given by the appellant, and also to make any order necessary for the purpose of expediting such appeal; and when an order shall be made requiring such security or additional security, it shall be given in the manner provided in this Act for appeals hereafter to be brought.

Court or a judge may make order expediting an appeal or requiring additional security.

§ 26. The Supreme Court may reverse, affirm, or modify any judgment, order, or determination appealed from, in whole or in part, and as to any or all of the parties; may grant new trials, and render such judgment as substantial justice shall require, without regard to formal or technical defects, errors, or imperfections, not affecting the very right and justice of the case; and upon an appeal from a final judgment, the Court may review any intermediate order involving the merits and necessarily affecting the judgment. And said Court, when from the character of the record no tangible point is presented for determination, may remand the cause for new trial in the Court below.

Power of supreme court on appeal.

§ 27. After an appeal shall have been heard and determined, the judgment or order of the Supreme Court therein, and all things concerning the same, shall be remitted to the District Court of the proper County, and thereupon such further proceedings shall be had in that Court as may be necessary to carry such judgment or order into effect.

After judgment on appeal, proceedings may be had in court below to carry judgment into effect.

On district court being duly organized, and notice thereof given, court of first instance to be superseded.

§ 28. When the District Court of any district shall be duly organized by the election and qualification of a District Judge for the district, and of a County Clerk and Sheriff for any county in such district, the County Clerk shall immediately give notice of such organization to the Judges of the Courts of First Instance within his county, and thenceforth the Courts of First Instance within such county shall be superseded and abolished, and all the functions of the Judge, Clerks, Sheriffs, and other officers thereof shall cease and determine, except as herein otherwise provided.

All judgments rendered and proceedings pending in courts of first instance to be transferred to district court.

§ 29. Upon such notice being given, all judgments in causes theretofore rendered in such Courts of First Instance on all suits and proceedings in causes then pending therein, together with all writs, processes, orders, bonds, recognisances, securities, and other papers and business in every way relating to such judgments, suits, or proceedings, or connected therewith, shall be transferred to and vested in the District Court of such county; which Court shall thenceforth have jurisdiction thereof.

Records, books, &c., of court of first instance to be delivered to county clerk.

§ 30. The records of the Courts of First Instance, and all books, papers, and documents in the custody of such Courts or the Clerks thereof, in any way relating to judgments, orders, suits, or any legal proceedings therein, shall be delivered to the County Clerk of the county in which is the place of holding the Court of First Instance, immediately after the election and qualification of such Clerk, and shall be by him deposited and kept in his office, subject to the order of the District Court.

County clerk to make returns in cases of appeals.

§ 31. When by the provisions of Section twenty-nine a judgment shall be transferred, and an appeal therefrom shall have been taken previous to such transfer, or shall be taken thereafter, and no return shall have been made therein, the return shall be made by the County Clerk in whose custody the records and papers relating to such judgment shall be; and if the appeal be made after such transfer, the notice of appeal shall be served upon the County Clerk instead of the Judge of First Instance.

Notice of appeal to be served on county clerk.

Judge of court of first instance may settle case.

§ 32. In cases mentioned in the last Section, the Judge of First Instance who tried the cause shall settle the case, if one be necessary on the hearing of the appeal and it has not been settled, with the same effect as if his powers continued and the judgment appealed from had not been transferred.

District court may proceed with causes pending in the court of first instance.

§ 33. The District Court shall proceed to hear, try, and determine all suits and proceedings transferred therein in which judgment shall not have been rendered in the Courts of First Instance, in the same manner, with like effect, and subject to the same provisions of law as if such suits and proceedings had been originally commenced in the District Court.

All writs, &c., issued out of court of first instance, and not returned, to be returned to district court.

§ 34. All writs, warrants, attachments, and other process issued by the Courts of First Instance, and in the hands of the Sheriff or other officers of such Courts at the time when they shall be superseded, shall be executed by such officers and returned by them to the District Courts of the proper counties, in the same manner, with like force and effect, and subject to the same provisions of law as process issuing out of the District Courts may be required by law to be executed and returned by Sheriffs of counties.

Provisions of act relative to courts of first instance to apply to alcaldes' courts.

§ 35. The provisions of this Act relative to the superseding of the Courts of First Instance, the transfer of causes and of records therefrom to the District Court, and relative to appeals from the same to the Supreme Court, shall, as to all causes properly cognisable in the Court of First Instance, and as to all records thereof, and all books and papers relating thereto, be applicable also to Alcaldes' Courts in those districts where, for want of a Judge of First Instance, the powers of such Judge have been exercised by the Alcalde.

On a justice of the peace entering upon his office, the offices of alcalde, prefect, sub-prefect, regidor, and syndics, to be superseded.

§ 36. Whenever a Justice of the Peace shall have entered upon the discharge of the duties of his office in any county, the office of Alcalde within such county shall thenceforth be superseded, and all laws conferring jurisdiction upon Alcaldes or relating to their powers and proceedings, or to the powers and duties of their clerks or other officers, shall, as to such county, be abolished. The offices of Prefect, Sub-Prefect, Regidor, Syndics, and their powers and duties, shall also cease and determine at the same time.

On county judge and sheriff qualifying, offices of prefect, sub-prefect, regidor, and syndics, to cease.

§ 37. The offices of Prefect, Sub-Prefect, Regidor, and Syndic, shall be superseded, and the powers and duties of those officers shall cease and determine in each county, so soon as the County Judge and Sheriff thereof shall have been elected and qualified.

§ 38. All suits and proceedings, whether civil or criminal, pending before any Alcalde, except such as are referred to in the thirty-fifth Section of this Act, and all persons, judgments, and business connected therewith and remaining undisposed of, shall, at the time mentioned in the last Section, be transferred to and vested in any such Justice of the Peace, who shall thenceforth proceed therein under the same provisions of law as if such suits had been commenced before him. All books, papers, and documents relating to suits or business so transferred, shall be delivered to such Justice of the Peace, and all process issued by such Alcalde and not returned, shall be executed by the officer to whom it was delivered, and shall be by him returned to such Justice of the Peace, the same as if it had been issued by him.

Business pending before any alcalde to be transferred to justice of the peace.

Books, &c., to be delivered to justice.

Process to be returned to justice.

§ 39. Books of records of deeds, mortgages, powers of attorney, and other instruments, kept by or in the possession of any Alcalde, Judge of the First Instance, Notary, or other officer, shall be delivered to the County Clerk of the county which the District Judge may direct, upon the election and qualification of each County Clerk, to be by him kept and disposed of according to law.

Certain books of records of deeds, &c., to be delivered to county clerk.

§ 40. Any appeal from a judgment rendered by an Alcalde, whether taken prior or subsequent to such transfer, shall be vested in the County Court of the county in which is included the place of holding the Alcalde's Court, which shall proceed to hear and determine the same, in the manner which shall be provided by law for appeals from Courts of Justices of the Peace to County Courts.

Appeals from judgment of an alcalde to be to county court.

§ 41. So soon as this Act is approved, the Governor shall cause it to be published for four successive weeks in three newspapers printed in this State.

Act to be published.

Chap. 24.

AN ACT to provide for holding the First County Election.

Passed March 2, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of each Prefect in this State, immediately after the passage of this Act, to designate a suitable number of Election Precincts in each County of his District, and give notice thereof by advertisement published in some newspaper printed in each County of said District, if there be one; if not, then by notices posted in at least three public places in each of said Counties.

Prefects to designate election precincts, and give notice thereof.

§ 2. When any County lies partly within the limits of one District, and partly within the limits of another, each Prefect shall designate the Precincts in that portion of the County, lying within the limits of his District.

Designation of precincts in counties partly in one district and partly in another.

§ 3. At the same time, and in the same manner, in which he is required to give notice of the establishment of Election Precincts, each Prefect shall give notice that, on the First Monday of April next, A. D. eighteen hundred and fifty, an Election will be held at each of said Precincts for the following Officers, to wit: one Clerk of the Supreme Court, one District Attorney for each Judicial District, one County Judge, one County Clerk, one County Attorney, one County Surveyor, one Sheriff, one Recorder, one Assessor, one Coroner, and one Treasurer for each County.

Prefects to give notice of electing certain officers specified.

§ 4. For the purpose of holding such Election the electors present of each Precinct may, on the day of Election, appoint an Inspector of Elections for the Precinct, who shall appoint two Judges and two Clerks of Election. The Officers so appointed shall be sworn, as prescribed in the nineteenth section of the "Act to regulate Elections."

Inspectors of elections, and judges and clerks of elections.

§ 5. The Election shall be conducted, and the returns made out in conformity with the provisions of the "Act to regulate Elections."

Conduct of elections.

Elections in counties where no election precincts established.

§ 6. If in any County Election Precincts be not established, according to the directions of this Act, the Election may be held at any place, or places, where there are not less than thirty electors present; and it may be held without any notice given by the Prefect.

Inspectors to form a board of canvassers, and appoint a president and clerk.

§ 7. On the first Monday after the day of Election, all the Inspectors of each County shall attend at the County-seat of their County with the sealed returns of their respective Precincts, and shall there meet as a Board of Canvassers. They shall choose out of their number a President and Clerk. The returns from each Precinct shall be delivered to the President, and opened, and read by him in presence of the Board. If any Inspector be unable to attend, the returns of his Precinct may be forwarded to the President of the Board of Canvassers in the manner prescribed in the thirty-sixth section of the "Act to regulate Elections."

Inspector unable to attend board.

Clerk of board to make out a statement and certificate of result of election.

§ 8. When the returns shall have been opened, read, and allowed, the Clerk shall, under the direction of the President and Board, make out a complete tabular statement, showing the vote given at each Precinct of the County, for each person, for each of the offices to be filled at this election, and also the vote given in the whole County for each person. This statement shall be signed by the President and Clerk. In the same manner there shall be made out, and signed, a certificate stating the number of votes given in the County to each person for the office of District Attorney, and another certificate stating the number of votes given in the County to each person for the office of Clerk of the Supreme Court.

Result of election for county officers, to be decided, and a certificate of election delivered to each person elected.

§ 9. So soon as such statement and certificate are made out, the President shall declare the result of the Election for County Officers, and shall immediately make out, and send, or deliver to each person chosen a certificate of election, signed by him as President of the Board of Canvassers, and attested by the Clerk. Such certificate shall be of the same force and effect as if issued by the County Clerk.

Persons elected to county offices, when to qualify.

§ 10. Each person chosen at this election to fill any county office, shall qualify and enter upon the discharge of his duties within the time prescribed by law; provided, that if he be prevented from so doing by the neglect of the County Judge to qualify, he shall have five days after such Judge is qualified to give any bond required by law.

Certificates of votes for district attorney to be forwarded to clerk of county court. Duty of county clerk on receipt of such certificates.

§ 11. The President of the Board of Canvassers shall, without delay, forward the certificate showing the vote of his County for District Attorney, to the Clerk of the County Court of that County of the Judicial District which stands first in alphabetical arrangement. The Clerk shall, on the thirteenth day after the day of election, or so soon as he has received the certificates from all the Counties of the district, if they are received within that time, compare said certificates, make out and sign a statement showing the vote of each County and of the district, and without delay send or deliver to the person chosen a certificate of election. He shall also forward a copy of this statement, signed by him and authenticated with the seal of the County Court, to the Secretary of State.

Certificate of votes for clerk of supreme court to be forwarded to secretary of state. Transmission of election returns.

§ 12. The President of the Board of Canvassers shall, in like manner, forward to the Secretary of State the certificate showing the vote of the County for a Clerk of the Supreme Court.

Disposition of county election returns.

§ 13. Whenever election returns are required by this act to be forwarded by one officer to another, they may be sent by mail, or any safe conveyance.

§ 14. The election returns of each County, and the statement founded thereon, shall be retained by the President of the Board of Canvassers in his own hands until the County Clerk of his County is qualified, when he shall deliver the same to such Clerk, by whom they shall be filed in the office of the Court of Sessions; said Clerk shall also file in the same office the certificates received by him relative to the vote of the several Counties for District Attorney, and the statement founded thereon.

Effect of election returns by boards of canvassers.

§ 15. The returns made to the Secretary of State, under the provisions of this act, by the several Boards of Canvassers, shall be of the same force and effect as if made by the County Clerks of the several Counties.

Act to regulate elections to apply.

§ 16. All the provisions of the "Act to regulate Elections," shall apply to the first County Election herein provided for, so far as they are not inconsistent with the provisions of this act.

§ 17. It shall be the duty of the Governor, without delay, to forward to each Prefect of this State, a copy of this act, and of such parts of the "Act to regulate Elections" as relate to the mode of conducting elections, and making out and forwarding returns, and also to cause the same to be published in three newspapers printed in this State.

Copies of this act to be forwarded to prefects.

Chap. 25.

AN ACT concerning the Salaries of Officers.

Passed March 5, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The amount of salaries per annum, as hereinafter specified, shall be, and are hereby allowed, to the officers of State, and persons designated, to wit:—To the Governor, ten thousand dollars; to the Secretary of State, seven thousand dollars; to the Comptroller of State, eight thousand dollars; to the Treasurer of State, nine thousand dollars; to the Attorney General, seven thousand dollars; to the Surveyor General, seven thousand five hundred dollars; to the Justices of the Supreme Court, each ten thousand dollars; to each District Attorney, two thousand dollars; to the State Translator, eight thousand dollars; to the Governor's Private Secretary, two thousand dollars.

Amount of salaries to be as herein specified.

§ 2. The foregoing salaries shall be paid at the times and in the manner prescribed by law.

Payment of salaries.

Chap. 26.

AN ACT defining the Duties of State Printer, and fixing his Compensation.

Passed March 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That all bills, journals, laws, statutes, reports, messages, or other documents of the Legislature, all circulars, certificates, or blanks for each of the departments of the State government, and the reports of decisions in the Supreme Court, shall be printed by the State Printer, who shall be governed in said duty, and be paid a compensation, as specified in the following sections.

What to be printed by State printer.

§ 2. It shall be the duty of the State Printer to submit the printing of all the laws and statutes passed by the Legislature, all reports of decisions by the Supreme Court, to the inspection of the Secretary of State, who shall see that they are correctly printed, and the work skilfully executed, and who shall aid the Comptroller in the examination of all accounts rendered by said State Printer, for work performed or material furnished for the State, which officers may call to their aid practical printers, whenever they are of opinion that the charges are incorrectly made.

To submit printing to secretary of state.

Duty of secretary of state in reference thereto.

§ 3. It shall be the duty of said State Printer, with the advice and concurrence of the Secretary of State and Comptroller, to procure on the best terms possible, paper of a good quality, on which to execute the printing of the laws, statutes, journals, and other printing of the Legislature, and the blanks and other printing of the several State departments, and of the Supreme Court; and he shall be allowed by the State, on the presenting to the Comptroller the proper vouchers for such paper, the cost and carriage of the same, and such allowance for his labor and expenses as the Comptroller and Secretary of State may deem just and reasonable.

To procure paper for State work.

To be allowed the cost and carriage of paper, and for labor in purchase of same.

Comptroller to issue warrant on treasury for payment of printer's bills.

To report the quantities and kinds of paper used, and the quantity on hand.
Report to be certified by secretary of state.
To report amount, nature, and price of work done, and aggregate receipts therefor.

Documents for use of Legislature—how to be printed.

Secretary of state and comptroller to decide on time to be allowed to printer to print laws and journals.

Other printing to be performed with all possible dispatch.

Penalty for not printing laws, journals, &c., within time allowed.

No allowance for blank pages in laws and journals.

Prices for public printing.

Prices for binding.

§ 4. On the fulfilment of any order for printing, folding, stitching, or binding, or for any materials furnished by the State Printer, for the use of the State, in the execution of any work ordered to be printed, or printed and bound, the Comptroller, on the presentation of a bill for the same, shall issue his warrant on the treasury for the amount, which shall be paid out of any moneys not otherwise appropriated.

§ 5. After the printing of each session of the Legislature shall have been completed, it shall be the duty of the State Printer to make out a written report of the quantity and kinds of paper he has used in the execution of said work, and the balance of paper, if any there be still in his hands, which report shall be presented to the Secretary of State, who shall decide upon and certify to its correctness.

§ 6. Within the first week of each annual session of the Legislature, the State Printer shall make out a Report, addressed to the Speaker of the Assembly and the President of the Senate, in which he shall exhibit the amount of work done by him under this law during the previous year, the nature of said work, the prices, and the aggregate receipts on the same.

§ 7. In printing bills, reports, messages, and other documents, for the use of either branch of the Legislature, the State Printer shall place a title at the top of every such document, but shall dispense with all blank pages not necessary in making up the form.

§ 8. The State Printer shall have such time after the adjournment of the Legislature, for the printing and delivery of the Laws, Journals, and Statutes to the Secretary of State, as that officer, in conjunction with the Comptroller, may decide upon satisfactory inquiry and examination, as is demanded by the present inability of the State to provide the necessary paper and facilities with which to execute said work; but all other printing necessary for the prompt discharge of the business of Legislation, shall be performed with all possible despatch.

§ 9. If the State Printer fails to print and deliver such Laws, Journals, and Statutes within the period decided by the Secretary of State and Comptroller to have been sufficient, it shall be the duty of said Comptroller, in auditing the bills for such work, to deduct a penalty of ten per cent. per week for each week that said work, or any part thereof, may be delayed.

§ 10. In the composition and presswork of the Laws, Statutes, and Journals, there shall be no allowance made, or charge permitted, for blank pages, unless they are necessary in arranging the form, in which case they may be counted as matter.

§ 11. The prices for public printing shall be as follows: On all journals, laws, statutes, messages, reports, or other documents of book form, printed on new and neat long primer type, twenty-eight ems wide, and forty-eight ems long each page, for composition in English seven dollars and thirty cents per thousand ems; when ordered to be printed in Spanish, or any language other than English, fourteen dollars and sixty cents per thousand ems; for rule work ten dollars and ninety-five cents per thousand ems; for figure work twelve dollars and seventy-seven cents per thousand ems; for rule and figure work, fourteen dollars and sixty cents per thousand ems. For presswork on the same, seven dollars and thirty cents per token. For bills of either House, or joint resolutions, or any other document ordered to be printed in open lines, like bills, the page forty-eight ems long primer in width, and seventy-four in length, measured as solid, seven dollars and thirty cents per thousand ems; for presswork on same, seven dollars and thirty cents per token (less than a token or each bill counted as a token). For certificates, circulars, and for receipts, or other blanks, ordered to be printed on foolscap or letter paper, for the several Departments of the State Government, or for any of the Courts of the State, eight dollars and fifty cents per quire; when figure work is required, four dollars and twenty-five cents additional per quire; rule and figure work, eight dollars and fifty cents additional per quire; rule work per quire, two dollars and fifty cents.

§ 12. For all binding the price shall be as follows: All volumes ordered to be full bound, leather covers, and labelled with gilt letters on the back, if the volumes do not exceed three hundred pages, one and three fourth cents per page; if they exceed that number of pages, one and a fourth cents per page. All volumes ordered to be half bound, with board binding, leather backs, and paper sides, with gilt labels on the back, if such volumes do not exceed three hundred pages, one and a fourth cents per

page; if they exceed that number of pages, one cent per page. For folding and stitching all bills, messages, or documents required to be folded and stitched, two cents per page; for folding without stitching, one cent per page.

§ 13. On all work or printing done after the first day of January, A. D. eighteen hundred and fifty-one, it shall be lawful for the Legislature to modify, amend, alter, or change the rate of charges fixed in this Act.

Prices may be modified.

Chap. 27.

AN ACT *Supplementary to an "Act to provide for holding the First County Election."*

Passed March 9th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. It shall be the duty of the Secretary of State to cause the Act entitled "An Act to provide for holding the first County Election" to be immediately translated into the Spanish language, and have two hundred and fifty copies of the same published and immediately forwarded to the Prefect of the Counties of Monterey, San Luis Obispo, Santa Barbara, Los Angeles, and San Diego: *Provided*, that fifty copies of said law be allowed for the use of the Prefect of the District of San José.

Chapter 23, ante to be translated into Spanish, and distributed. Fifty copies of said translation for San José district.

§ 2. In the event that the above mentioned Act shall fail to reach any Prefect in the State before the first Monday of April next, or in time to give proper notice of such Election, it shall be the duty of such Prefect, within fifteen days after the receipt of said Act, to order an Election to be held for the same county and other officers as are specified in said Act, which Election shall be as legal as if the same had been held on the first Monday of April, as prescribed by this Act.

Duty of prefect where not time to give prescribed notice of election.

Chap. 28.

AN ACT *for the Remuneration of Charles White for Money advanced to Culeb Lyons for furnishing the design, and making the Great Seal of the State.*

Passed March 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the Comptroller of this State be, and he is hereby authorized and directed, to issue his warrant, drawn upon the Treasurer of this State, in favor of, and payable to, Charles White, for the sum of one thousand dollars, and out of any money in said Treasurer's hands, not otherwise appropriated.

Comptroller to issue warrant for \$1,000.

§ 2. This Act to take effect immediately after its passage.

Commencement of act.

Chap. 29.

AN ACT *regulating the duties of Harbor Master of the Port of San Francisco, and for other purposes.*

Passed March 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the people of the City of San Francisco shall, at their annual State election, elect by ballot a Harbor Master for the Port of San Francisco, who shall hold his office for one year, or until his

Harbor master to be elected; his term of office; to give bond, and to take oath of office.

successor is qualified; and that the Harbor Master, before he enters upon the duties of said office, shall execute a bond to the people of this State, with two sufficient sureties, to be approved of by the Mayor or Recorder of the City of San Francisco, in the sum of ten thousand dollars, conditioned for the faithful and impartial fulfilment of the duties required by this Act; and shall also take an oath truly and faithfully to execute the same: *Provided*, however, that the Legislature shall elect a Harbor Master for said Port, who shall continue in office until a successor shall be elected, as aforesaid; the Harbor Master already appointed shall continue in office until a successor is so elected by the Legislature.

Proviso.

Deputy harbor-master. Vacancy—how supplied. To regulate and station all shipping in the harbor.

§ 2. The Harbor Master shall not have power to appoint a deputy or deputies, unless in case of sickness; and in case of a vacancy by death or otherwise, the Governor shall supply such vacancy.

§ 3. That the said Harbor Master shall have authority to regulate and station all ships and vessels in the harbor of San Francisco, within the limits of said city, and the wharves thereof; and to remove from time to time such ships or vessels as are not employed in receiving and discharging their cargoes to make room for such others as require to be more immediately accommodated, for the purpose of receiving or discharging theirs; and as to the fact of their being fairly and bona fide employed in receiving and discharging their cargoes, the said Harbor Master is constituted the sole judge.

Penalty of \$500 for refusing to obey all directions of the harbor-master.

§ 4. The said Harbor Master shall have authority to determine how far, and in what instance it is the duty of the master, and others having charge of ships and vessels, to accommodate each other in their respective situations; and if any master or other person, having charge of any ship or vessel, shall refuse or neglect to obey the directions of the said Harbor Master in matters within his authority to direct, or if any person shall resist or oppose the said Harbor Master in the execution of the duties of his office, such Master or other person having charge of any ship or vessel shall, for every such offence, forfeit and pay the sum of five hundred dollars, to be recovered with costs of suit, in the name of the Treasurer of the hospital of said city, before any court having cognisance thereof; all which fines, when collected, shall be paid to said Treasurer for the use of said hospital.

Collection and application of penalties.

To collect dues of all vessels entering the port of San Francisco, the amount of such dues.

§ 5. That the said Harbor Master shall have power to demand and receive from the commanders, owners, and consignees, or either of them, on all ships or vessels of the United States, and on all ships or vessels of any foreign nation that are permitted by the laws of the United States to enter on the same terms as vessels of the United States, and which shall enter the said port of San Francisco, and load or unload, or make fast to any wharf therein, four cents per ton, to be computed from the tonnage expressed in the register or enrolment of ships and vessels respectively, and no more; and also on all other foreign ships or vessels, which shall arrive at and enter the said port, and load, unload, or make fast to any wharf therein, double the amount of fees above specified, according to the rate of tonnage or burden of said ships or vessels respectively, to be ascertained by their respective registers or other documents on board the same; *Provided*, nevertheless, that nothing whatsoever shall be demanded by the said Harbor Master for the entrance into the port of San Francisco, of any sloop or schooner employed in the coasting trade, on the Pacific coast within the United States, unless upon the application of the master or person having charge of any such vessel employed in the coasting trade, as aforesaid, the said Harbor Master shall interfere and adjust any difference which may happen respecting the situation or position of any such coasting vessel, which difference said Harbor Master is hereby authorized and required to hear and determine; in which case the said Harbor Master may demand, and receive from the party in default in the premises, the sum of ten dollars, and no more, for any difference so by him adjusted; to be sued for and recovered in the name and for the use of said Harbor Master, in any court having cognisance thereof.

Nothing to be demanded of any sloop or schooner in the coasting trade, except in certain cases.

Harbor dues—when to be paid.

Penalty for non-payment

§ 6. That the master, owner, or consignee of any ship or vessel subject to the payment of fees to the Harbor Master as aforesaid, shall, within forty-eight hours after the arrival of such ship or vessel, pay the fees so due therein at the office of the said Harbor Master; and in default of such payment, if the same shall have been first duly demanded, such master, owner, or consignee on whom such demand shall have been previously made, shall forfeit and pay double the amount of such fees, to be sued for and recovered, in the name and for the use of the said Harbor Master, in any court having cognisance thereof.

§ 7. That it shall be the duty of the said Harbor Master to superintend and enforce the execution of all laws of this State, and bylaws of the corporation of the City of San Francisco, for cleaning the docks and wharves, and for preventing and removing all nuisances in or upon them, or either of them; and if the person or persons whose duty it shall be to remove such nuisance, shall refuse or neglect to remove the same, within forty-eight hours after notice from the said Harbor Master to remove the same, the said Harbor Master may, thereupon, demand and receive from the person or persons so neglecting or refusing, the sum of thirty-five dollars; and in case of non-payment thereof, on demand, the same may be sued for and recovered, in the name of and for the use of the said Harbor Master, in any court having cognisance thereof.

Harbor-master to enforce laws for cleaning docks and wharves, &c. Penalty for not removing nuisances after notice so to do.

Chap. 30.

AN ACT to provide for the Incorporation of Cities.

Passed March 11, 1850.

Dec 13. 1850

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Any City in this State, having a population of more than two thousand persons, may be incorporated according to the provisions of this act, either by the Legislature, or by the County Court, upon application

What cities may be incorporated.

§ 2. When any City is incorporated by a special Act of the Legislature, such Act may simply define the boundaries of the City, and declare it incorporated, in which case it shall be deemed incorporated according to the provisions of this Act; or may declare it incorporated under the same, with such changes as may be specially named.

Cities incorporated by special acts.

§ 3. Whenever a majority of the inhabitants of any town or village, within the State, who shall be qualified electors, and shall have resided in such town or village thirty days, shall present a petition to the County Court of the county in which such town or village is situated, setting forth the metes and boundaries of their town and commons, with a plot of the same, and praying that they may be incorporated under the provisions of this Act, and the Court shall be satisfied that the population of such town or village exceeds two thousand, and that a majority of the qualified electors thereof have signed the petition, the Court shall declare such town or village incorporated as a City, by the name stated in the petition.

Proceedings to obtain order of incorporation.

§ 4. The order of incorporation shall designate the metes and bounds of the City, which shall in no case include an area of more than four square miles. The order, together with the petition and town plot, shall be entered on the records of the Court, and thenceforth, the inhabitants within such bounds shall be incorporated in like manner as if specially named in this Act.

What order is to contain. Order, petition, and town plot to be entered in records of court.

§ 5. The boundaries of any City may, at any time, be changed by the County Court, upon application, to be made and acted upon in like manner as the application to be incorporated: *Provided*, that if it be proposed to extend the boundaries of the City, the application shall not be granted, unless a majority of all the qualified electors, resident within the limits of the additional land intended to be included, shall unite in the application; and, *Provided* also, that in no case shall the limits of four square miles be exceeded.

Boundaries of cities may be changed.

Boundaries not to be extended, except, &c.

Certain limits not to be exceeded.

§ 6. When an application is made either for an incorporation or for a change of boundaries, twenty days' notice thereof shall be given, either by publication in some newspaper printed in the City, or if there be none, then by notices posted up in three public places in the City. Proof of such notice must be made to the Court, before the application is heard. At the hearing, any qualified elector who has been a resident of the City for thirty days, next preceding, may appear and file a written opposition, which shall be heard and determined by the Court.

Notice of application for incorporation or change of boundaries, to be published.

Opposition to application.

Incorporated cities to be governed by a mayor, recorder, and common council

§ 7. For the government of every City incorporated under the provisions of this Act, there shall be a Mayor, Recorder, and Common Council, to consist of _____ members, one of whom shall be elected President. The said Mayor, Recorder, and Councilmen, shall be a body corporate and politic, by the name and style of "The Mayor, Recorder, and Common Council of the City of _____," and by that name, they and their successors shall be known in law, have perpetual succession, suo and be sued, in all Courts and in all actions whatsoever; may grant, purchase, hold, and receive property, real and personal, within said City; may lease, sell, and dispose of the same for the benefit of the City; may provide for the regulation and use of all commons belonging to the City, and may have a common seal and alter the same at pleasure; *Provided*, that they shall not purchase or receive any real estate, other than such lands or lots within the same, as shall be necessary for the erection thereon of public buildings, or for the laying out of streets or public grounds, or such lands without the City as may be required for burial grounds.

Proviso.

Election of officers, and who may be candidates and electors.

§ 8. There shall be elected in said City, at the times and in the manner hereinafter provided, a Mayor, Recorder, not less than seven nor more than twenty Councilmen, a City Marshal, a City Attorney, Assessor, and Treasurer; but no person shall be eligible to any of said offices, nor to any other office which may be established by ordinance, nor shall any person be entitled to vote for the same, who shall not be a qualified elector, according to the Constitution and laws of this State, and who shall not have resided in said City for thirty days next preceding the election. The number of Councilmen to be elected at the first election, shall be fixed by the Legislature, or by the County Court, as the case may be, and such number may be subsequently increased or diminished, by the Common Council within the limits aforesaid.

Number of councilmen—how fixed.

City may be divided into wards.

§ 9. The Common Council shall have power to divide the City into a convenient number of wards, and fix the boundaries thereto, and may change the same from time to time, as they shall see fit, having regard to the number of white male inhabitants, so that each ward shall contain, as near as may be, the same number of such inhabitants. The number of wards of any City shall not exceed the number of Councilmen to which the City is entitled, and when a City shall have been so divided, the Councilmen shall be elected from the several wards respectively, according to the number of inhabitants.

Number of wards.

Meeting of common council; their powers.

§ 10. The members of the Common Council, elected under this Act, shall assemble within five days after their election, and choose a presiding officer from their number, and some suitable person as Clerk. In case of the absence of the President, they may elect a President *pro tempore*, who shall have all the powers, and perform all the duties of President; they shall, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the Council may previously by ordinance have prescribed; they shall judge of the qualification, elections, and returns of their own members, and the other officers elected under this Act; they may determine contested elections; they may determine rules for their own proceedings; punish any member or other person, for disorderly conduct in their presence; and, with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member, shall cause the yeas and nays to be taken and entered on any question, and their proceedings shall be public.

City council may make by-laws for purposes specified.

§ 11. The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and laws of the United States, or of this State; to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements within the City; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same; to regulate and establish markets; to establish a board of health; to cause the streets to be cleaned and repaired; to establish a fire department, and to make regulations to prevent and extinguish fires; to regulate the inclosure of any common field belonging to or within the limits of the City; to

provide for supplying the City with water; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances: *Provided*, that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a Police; to make appropriations for any object of city expenditures; to erect and maintain poor-houses and hospitals; to prevent the introduction and spreading of diseases; and to pass such other by-laws and ordinances for the regulation of the Police of such City as they shall deem necessary; which by-laws and ordinances shall be published in the manner to be prescribed by the City Council.

By-laws to be published.

§ 12. The City Council shall have power to borrow money, and pledge the faith of the City therefor: *Provided*, that a majority of the legal voters in said town or city shall so decide by an election; the notice of said election to be given by the City Council at least twenty days previous to said election; and, *Provided*, that the aggregate amount of the debts of the City shall never exceed three times its annual estimated revenue.

City council may borrow money.

§ 13. The direct taxes imposed by the city council in any one year, shall not exceed two per centum of the valuation of property within the city.

Limitation of amount of direct taxes.

§ 14. Whenever it becomes necessary for the Corporation to take private property for the purposes of laying out or altering streets or alleys, and the Council cannot agree with the owner thereof as to the price to be paid, the Council may direct proceedings to be taken to ascertain the value of such property.

Proceedings may be directed to ascertain value of property taken for streets, &c.

§ 15. To determine such value, a petition, in the name of the Corporation, shall be presented to the County Court, at a regular term, particularly describing the property, and praying the appointment of commissioners to ascertain its value. If the owner is a resident of the county, he shall have personal notice of the application, and of the time at which it will be presented. If he be a non-resident of the county, the notice shall be given by publication, at least three months, in some weekly newspaper, printed in the county. The Court, before hearing the application, shall have satisfactory evidence that notice, as required in the preceding section, has been given. When the owner is a non-resident of the county, the Court may adjourn the application for such time as may be reasonable, and may direct further notice to be given.

Petition for appointment of commissioners to value property.

Notice of presenting petition.

§ 16. When satisfied that sufficient notice has been given, the Court shall, by entry in its minutes, appoint five disinterested persons Commissioners, to ascertain the compensation, specifying in the entry, the time and place for the first meeting of the Commissioners.

Commissioners may be appointed.

§ 17. The Commissioners shall be sworn to discharge their duties faithfully and impartially. They shall view the premises, and ascertain and certify the compensation proper to be paid to the owner for the property to be taken, and may, in their discretion, assess a reasonable sum, to be paid to the owner for costs and expenses. They, or a majority of them, shall make, subscribe, and file with the County Clerk, a certificate of their assessments. The Court, upon such certificate, and due proof that the amount determined has been paid to the party interested, or into Court, shall cause an entry to be made in its minutes, describing the property, setting forth the ascertainment of compensation, and the payment as aforesaid.

Commissioners to be sworn. Their duties.

Entry of payment for property, &c.

§ 18. Upon such entry being made, the corporation shall be entitled to use and occupy the property as fully as if conveyed to it by the owner; a certified copy of this entry shall be recorded in the Recorder's office of the county, in the like manner, and with the like effect, as if it were a deed of conveyance from the owner.

Entry to vest title in corporation.

§ 19. All accounts and demands against said city shall be audited by the President of the Common Council, and no money shall be drawn from the city treasury unless upon the certificate of the President, by order of the Council. The certificate shall be drawn upon the treasurer of the city, and shall specify the fund out of which the same is payable. The treasurer shall pay the same out of any money in his hands belonging to said fund.

Demands on city—how audited and paid.

Salaries and fees of the mayor and city officers to be fixed and published.

§ 20. It shall be the duty of the Common Council to establish and fix the salaries of the Mayor and other city officers, and also to fix a tariff of fees for the officers entitled to such, designating the fees which shall be allowed for each particular item of service, and cause the same to be published, in like manner with the ordinances passed by the said Common Council.

Ordinances to be approved by mayor.

§ 21. Every ordinance which shall have been passed by the Common Council shall, before it become effective, be presented to the Mayor for his approbation. If he approve it, he shall sign it; if not, he shall return it, with his objections in writing, to the Common Council, who shall cause the same to be entered upon its journals, and shall proceed to reconsider the same. If, after such consideration, two thirds of all the members of the Common Council elect shall agree to pass the same, it shall become an ordinance. In all such cases, the votes shall be taken by yeas and nays, and the names of the members voting for and against the same shall be entered on the journal. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective, as if the Mayor had signed it.

Mayor's approval dispensed with.

Mayor to report to council on the condition, &c., of city once a year.

§ 22. It shall be the duty of the Mayor to communicate to the Common Council, at least once a year, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city, in relation to its government, finances, and improvements; to recommend to the Common Council the adoption of all such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he shall deem expedient; to be vigilant and active in causing the laws and ordinances of the city government to be duly executed and enforced, to exercise a constant supervision and control over the conduct and acts of all subordinate officers, to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same, and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filled as is hereinafter mentioned.

Other duties of mayor.

Jurisdiction of recorder as to offences committed within the city.

§ 23. The Recorder, as to offences committed within the City, shall have the like jurisdiction as is or may be conferred upon Justices of the Peace, to examine and commit persons brought before him, and charged with the commission of offences within the limits of the City, to take recognisance to appear, to keep the peace, and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices of the Peace.

Further jurisdiction of recorder.

§ 24. The Recorder shall also have jurisdiction over all violations of the City Ordinance, and may, according to the provisions of such ordinance, hold to bail, fine, or commit to prison, persons found guilty of any violation thereof.

Duties of city marshal.

§ 25. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all process issued by the Recorder, or directed to him by any legal authority, and to attend upon the Recorder's Court regularly. He may appoint one or more deputies, who shall possess the same power and authority as the Marshal; he shall arrest all persons guilty of a breach of the peace, and of a violation of the City Ordinances, and bring them before the Recorder for trial, and he shall possess superintending control over the City Police; he shall, also, until otherwise provided by ordinance, perform all the duties of Collector of City taxes.

Duties of assessor.

§ 26. It shall be the duty of the Assessor, in addition to the duties that may be prescribed to him, or them, by the Common Council, to make out within such time as the Common Council shall order, a correct list of all the property taxable, by law, within the limits of said City, with the valuation thereof, which list, certified by him or them, shall be returned to the Common Council. The mode of making out said list, and of ascertaining the value of property, and of collecting all taxes, shall be the same as prescribed by the law for assessing and collecting the State tax.

Duties of city attorney.

§ 27. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the City may be legally interested; to give his advice or opinion, in writing, whenever required by the Mayor or Common Council, and to do and perform all such things touching his office, as by the Common Council may be required of him.

§ 28. It shall be the duty of the Treasurer to receive all moneys that shall come to said City, either by taxation or otherwise, and to pay the same out on the certificate of the President of the Common Council, and to do and perform all such other acts as shall be prescribed to him by the Common Council. He shall, on the first day of January, April, July, and October, of each year, make out and present to the Mayor, a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published.

Duties of treasurer.

§ 29. The Common Council shall have the power to create the office of City Collector, and such other offices as they may deem necessary; and to prescribe the duties of all city officers, subject to the provisions of this Act.

Common council may create certain offices.

§ 30. All City officers, before entering upon the duties of their office, shall take the oath of office. The Marshal, Attorney, Assessor, and Treasurer, shall also give bond, with sureties to be approved by the Mayor, payable to the Corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and the like bond may be required of any officer whose office may be created by ordinance. Should the bond of any City officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

All city officers to take oath, and certain to give bonds.

When office deemed vacant.

§ 31. On some day to be fixed by special Act passed by the Legislature, or by order of the County Court, an election shall be held to fill the offices created by this charter. At said election, the electors present shall appoint three persons to act as Judges, who shall, with two Clerks to be appointed by them (the said officers having been first sworn), conduct the election and declare the result. The persons who shall have received a plurality of votes for the several offices shall be declared duly elected, and the Judges shall deliver to such persons certificates of election. The Mayor, Recorder, and Councilmen, chosen at such election, shall be qualified within three days thereafter, and shall enter upon the discharge of their duties. The other officers elected shall qualify within ten days after the day of election. The said officers shall hold office until the first Monday of May next thereafter, and until their successors are elected and qualified.

Election of officers.

Officers—when to qualify.
Term of office.

§ 32. After the first election, the officers mentioned in the eighth section of this Act, and all others whose offices have been created by ordinance, shall be elected on the first Monday in May of each year, and their term of office shall be for one year, and until their successors are elected and qualified. In case of a vacancy in any City office, an election shall be ordered to fill the same. It shall be the duty of the Council to order all elections, and to designate the place of holding the same; to give at least ten days' notice thereof, and to appoint an Inspector of Elections at each place of voting. The election shall be conducted according to the provisions of the Act to regulate Elections. If any Inspector fail to attend, the electors present may appoint another in his stead. The returns of all elections shall be made to the Common Council, who shall declare the result thereof, and give certificates of election to the person chosen.

Subsequent elections—when to be held, and how to be conducted.

§ 33. If any person, elected to any City office, shall remove from the City, absent himself therefrom for more than thirty days, without leave from the Council, or shall fail to qualify within ten days after the day of election, his office shall be deemed vacant.

Officers—when deemed vacant.

§ 34. Whenever the owners of a major part of the property, fronting on any street or avenue, desire to improve such street, by paving the same, or constructing sewers, or otherwise, the Mayor and Council may make such improvement, at the expense of all the owners of property on said street, which expense shall be in proportion to the number of feet owned by each one.

When mayor and council may pave streets and construct sewers on request of owners.

Chap. 31.

AN ACT to regulate the interest of Money.

Passed March 13, 1850.

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*Rate of interest
ten per cent.

§ 1. When there is no express contract in writing fixing a different rate of interest, interest shall be allowed at the rate of ten per cent. per annum, for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing, on any judgment, recovered before any Court in this State, for money lent, for money due on the settlement of accounts, from the day on which the balance is ascertained; and for money received to the use of another.

Parties may
agree for any
rate of interest.

§ 2. Parties may agree in writing for the payment of any rate of interest whatever on money due, or to become due on any contract. Any judgment rendered on such contract shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment.

Compound
interest.

§ 3. The parties may in any contract in writing, whereby any debt is secured to be paid, agree, that if the interest on such debt is not punctually paid it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Chap. 32.

AN ACT to provide for the early publication of the Laws of California.

Passed March 13, 1850.

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*Certain laws and
joint resolutions
to be published
in pamphlet
form.

§ 1. That all such laws and joint resolutions of a general character, that have, or may hereafter be passed, as shall be designated by the Legislature, shall be published by the State Printer in pamphlet form, under the order and direction of the Secretary of State.

Until laws bound
in volumes, laws
published in
pamphlet form
may be used in
law courts.

§ 2. And until the laws of the State shall be printed, bound in volumes, and distributed according to law, all the general laws published in the manner prescribed in this Act, having the certificate of the Secretary of State at the footing of each, that they are correct copies of the original on file in his office, shall be proper to be used in each, and all of the Courts of this State, in any suit of law between individuals, or between the State and individuals.

Mode of distri-
bution the laws
when printed.

§ 3. That when any such laws are printed as contemplated in this Act, the State Printer shall deposit them with the Secretary of State, who shall deliver to each member of the Legislature, four copies thereof, and two copies to each of the officers of State, and Judges of the District Courts; and shall transmit by the safest, most expeditious, and least expensive manner to the County Clerks of each County, for distribution among the several officers in their respective Counties as follows: to each Judge, Sheriff, Attorney, Clerk, Treasurer, Assessor, Recorder, Coroner, Surveyor, School Commissioner, Justice of the Peace, and Constable, one copy: *Provided*, that not more than eleven hundred copies of such laws shall be published—eight hundred in English, and three hundred in Spanish.

Number of copies
of the laws to
be published.Surplus copies of
the laws—how
disposed of.

§ 4. The Secretary of State is hereby required, after the laws have been published, and copies of the same furnished, as contemplated in the third section, to transmit the surplus copies remaining in his office, to the Clerks of the several counties, who shall be authorized to dispose of them at cost prices, and who shall account to the Comptroller of State for the proceeds of said sale.

Chap. 33.

AN ACT to organize the District Courts of the State of California.

Passed March 16th, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the State shall be, and is hereby divided into nine judicial districts, which districts shall be composed of the several counties and numbered as follows :

State divided into nine judicial districts, composed and numbered as specified.

The first judicial district shall be composed of the counties of San Diego and Los Angeles.

The second judicial district shall be composed of the counties of Santa Barbara and San Luis Obispo.

The third judicial district shall be composed of the counties of Branceforte, Santa Clara, Contra Costa, and Monterey.

The fourth judicial district shall be composed of the county of San Francisco.

The fifth judicial district shall be composed of the counties of Calaveras, Tuolumne, San Joaquin, and Mariposa.

The sixth judicial district shall be composed of the counties of Sacramento and El Dorado.

The seventh judicial district shall be composed of the counties of Marin, Sonoma, Napa, Salano, and Mendocino.

The eighth judicial district shall be composed of the counties of Yolo, Sutter, and Yuba.

The ninth judicial district shall be composed of the counties of Butte, Colusi, Trinity, and Shasta.

§ 2. A judge for each of said judicial districts shall be elected in the manner prescribed by the Constitution and laws of this State.

A judge to be elected for each district.

§ 3. Said Judges shall be commissioned by the Governor. Before entering upon the duties of their office, each of them shall, before any officer competent to administer oaths, take and subscribe the oath or affirmation prescribed by the Constitution, which oath shall be filed in the office of the Secretary of State, and a certified copy thereof endorsed on his commission.

Duties of judges before entering office.

§ 4. The said Judges shall reside in their respective districts. No person shall be eligible to the office of District Judge who shall not have been a citizen of the United States and a resident of the State for one year, and of the district six months previous to such election; provided, that such residence in the State for one year and the district six months shall not be necessary to the Judges appointed by the present legislature.

Residence of judges, and who eligible for the office of district judge.

§ 5. There shall be held by the District Judges, at the seats of justice of the several counties of their respective districts, a court, the name and style whereof shall be the "District Court of the _____ Judicial District," according to the number of the district in which such court is held. The several terms of the District Court shall, during each year, commence at the times following, to wit :

Judges to hold courts; their style.

First judicial district, in the county of San Diego, on the first Mondays of the months of January, May, and September; in the county of Los Angeles, on the first Mondays of the months of February, June, and October.

Terms of the courts; when to commence in each district.

Second judicial district, in the county of San Obispo, on the first Mondays of the months of March, July, and October; in the county of Santa Barbara, on the first Mondays of the months of April, August, and November.

Third judicial district, in the county of Monterey, on the first Mondays of the months of April, August, and December; in the county of Branceforte, on the first Mondays of the months of May, September, and January; in the county of Santa Clara, on the third Mondays of the months of May, September, and January; in the county of Contra Costa, on the second Mondays of the months of July, November, and March.

Fourth judicial district, in the county of San Francisco, on the first Mondays of the months of January, March, May, July, September, and November.

Fifth judicial district, in the county of Calaveras, on the first Mondays of the months of March, July, and November; in the county of Tuolumne, on the third Mondays of the months of March, July, and November; in the county of Mariposa, on the second Mondays after the third Mondays of the months of March, July, and November; in the county of San Joaquin, on the fourth Mondays after the second Mondays of the months of March, July, and November; the first term shall be held in the county of San Joaquin on the second Monday in May.

Sixth judicial district, in the county of Sacramento, five terms, to wit, on the first Mondays of January, March, May, July, and October; and El Dorado County, three terms, to wit, on the first Mondays of April, June, and November of each year.

Seventh judicial district, in the county of Sonoma, on the first Mondays of the months of January, May, and September; in the county of Napa, on the first Mondays of the months of March, June, and October; in the county of Solano, on the first Mondays of the months of April, July, and November.

Eighth judicial district, in the county of Yolo, on the first Mondays of April, September, and January; in the county of Sutter, on the first Mondays of the months of May, October, and February; in the county of Yuba, on the first Mondays of the months of June, November, and March.

Ninth judicial district, in the county of Butte, on the first Mondays of the months of April, September, and January; in the county of Colusa, on the first Mondays of the months of May, October, and February; in the county of Shasta, on the first Mondays of the months of June, November, and March. Each term may continue until the day fixed for the commencement of some other term in the district.

Place for holding courts.

§ 6. The seats of justice of the several counties shall be the place for holding said courts. If a room for holding the courts in such places shall not be provided by the county, together with attendants, fuel, lights, and stationery suitable and sufficient for the transaction of business, it may be held in any room provided for that purpose by the Sheriff, under the order of the Court; and said Sheriff, whenever directed so to do by the courts, shall also provide such attendants, fuel, lights, and stationery, as aforesaid.

Sheriff to provide attendants, fuel, &c.

Original jurisdiction of said courts.

§ 7. Said courts shall have original jurisdiction in law and equity in all civil cases, where the amount in dispute exceeds two hundred dollars, exclusive of interest; in all criminal cases, not otherwise provided for; and in all issues of fact joined in the probate court; and in all cases involving the title or possession of real property their jurisdiction shall be unlimited.

Power to issue certain writs.

§ 8. They shall have power to issue and direct writs of mandamus, prohibition, quo warranto, habeas corpus, ne exeat, and all other writs and processes to courts of inferior jurisdiction, and to corporations and individuals which shall be necessary to the furtherance of justice and the regular execution of the laws; and to issue and direct all other writs and processes which may be necessary to carry the power of such courts into effect, according to the laws and constitution of this State and to the jurisdiction of said courts.

May frame new writs.

§ 9. When there shall be occasion for any writ or process for which no form is prescribed by law, the court shall frame a new writ, in conformity with the principles of law, which writ or process shall be tested and sealed as other writs or processes.

Courts to have power to carry judgments, &c., into effect.

§ 10. The said court shall have power to award and make all such judgments, sentences, decrees, orders, and injunctions, and to issue all such processes as may be necessary or proper to carry into full effect all such judgments, sentences, decrees, orders, and injunctions; and to issue all such executions and other writs and processes, and to do all such other acts as may be necessary or proper to carry into full effect all such judgments, sentences, decrees, orders, and injunctions in conformity with the constitution and laws of this State.

To issue subpoenas, take evidence out of court, and compel return of process.

§ 11. They shall have power to issue all subpoenas and other processes to any county of the State; to compel the attendance of witnesses to testify in any District Court; to take the deposition of witnesses out of court, as prescribed by law; and shall have power to compel the return of any writ, execution, subpoena, or other process.

- § 12. They shall have power and authority, whenever it may be necessary, to grant and empower commissions for the examinations of witnesses according to the regulations of law. Grant commissions to examine witnesses.
- § 13. The said Courts shall have power to punish in a summary manner, by fine and imprisonment, or either, for contempts offered to them while in session, or to any process, writ, rule, or order of said Courts issued and made, or for disobeying any writ, process, or order thereof, or for obstructing or preventing the execution of the same, and the judgments, decrees, and determinations of said Courts in such cases shall be final and conclusive. No fine shall exceed the sum of five hundred dollars, nor such imprisonment exceed the term of fifteen days for any one offence. May punish for contempt.
- § 14. When any person is indicted, or otherwise legally charged with any crime, offence, or misdemeanor in the District Court of any County, and shall remove to or dwell in another County, said Courts in term, or the Judges thereof in vacation, may order a writ, warrant, or other proper process to be issued by the Clerk of the Court having jurisdiction, to any Sheriff or other proper officer of the County where the person thus indicted or charged may be, to have him arrested and brought before such Court for trial. Limitation of fine or imprisonment.
- § 15. No Judge of a District Court who is interested in the event of any suit, or related to either party within the fourth degree of affinity or consanguinity, or who shall have been the presiding Judge on the trial of the same cause of action in any Court heretofore existing, or who shall have been the attorney or counsellor in any suit or proceeding, shall sit on the determination thereof: *Provided*, either party to the suit shall make objection for either of the causes enumerated in this section. May issue warrants for arrest of offenders moving out of county.
- § 16. When a cause is pending in any District Court, and the Judge thereof is incompetent to try and determine the same by any or either of the causes enumerated in the preceding section, the Clerk thereof, as soon as such incompetency is established, shall make out a certificate under his hand and the seal of the said Court, stating the names and parties to the action, the term of the Court, and the county in which such action is pending, and the reason of the incompetency of the Judge thereof, and shall transmit such certificate to the Governor. Judge not to take part in determining certain suits if parties object.
- § 17. It shall be the duty of the Governor, on the receipt of such certificate, to direct the Judge of a District Court adjoining thereto to proceed to such county, and hear and determine such suit. When judge incompetent to try cause, certificate of incompetency to be forwarded to governor.
- § 18. The Governor shall appoint the time of the trial of such cause, and shall transmit to the Clerk of the proper county notification thereof; and such clerk shall, on its receipt, notify the parties to such suit, their agents or attorneys. Governor to direct judge of adjoining district to try cause. Governor to appoint time of trial, and parties to suit to be informed thereof.
- § 19. The Judge so appointed by the Governor to hear and determine such suit, shall proceed in the same manner, and have as full power in hearing such cause; and the judgment, decision, or determination thereof shall be of the same validity as if the same had been had and held before him, in his proper district; and appeals, exceptions, or writs of error may be taken as in other cases. The District Judges may exchange and hold any term or terms of the Court in each other's districts. Trial to proceed as if cause tried by judge of the district.
- § 20. Whenever any county shall be attached to another county for judicial purposes, the District Court of the county to which the same is attached shall hear and determine all matters arising in such county, and shall have the same jurisdiction and do all such other acts as may be necessary in the exercise of the powers of such Courts as fully and completely as if the said Court had been held in such county. District judges may exchange and hold courts in each other's districts.
- § 21. The County Clerks of the several counties in each judicial district shall be *ex officio* Clerks of the District Courts in and for their respective counties, and shall perform such duties as may be prescribed by law. Power of court to adjudicate on matters arising in a county attached for judicial purposes.
- § 22. Until a County Clerk can be elected by the people, the Judge of the District Court shall appoint a Clerk for such Court, who shall hold his office until a County Clerk shall be elected and qualified, and shall perform such duties as may be prescribed by law. County clerks to be *ex officio* clerks of district courts.
- § 23. When from any cause a vacancy shall occur in the office of District Judge, the same shall be filled in the manner prescribed by law. Clerks of district courts *pro tem*.
- § 24. The seal of the county shall be the seal of the District Court of such county, and shall be used by the Clerk thereof for the authentication and testing of all records, writs, or proceedings, of such Vacancies in office of district judge—how supplied.
- County seal to be seal of district court.

Clerk may use his private seal.

Courts: until such county does procure a seal, it shall be lawful for the Clerk thereof to seal all writs, processes, and matters where the seal of said District Court shall be required by law, with his own private seal, and the same shall have like force and effect as if it had been sealed with the seal of said Court.

Power to administer oaths.

§ 25. The said District Courts respectively shall have full power and authority to administer all necessary oaths and affirmations.

Judge failing to attend not to cause a discontinuance.

§ 26. There shall be no discontinuance of any suit, process, matter, or proceedings whatever, returnable to or pending in any District Court, although the Judge thereof shall fail to attend at the commencement or any other day of the term.

Judge failing to attend, sheriff or clerk may adjourn the court.

§ 27. If the Judge, as aforesaid, shall not attend, the Sheriff, or in his absence the Clerk of said Court, may adjourn the same for three days successively, and if said Judge shall not attend on the fourth day, or, having attended one day, shall fail to attend for any three successive days of the term, the Court shall stand adjourned until Court in course.

Court not sitting, business continued to succeeding term. Matters undetermined at one term continued to next.

§ 28. If a Court shall not sit in any term, all suits and matters depending in said Court shall stand continued until the next succeeding term.

County clerks, after each term of circuit court, to report state of business to governor.

§ 29. If at the end of the term of any District Court, any suits or matters depending therein are undetermined, the same shall stand continued until the next succeeding term.

Governor to transmit report to Legislature.

§ 30. It shall be the duty of the County Clerk of each County in which a term of any Circuit Court shall have been held, within ten days after the close of such term, to prepare a statement in writing of the number of actions on the calendar of such Court, the number tried or determined, the number remaining on said calendar, not tried, heard, and determined, and the duration of such term, which statement the said Clerk shall transmit to the Governor, who shall lay the same before the next Legislature.

Clerk of district court to draw up each day's proceedings, and read same in court. No execution to issue on a judgment until it has been read and signed.

§ 31. It shall be the duty of the Clerk of the District Court to draw up each day's proceedings at full length, and the same shall be publicly read in open Court, and corrected when necessary; after which they shall be signed by the Judge thereof, and no process or execution shall issue on any judgment or decree of the Court until it has been so read and signed.

Chap. 34.

AN ACT supplementary to an Act entitled "An Act to incorporate Sacramento City."

Passed March 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Amendment of sec. 5 of chap. 21.

§ 1. The fifth section of the Act to incorporate Sacramento City shall read as follows: The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and laws of the United States, or this State; to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements; to fix and collect a license tax on all theatres or other places of amusement, trades, professions, and business not prohibited by law, having regard to the amount of business done by each person or firm thus licensed; to regulate and establish markets; to establish a board of health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances; to provide for the punishment of breaches of the City ordinances. But no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than ten days. To levy and collect taxes; to lay out, extend, alter, or widen streets and alleys; to establish and regulate a police; to make appropriations for any object of City expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and

spreading of diseases; to erect, repair, and regulate wharves and the rates of wharfage; to regulate the landing and stationing of steamboats, rafts, and all water craft; and to pass such other by-laws and ordinances for the regulation and police of such City as they may deem necessary, which by-laws and ordinances shall be published in some newspaper printed in said City. And the taxes shall never, together with other taxes levied by the Common Council, exceed the sum of one hundred thousand dollars for each year, unless allowed in the manner provided by this charter.

§ 2. The twentieth section of said Act is so amended as to read as follows: On the first Monday of April next there shall be held in Sacramento City, an election to fill all the offices created by this charter. Such election shall be held at the same places and in the same manner as the first County election in said City. The Inspector and Judges holding such County election, shall declare the result of the election of City officers, and shall deliver to each person receiving a plurality of votes for any such office, a certificate of election. The Mayor, Recorder, and Councilmen chosen at said election, shall qualify and enter upon the discharge of their duties within three days after the day of election. All such officers shall hold their offices until the first Monday of May in the year eighteen hundred and fifty-one; and until their successors are elected and qualified.

Amendment of
sec. 20 of chap.
21.

Chap. 35.

AN ACT creating and regulating Public Ferries.

Passed March 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall keep a ferry so as to demand or receive pay thereat, without a license.

No person to
keep a ferry
without a
license.

§ 2. The Court of Sessions of each County shall be, and they are hereby, empowered to establish public ferries across those bays, rivers, creeks, or sloughs, bounding or within their respective Counties, whenever they shall deem it necessary.

Court of sessions
may establish
public ferries.

§ 3. Any person may petition the Court of Sessions for a license to keep a ferry, and if, in the discretion of the Court, such ferry be necessary, and the petitioner be a suitable person to keep the same, it shall order the Clerk to issue a license, on the payment of the tax assessed on such license.

Petition for
license to keep a
ferry.

§ 4. Upon the production of the receipt of the Collector of the County tax to such Clerk, he shall issue such license to keep a ferry at the place therein mentioned, for a time not to exceed one year; but no license to keep such ferry shall issue unless the land on that side of such river or creek, on which it is sought to establish such ferry, be public land, or the land of said petitioner; or where the holders or owners of any land where the public convenience may require that such ferry shall be kept, shall neglect or refuse to have a public ferry established within a reasonable time.

License to keep
a ferry—when it
may issue.

§ 5. No ferry shall be established within one mile immediately below or above a regular established ferry, unless it shall be deemed important for the public convenience, or where the situation of a town or village, the crossing of a public highway, or the intervention of some creek or ravine, shall render it necessary.

No ferry to be
established
within a mile of
an existing ferry,
except in certain
cases.

§ 6. When any river or creek shall be the boundary line between two counties, and any person holding lands on either side of said river or creek shall wish to have a public ferry across the same, he or she shall apply to the Court of Sessions for the County in which his or her land lies, who are hereby authorized to establish such ferry from the land of such applicant to the opposite side.

Ferry over river
or creek being
the boundary
line between two
counties.

§ 7. When any person, being owner or holder of any land lying on any river or creek within, or bounding on this State, where any public road may cross the same, and where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time, it shall be lawful for the Court of Sessions of the County in which it may be

Where public
convenience re-
quires it, a ferry
may be estab-
lished on lands
being private
property.

necessary to have such ferry established, upon proper application being made, and after having given three months' public notice of their intention, by advertisement in some public newspaper in the County, or by written notices set up in three of the most public places in the County, to grant a license to some person to keep a ferry at such place on such conditions as to them may appear reasonable and just, taking bond and security as hereinafter provided.

Persons licensed to keep such ferry may occupy ground for the purpose.

§ 8. Any person or persons having obtained a license from the Court as aforesaid shall be and they are hereby authorized and empowered to keep such ferry so established, and also to occupy as much ground as may be necessary to discharge passengers, not exceeding one hundred feet on each side of the river or creek, as the ferryman may deem sufficient and necessary, but shall not be permitted to move or disturb any boat lying at shore one hundred feet or more from the regular landing.

Private property taken for a ferry to be appraised and paid for.

§ 9: In case of any land belonging to any private individual being appropriated for public use, as provided for in the last two preceding sections, it shall be the duty of the Court of Sessions to appoint three disinterested electors of the County, who shall, upon view of such land so appropriated for public use, appraise the same and make a return to said Court, setting forth the metes and bounds of such land, and the fair valuation which they have placed thereon. Whereupon the Court of Sessions shall make an order that the amount of such appraisement shall be paid to the holder or owner of such land so appropriated, out of any moneys in the County Treasury; and thereafter such land shall be held to be public property, until such ferry shall become disused, or be formally vacated by the Court of Sessions.

When ferries may be established across creeks or rivers bordered by a public common.

§ 10. Where the land bordering on any creek or river, across which a public ferry is deemed necessary, shall be a public common for any town, the said Court shall be authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common, under the same rules and restrictions that ferries are established to persons owning land bordering on such river or creek; but the foregoing provisions shall not be so construed as in any wise to affect the right of any town or corporation, or of any person or persons being proprietor or proprietors of any town, their heirs or assignees, by giving the right to establish a ferry or ferries to any person or persons who are not proprietors of the land lying on the margin of the river or creek, if the corporation of such town, or the proprietor or proprietors of such land, keep up a sufficient number of ferries across such river or creek.

Ferry not to be established until proof of application for ferry.

§ 11. The Court of Sessions of each County shall not establish any ferry until the applicant shall prove satisfactorily that written notices of his intended application have been set up in three of the most public places in the township at least thirty days.

Number and description of boats, &c.; how regulated.

§ 12. The Court of Sessions shall have authority to order and direct, from time to time, the number and description of boats, and the number of lands which shall be kept at each ferry respectively.

Persons authorized to keep a ferry to give bond to State.

§ 13. The owner of the land whereon such ferry is established, or the applicant to whom the ferry is granted shall, within thirty days from the establishment thereof, execute a bond payable to the State of California, in a penal sum to be fixed by the Court of Sessions, with one or more sureties, to be approved by said Court of Sessions, conditioned that he or she will keep such ferry, or cause the same to be kept according to law, and that he or she will give passage to all public messengers and expresses, when required, without fee or reward; which bond shall be filed with the Clerk of the County Court, to be proceeded on in the same manner as other public bonds for any breach of the condition thereof; and if any person shall neglect or refuse to give such bond, he or she shall forfeit his or her right to said ferry.

Expresses on public service to pass free.

§ 14. All expresses sent on public service by a Commander-in-Chief, Colonel, or Major, to or from the Governor for the time being, or commanding officer of the Militia, shall be accounted public messengers or expresses, and shall pass all ferries free of charge, within the condition of the bond aforesaid, if the dispatch carried by such express be endorsed "*Public Service*," and be signed by the person sending the same. But no ferryman shall be bound to give passage free to any such express in time of peace, except in case of insurrection.

Exception.

§ 15. Each and every licensed ferry keeper shall constantly keep a good and sufficient boat or boats, if more than one be necessary, with a sufficient number of able and skilful ferrymen, as may be directed and required by the Court of Sessions, and give due attendance to the said ferry or ferries, and to the transportation of all persons with their property who shall apply for the same between daylight in the morning and dark in the evening, so that no unnecessary delay may happen to persons having occasion to pass said ferry; and all licensed ferry keepers shall be obliged at any hour of the night, if required, except in cases of evident danger, to give passage to all expresses above recited, and to all other persons requiring the same, on their tendering and paying the rate of ferrriage allowed to be taken during the day time.

Duties of ferry keepers.

§ 16. It shall be the duty of all ferry keepers within this State to cause the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse, wagons, and other vehicles.

Further duties of ferry keepers.

§ 17. The Courts of Sessions of each County may, in their discretion, and under the restrictions hereinbefore prescribed, establish and license ferries over streams that are otherwise impassable, except for short periods in particular seasons, without charge, if the Court of Sessions shall be satisfied that the profits of such ferry will not satisfy the owner in paying a tax therefor; but every ferry so established under the provisions of this Section shall be subject to all the rules, regulations, and restrictions herein prescribed for regulating ferries, except so far as relates to the payment of a ferry tax.

Ferries over streams otherwise impassable.

§ 18. For the encouragement of ferry keepers, and in consideration of setting over public messengers and expresses exempt from payment of ferrriage by this Act, all men, while necessarily employed in attending on licensed ferries in this State, shall be free from militia duty, except in times of war or public danger; from working on roads and highways, so far as personal service is required; and from serving on juries. And if any person or persons, other than ferry keepers licensed under the provisions of this Act, shall for fee or reward, or any expectation or promise thereof, set any person over any river or creek whereon public ferries are established, or shall hire to any person or persons a boat to be used in ferrying at any place within two miles of such public ferry, he, she, or they so offending, shall forfeit the sum of thirty dollars for every such offence, to be recovered before any Justice of the Peace of the County wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this State, and shall likewise be subject to be taxed by the Court of Sessions in the same manner as regularly licensed ferry keepers.

Ferry keepers exempt from militia and road duty, and from service on juries.

Penalty on unlicensed person acting as ferry-keeper for hire.

§ 19. The rates of ferrriage shall be fixed by the Court of Sessions at the time of licensing the ferry; and from time to time thereafter as they shall think proper.

Rates of ferrriage—how fixed.

§ 20. If any ferry or ferries, which now are or may hereafter be established, shall not be furnished with the necessary boat or boats and ferrymen within one month after the establishment thereof, and continue to be so furnished, or if the proprietor shall, at any time thereafter, wilfully neglect to attend to the same, it shall and may be lawful for the Court of Sessions for the county wherein such ferry or ferries may be situate, on complaint to them made, to cause the proprietor or proprietors of such ferry to be summoned to show cause, at the next sitting of the Court of Sessions, why the license to the proprietor of such ferry should not be revoked; and the Court of Sessions shall revoke such license, or dismiss such complaint, according to the testimony adduced, and may award costs against the complaint, if such complaint is dismissed, or against the proprietor or proprietors, if the ferry be vacated.

Revoking license to keep a ferry.

§ 21. If any person shall think himself or herself aggrieved by the establishment or vacation of a public ferry by the Court of Sessions, under this Act, he or she shall have the right to appeal to the District Court of the district in which the county is situated, upon filing bond within thirty days, payable to the treasurer of the county, with security to be approved by the County Judge, and conditioned for the due prosecution of said appeal, and payment of all costs, if judgment be rendered against such appellant; and the County Judge shall cause said bond, with a certified copy of the

Persons aggrieved by establishment or vacation of a ferry may appeal to district court.

proceedings of said Court, and all the original papers filed in the cause, to be filed in the office of the Clerk of the District Court, within twenty days thereafter; and the cause shall be docketed for the ensuing term, and further proceedings had and judgment rendered therein as in other cases of appeal.

Penalty on ferry keeper for refusing to set over any person or property.

§ 22. Any licensed ferry keeper who shall neglect or refuse to set over at his ferry, during the hours of daylight, any person or property, without unnecessary delay, shall be fined in any sum not exceeding one hundred dollars, and shall, moreover, be liable to the party injured in a civil action.

Chap. 36.

AN ACT empowering the Governor to appoint Commissioners of Deeds, and defining the Duties of such Officers.

Passed March 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Commissioners may be appointed.

Power of commissioners.

Effect of certain acts done by commissioners.

Commissioners to take oath.

Oath to be filed.

Commissioners to be furnished with copies of this act. Commissioners' names to be published.

§ 1. The Governor may, when in his judgment it may be necessary, appoint in each of the United States one or more Commissioners, to continue in office four years, unless sooner removed by the Governor. Every such Commissioner shall have power to administer oaths and to take depositions and affidavits to be used in this State; and also to take the acknowledgment or proof of any deed or other instrument to be recorded in this State.

§ 2. All oaths administered by said Commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs aforesaid, certified by them, shall have the same force and effect in law, to all intents and purposes, as if done and certified by any Recorder or other officer within this State, authorized by law to perform such acts.

§ 3. Before any Commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any officer duly authorized to administer oaths in the State for which such Commissioner may be appointed, that he will faithfully perform and discharge all the duties of his office; which oath shall be filed in the office of Secretary of State of California, within six months after the taking the same.

§ 4. It is hereby made the duty of the Secretary of State to furnish each Commissioner, appointed as aforesaid, with a copy of this Act.

§ 5. The names of all persons appointed Commissioners under this Act shall be published at least three times in some weekly newspaper published in this State.

Chap. 37.

AN ACT declaring certain Rivers, Creeks, and Sloughs, herein named, navigable.

Passed March 20, 1850.

Certain parts of the rivers San José de Guadalupe, Petaluma, Sonoma, Napa, Suisun Embarcadero, Sacramento, Feather, Bear, Yuba, San Joaquin, Mokelumne, and American Fork; and of Butte, Chico, and Deer creeks, and the Big Slough, declared navigable streams.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That so much of the San José de Guadalupe river, as lies between its mouth and the old residence of Señor Alviso, known as the town of Alviso; and so much of the Petaluma river as lies between its mouth and where the road crosses said river, leading from Sonoma and San Raphael; and so much of Sonoma river as lies between its mouth and the town of San Luis; and so much of Napa river as lies between its mouth and Napa City; and so much of Suisun river as lies between its mouth and the town of Suisun Embarcadero; and so much of the Sacramento river, as lies between its mouth

and a point twenty miles north of the mouth of Cotton Wood creek ; and so much of Feather river as lies between its mouth and Potter's bar ; and so much of Bear river as lies between its mouth and the town of Kearney ; also the big slough which empties into Feather river, at Nicholas Altejar's rancho, from its mouth to its source, near the house of John Barham ; and so much of Yuba river as lies between its mouth and a point eight miles therefrom ; so much of the San Joaquin river as lies between its mouth and the Tulares Lake ; and so much of the Mokelumne river as lies between its mouth and the first falls ; and so much of the Tuolumne river as lies between its mouth and the ferry known as Spark's, are hereby made and declared navigable streams ; and so much of Butte creek as lies between its mouth and the house of Samuel Neal ; and so much of Chico creek as lies between its mouth and a point five miles therefrom ; and so much of Deer creek as lies between the house of Peter Lassen and its mouth ; and so much of the river called the American Fork, as lies between its mouth and the place called the Mill Dam, at the head of the race made by Capt. J. A. Sutter, for the erection of a grist mill.

§ 2. It shall not be lawful for any person or persons to build or construct any bridge or dam across said rivers, or in any other manner to obstruct the navigation of said rivers, creeks, or sloughs.

No bridge or dam to be erected over said rivers, or the navigation to be obstructed.

Chap. 38.

AN ACT to regulate Elections.

Passed March 23, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

ARTICLE I.

OF GENERAL, COUNTY, AND SPECIAL ELECTIONS.

§ 1. There shall be held throughout this State, on the first Monday of the month of October of each year, an election for members of Assembly and such other officers as may be required by law to be chosen by the qualified electors of the State, or of Districts ; and such election shall be called the general election.

General elections.

§ 2. There shall also be held throughout this State, on the first Monday of the month of April, of the year one thousand eight hundred and fifty-two, and on the same day of every second year thereafter, an election for county and township officers, which shall be called the county election.

County elections.

§ 3. Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the State, or any district, county, or township, and may be held at such time as may be designated by the proper officer.

Special elections.

§ 4. All vacancies which are about to occur in office by the expiration of the full term thereof, shall be supplied at the general election, or the county election next preceding the happening of such vacancies, according as the office is filled by vote of the electors of the State or any district, or by the vote of the electors of any county or township.

Vacancies—how and when supplied.

§ 5. It shall be the duty of the Governor, at least thirty days before any general election, to issue his proclamation designating the offices to be filled at such election, and to transmit a copy thereof to the County Judge of each county of the State.

Proclamation to be made of offices to be filled at a general election.

§ 6. It shall be the duty of the County Judge to give at least ten days' notice thereof, by setting up at each usual place of holding elections in his county, a copy of such proclamation, and by inserting the same in some newspaper published in the county, if any be published therein.

County judges to give notice of such proclamation.

§ 7. It shall be the duty of the County Judge, at least ten days before the county election, to give notice thereof, and of the offices to be filled, in like manner as required in the preceding section.

Notices of county elections.

§ 8. Whenever a special election is necessary to fill a vacancy in any office which is to be filled by the vote of the qualified electors of the State or of the district, the Governor shall issue his proclamation,

Notices of special election by State vote.

ordering such election in like manner as is provided in regard to general elections, and designating also the time at which it is to be held; and the County Judge of each county in which such election is to be held, shall give notice thereof as required in the sixth section of this Act.

Notices of special election by county vote.

§ 9. Whenever a special election is necessary to fill a vacancy in any county or township office, the County Judge shall issue an order for such election, designating the office to be filled and the time of holding the election, and shall publish the same in the manner required by the sixth section of this Act.

ARTICLE II.

OF THE QUALIFICATIONS AND DISABILITIES OF ELECTORS.

Who entitled to vote at elections.

§ 10. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote, thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

Residences for purpose of voting — when not to be deemed gained or lost.

§ 11. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence on the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, nor while confined in any public prison.

Who not entitled to be an elector.

§ 12. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

What absence not to affect question of residence. Infamous crime deemed.

§ 13. Absence from this State on business of the State, or of the United States, shall not affect the question of residence of any person.

§ 14. A crime shall be deemed infamous which is punishable by death or by imprisonment in the State prison.

ARTICLE III.

OF THE PLACE OF HOLDING ELECTIONS, AND ALSO OF INSPECTORS, JUDGES, AND CLERKS OF ELECTIONS.

Precincts for holding elections.

§ 15. There shall be a precinct for holding elections in each township designated by the Court of Sessions; but the Court may, if the convenience of the people require it, create additional precincts in any township in which the number of votes usually polled exceeds two hundred.

Inspector of elections to be named for each precinct.

§ 16. Whenever an election is ordered, the County Judge shall name in the order of election, as Inspector of elections at each precinct, some qualified elector of the township in which such precinct lies.

Inspector to be at precinct on day of election, or another to be appointed.

§ 17. It shall be the duty of each Inspector to be at the precinct for which he is appointed, from sunrise to sunset of the day of election. Should such Inspector not appear, at sunrise, the qualified electors of the township who may be present shall appoint an Inspector.

Board of judges of elections, and their clerks.

§ 18. Each Inspector of election shall, previously to the time of opening the election, select two qualified voters of his township, who, with himself, shall constitute a Board of Judges of said election, and he shall also appoint two suitable persons as Clerks.

Board of judges, &c., to take oath.

§ 19. Before any election shall be opened, the Inspector, Judges, and Clerks shall each, before any officer authorized to administer oaths, take an oath that he will faithfully and impartially discharge the duties assigned him by law. If there is no person present authorized to administer oaths, the Inspector shall administer the same to the Judges and Clerks, and one of the Judges shall then administer the oath to the Inspector.

Chairman of board of judges.

§ 20. The Inspector shall be Chairman of the Board, and after its organization, shall have power to administer all necessary oaths which may be required in the progress of the election. He shall also have power to fill any vacancy that may occur in the Board of Judges, or by absence or refusal to serve of either of the Clerks, after the polls shall have been opened.

§ 21. The County Judge of each County shall cause a suitable number of blank forms, containing one column headed "names of voters," and an additional column headed "number of votes," with the proper captions and certificates, to be made out and delivered before the election to each Inspector of elections.

County judges to deliver to Inspectors before the elections the necessary blank forms.

ARTICLE IV.

OF OPENING THE POLLS; OF VOTING, AND CHALLENGES.

§ 22. At all elections the polls shall be opened at sunrise, and shall continue open until sunset; at which time the Judges shall close the polls: *Provided*, That the Judges of the election may take a recess of one hour, at any time they may think proper during the day, before three o'clock P. M.

Polls—when to be opened and closed.

§ 23. The Board of Judges, before they commence receiving ballots, shall cause it to be proclaimed aloud at the place of voting that the polls are opened.

Opening of polls to be proclaimed.

§ 24. The voting shall be by ballot. The ballot shall be a paper ticket containing the names of the persons for whom the elector intends to vote, and designating the office to which each person so named is intended by him to be chosen.

Voting to be by ballot.

§ 25. Whenever any person offers to vote, the Inspector shall pronounce his name in an audible voice, and if there be no objection to the qualification of such person as an elector, shall receive his ballot, and in the presence of the other Judges put the same, without being opened or examined, into the ballot box.

Vote—how taken.

§ 26. The name of each elector whose ballot has been thus received, shall be immediately entered by each Clerk, in the column of his poll list, headed "names of voters," numbering each name in the additional column, as it is taken down, so that it may be seen at any time whether the two lists agree.

Name of each voter to be entered on poll list.

§ 27. Any person offering to vote may be challenged as unqualified by the Inspector, or either of the Judges, or by any legal voter, and it shall, in all cases, be the duty of the Inspector and each of the Judges to challenge any person offering to vote whom he shall know or suspect not to be duly qualified as an elector.

Persons offering to vote may be challenged.

§ 28. When any person offering to vote is challenged, it shall be the duty of the Board of Judges to declare to him the qualifications of an elector.

Persons challenged to be informed of qualification. Person challenged to be sworn.

§ 29. If such person shall still insist that he is entitled to vote, and the challenge shall not be withdrawn, the Board of Judges, in their discretion, may administer an oath or affirmation to the voter "You do swear (or affirm) that you are a citizen of the United States; that you are of the age of twenty-one years, according to the best of your information and belief; that you have resided in this State six months next preceding this election, and in this County (or district, or township, as the case may be) thirty days, and that you have not before voted this day."

§ 30. If the person thus challenged shall take the oath as tendered to him by the Board of Judges, he shall be admitted to vote, and it shall not be lawful, after he has taken such oath or affirmation, for said Board to examine any witnesses touching his want of qualifications; but if he shall refuse to take the oath or affirmation so tendered to him, his vote shall be rejected.

Person challenged may vote after taking oath.

§ 31. If the vote of any person be challenged on the ground that he has been convicted of an infamous crime, or disfranchised by any Court of competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction; and in the absence of any authenticated record of such facts, it may be competent for two disinterested witnesses upon oath to prove the same.

Conviction of infamous crime; how proved.

§ 32. When the polls are closed, proclamation thereof shall be made at the place of voting, and no votes shall be afterwards received.

Closing of polls to be proclaimed.

ARTICLE V.

OF COUNTING AND RECEIVING THE VOTES, DECLARING THE RESULT OF ELECTIONS, AND OF CERTIFICATES OF ELECTION.

§ 33. As soon as the polls are closed on the afternoon of the day of election, the Judges shall open the ballot box and commence counting the votes, and in no case shall the ballot box be removed from

Opening ballot box, and counting votes.

the room in which any election may be held, until all the ballots are counted; the counting of ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the inspector or one of the Judges, who shall open them, and read aloud the name of each person contained therein, and the office for which every such person is voted for. Each clerk shall write down each office to be filled and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the Inspector or Judge. The counting of the votes shall be continued without adjournment until all are counted.

Certain tickets to be rejected.

§ 34. If two tickets are found folded together, they shall both be rejected; and if more persons are designated on any ticket for any office than are to be elected for such office, such part of the ticket shall not be counted for any of them; but no ticket shall be lost for want of form, if the Board of Judges can determine to their satisfaction the person voted for and the office intended.

Election returns to be drawn up, and ballots destroyed.

§ 35. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges, and inspector; one of said certificates, with the poll list and tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be destroyed by the inspector. The other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed up by the inspector, and endorsed "Election Returns," and be directed and delivered, or sent by the inspector to the County Clerk of the county in which the election is held.

Election returns to county clerk.

§ 36. The said package shall be delivered to the County Clerk by one of the judges or clerks of election in person, or may be sent by private hand, or by mail. If sent by private hand, the person delivering it shall, before the County Clerk, take and subscribe an affidavit that the package was delivered to him by one of the judges (naming him), that it has not been out of his possession since it was received, and has undergone no alteration while in his possession. The affidavit shall be endorsed on the package. If sent by mail, it shall be mailed by one of the judges, and the postmaster shall make on it an endorsement that he received it from one of the judges (naming him).

Want of form not to vitiate.

§ 37. No tally paper, poll list, or certificate, returned from any election, shall be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this Act, if the same can be satisfactorily understood.

County clerks to draw up a statement of result of election, and fill same.

§ 38. On the tenth day after the day of each election, or as soon as he shall have received the returns from each Precinct of the County or Township, if he received them within that time, the County Clerk shall proceed to estimate the vote of the County or Township; a statement of which shall be drawn up and signed by him. The statement shall contain the names of the persons voted for; the office to fill which each person was voted for; the number of votes given at each Precinct to each of such persons, and the number of votes given to each in the County; and the same shall be filed, together with the returns from each Precinct, in the office of the Court of Sessions.

Certificate of election to person elected.

§ 39. The person having the highest number of votes given for each office to be filled by the votes of a single County, or of a Township, shall be declared elected; and the County Clerk shall immediately make out, and deliver, or send to him, a certificate of election, signed by said Clerk, and authenticated with the seal of the County Court.

County clerks' election returns.

§ 40. When a County Clerk is to be elected, the County Judge shall examine the returns so soon as they are filed, and issue to the person chosen a certificate of election in the form prescribed in the preceding section.

Returns from district composed of two or more counties.

§ 41. When there are officers other than Representatives in Congress voted for, who are to be chosen by the electors of a District, composed of two or more Counties, it shall be the duty of each of the County Clerks of the Counties composing such District, immediately after making out the statement specified in the Thirty-eighth Section of this Act, to extract therefrom so much as relates to the election of such officers, and certify under his hand, and the seal of the County Court, that such

extract contains a full statement of all the votes given for District Officers as returned to him, and without delay transmit the same to the County Clerk of the County which stands first in alphabetical arrangement in the list of Counties composing such District. The said Clerk shall compare the returns, make up a statement of the vote of the District for such officers, and file the same, together with the returns from the other Counties, in like manner as is prescribed in Section 38 of this Act. He shall also make out and transmit to the Secretary of State a copy of such statement of the votes of the District, signed by him officially, and authenticated with the seal of his Court.

§ 42. The County Clerk, to whom the election returns of a District are made, shall, on the twentieth day after the day of election, or so soon as the result is ascertained, if within that time all of said statements are received, make out, and deliver, or send to each person chosen to any such office a certificate of election under his hand and the seal of his Court.

Certificate to person elected by votes of more than one county.

§ 43. When there are officers voted for who are chosen by the qualified electors of the State, other than the Governor and Lieutenant Governor, it shall be the duty of each County Clerk, so soon as the statement of the vote of his county is made out, as required in Section thirty-eight of this Act, to copy therefrom so much as relates to the votes given for such officers, certify to the correctness thereof under his hand and the seal of his court, and transmit the same to the Secretary of State, endorsing on the package the words "Election Returns." On the sixtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the State, if received within that time, the Secretary of State shall compare and estimate the vote, and make out and file in his office a statement thereof, a copy of which shall be transmitted to the Governor. Upon this statement the Commission shall issue.

Election of officers chosen by State vote.

§ 44. When any person chosen to any office filled by the vote of the electors of a district, is required by law to be commissioned by the Governor, such Commission shall issue upon the statement of the votes transmitted to the Secretary of State, according to the provisions of the forty-first Section of this Act.

Commission from governor to officers elected by district vote.

§ 45. No certificate shall be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate; nor shall any commission be withheld by the Governor on account of any such defect or informality of any returns made to the office of the Secretary of State.

Certificate not to be withheld for want of form in returns.

§ 46. Whenever returns are required to be transmitted by one County Clerk to another, or by the County Clerk to the Secretary of State, it shall be the duty of the County Clerk to deliver the same to some Post Master of the county, at the post-office, to be transmitted by mail, taking from such Post Master, if it can be obtained, a certificate, setting forth the time when such returns were deposited in the post-office, which certificate the Clerk shall file with the returns.

Transmission of returns.

§ 47. When elections are held for Representatives in Congress, the County Clerk of each county shall make his returns thereof, in the manner prescribed in this Act, to the Secretary of State. On the sixtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the State, if received within that time, the Secretary of State shall compare and estimate the votes given for such Representatives, and certify to the Governor the person having the highest number of votes in each Congressional district as duly elected, and it shall thereupon be the duty of the Governor to give to each of such persons a certificate of his election, sealed with the seal of the State, and attested by the Secretary of State. The returns of all elections for officers chosen by the qualified electors of the State, which are required by this Act to be transmitted to the Secretary of State, shall likewise be opened on the sixtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the State, if received within that time.

Election of representatives in congress.

§ 48. When an election is held to fill the offices of Governor and Lieutenant Governor, the County Clerk of each county shall make out duplicate returns thereof in the manner prescribed in this Act, one of which he shall seal up and transmit to the Speaker of the Assembly by the Senator or Representative of his county or district, whose duty it shall be to deliver the same to the Speaker on or before the

Election of governor and lieutenant governor.

second day of the session of the Legislature, and the other shall be sealed up and transmitted by mail to the seat of government, directed to the Speaker.

Election returns for governor and lieut. governor to be opened by speaker of assembly.

§ 49. Said returns of election for Governor and Lieutenant Governor shall, during the first week of the session, be opened and published by the Speaker of the Assembly in presence of both Houses. The persons having the highest number of votes for either office shall be declared chosen; but in case any two or more persons have an equal and highest number of votes for either of said offices, the Legislature shall, by joint vote of both Houses, choose one of said persons to fill such office.

Two or more persons receiving an equal number of votes.

§ 50. If at any election to fill any office, except that of Governor or Lieutenant Governor, two or more persons receive the highest and an equal number of votes, it shall be declared that there is no choice, and a special election to fill such office shall be ordered by the proper officer.

ARTICLE VI.

OF CONTESTING ELECTIONS, OTHER THAN FOR MEMBERS OF THE LEGISLATURE, GOVERNOR, AND LIEUTENANT GOVERNOR.

Who may contest, and on what grounds.

§ 51. Any elector of the proper county may contest the right of any person declared duly elected to an office to be exercised in and for such county; and, also, any elector of a township may contest the right of any person declared duly elected to any office, in and for such township, for any of the following causes:—

1st. For mal-conduct on the part of the Board of Judges, or any member thereof.

2d. When the person whose right to the office is contested was not at the time of the election eligible to such office.

3d. When the person whose right is contested shall have been, previous to such election, convicted of an infamous crime by any Court of competent jurisdiction, such conviction not having been reversed, nor such person relieved from the legal infamy of such conviction.

4th. When the person whose right is contested, has given to any Elector or Inspector, Judge or Clerk of the election, any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election.

5th. On account of illegal votes.

Irregularity or improper conduct of judges.

§ 52. No irregularity or improper conduct in the proceedings of the Judges, or any one of them, shall be construed to amount to such mal-conduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested, to be declared duly elected, when he had not received the highest number of legal votes.

When mal-conduct of judges not to vitiate election.

§ 53. When any election held for an office, exercised in and for a county, is contested on account of any mal-conduct on the part of the Board of Judges of any township election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such township or townships shall change the result as to such office in the remaining vote of the county.

When illegal votes not to vitiate election.

§ 54. Nothing in the fifth ground of contest, specified in the first section of this article, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Who may contest election.

§ 55. No person shall be competent to contest any election unless he is a qualified elector of the district, county, or township, as the case may be, in which the office is to be exercised.

Proceedings to contest election.

§ 56. When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall file within twenty days after the return day of such election, with the County Clerk as Clerk of the Court of Sessions, a written statement, setting forth specifically:—

1st. The name of the party contesting such election, and that he is a qualified elector of the district, county, or township, as the case may be, in which such election was held.

2d. The name of the person whose right to the office is contested.

3d. The office.

4th. The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true, as he verily believes.

§ 57. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally, that illegal votes were given to the person whose election is contested in the specified township or townships, which if taken from him will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes, unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes except such as are specified in such list.

Where reception of illegal votes is cause of contest.

§ 58. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may be brought for trial for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceeding or cause for which election is contested.

Want of form not to vitiate proceedings of contest.

§ 59. Upon such statement being filed, it shall be the duty of the clerk to inform the County Judge thereof, who shall give notice and order a special term of the Court of Sessions to be held at the Courthouse of the proper county on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election.

Court to be held to determine contested election.

§ 60. Said Clerk shall, also, at the same time issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the Sheriff and be served upon the party in person, or if he cannot be found, by leaving a copy thereof at the house where he last resided.

Person whose election contested to be cited to appear.

§ 61. The said Clerk shall issue subpoenas for witnesses in such contested election, at the request of either party, which shall be served by the Sheriff as other subpoenas; and the Court of Sessions shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

Compelling attendance of witnesses.

§ 62. Said court shall meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn from day to day until such trial is ended, and may also continue said trial, before its commencement, to any time not exceeding twenty days, for good cause shown by either party upon affidavit at the costs of the party applying for such continuance.

Power of court to determine; may adjourn, &c.

§ 63. Such court shall be governed in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

Court to be governed by rules of law and evidence, and to pronounce judgment.

§ 64. If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected.

Court may declare who duly elected.

§ 65. The Clerk, Sheriff, and witnesses shall receive respectively the same fees from the party against whom judgment is given, as are allowed for similar services in the District Court.

Fees to officers and witnesses.

§ 66. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election, for costs, in favor of the party whose election was contested.

Costs to party contesting election.

Costs to party where election contested

§ 67. If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested in favor of the party contesting the same.

Each party liable for costs of officers and witnesses.

§ 68. Each party shall be liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner in which similar costs are collected in the District Court.

Party aggrieved may appeal, and manner of appeal.

§ 69. Either party feeling himself aggrieved by the judgment of said court, may appeal therefrom to the District Court of the proper county, within ten days after the rendition thereof, by filing with the Clerk of the Court of Sessions an appeal bond in the penal sum of double the amount of the costs which have accrued and may accrue thereon in the District Court with sufficient security, and with the condition that he will pay all said costs if judgment shall be given against him in the District Court; and shall also file with said bond his affidavit, stating that he has merits in his appeal, as he is informed and verily believes, and that the same is not taken to harass and oppress the opposite party, but that right and justice may be done.

Transcript of proceedings to be filed in appellate court.

§ 70. The Clerk of said Court of Sessions, within ten days after said appeal bond and affidavit are thus filed, shall file the same in the District Court, together with a certified copy of the statement of the causes of contest, and a transcript of the proceedings and judgment of said Court.

Appeal to be determined by district court.

§ 71. Said appeal shall be tried and determined by the District Court, in the manner the same is required to be tried and determined by the Court of Sessions; and said cause shall be tried at the first term of said District Court next after the filing of said appeal, unless the Court, for good cause shown by either party, shall continue the same; the costs of the continuance to be paid by the party applying therefor.

Judgment upon the appeal.

§ 72. The said Court may dismiss said appeal when the same is insufficiently taken, or for want of prosecution, or may dismiss the whole proceedings for any substantial defect therein; and in any such case, or if the cause is tried upon its merits, shall pronounce such judgment affirming or setting aside and annulling such election, as should have been rendered in the premises by said Court of Sessions.

Commission, if used, to become void if election annulled.

§ 73. Whenever an election shall be annulled and set aside by the judgment of the District Court, or by the Court of Sessions, when no appeal has been taken thereupon within ten days, the certificate or commission, if any has been issued, shall be thereby rendered void, and the office become vacant.

Contesting election of county judge.

§ 74. In case of any contest in regard to an election to fill the office of County Judge, such contest shall be tried in like manner before the Associate Justices of the Court of Sessions.

ARTICLE VII.

OF CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATURE.

Who may contest election.

§ 75. The right of any person declared duly elected to a seat in the Senate or Assembly, may be contested by any qualified voter of the county or district to be represented by such Senator or Member of Assembly.

Statement of cause of contest to be filed.

§ 76. The person contesting such election shall, within ten days after such election, file with the Clerk of the District Court of the County in which the alleged cause or causes of contest originated, a concise statement of the grounds on which he intends to rely, verified by affidavit.

Commission to issue to take testimony of witnesses.

§ 77. Immediately on the filing of such statement in the Clerk's office, the said Clerk shall issue a commission, directed to two Justices of the Peace of his County, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of such witnesses as the parties to such contest may wish to examine.

Notice of proceedings to person whose election contested.

§ 78. Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of the statement, certified by the clerk of said Court, shall be delivered to the person whose election is contested, or if he cannot be found, shall be left at the house where he last resided, by the Sheriff of the county in which such person claims his residence, within ten days after such statement shall have been filed in the clerk's office.

§ 79. The Sheriff into whose hands such notice and certified copy may come, shall make due service thereof, and shall return to the proper clerk a certified copy of such notice, with the manner and time of service endorsed thereon, for which he shall be entitled to receive from the party contesting such election, the same fees for service and mileage as are allowed in the District Courts for service of original writs.

Sheriff to serve notice of proceedings.

§ 80. Either of said Justices of the Peace shall have power at any time to issue subpoenas for witnesses at the request of either party, to be served by the Sheriff as other subpoenas; and such Justices, when met at the time and place appointed to take such depositions, shall have the same power to issue attachments and assess fines against witnesses as is given to Justices of the Peace in the trials of suits instituted before them.

Compelling attendance of witnesses.

§ 81. Said Justices of the Peace shall meet at the time and place appointed, to take the depositions of witnesses produced by the parties, which shall be reduced to writing by said Justices, and sworn to and subscribed by said witnesses respectively, and duly certified by said Justices as depositions are in other cases, noting in the caption of each deposition by which party the witness was called.

Testimony—how taken.

§ 82. Said Justices may continue said examination from day to day, if the business shall require it; and when the same is closed, they shall deliver the depositions taken before them, together with their said commission, to the Clerk of the District Court, by whom the same was issued.

Testimony, when taken, to be delivered to clerk of district court.

§ 83. If at any time either of the said Justices shall become unable to proceed in such examination, said clerk may supply the vacancy by designating any other Justice of the Peace of the county in the place of such Justice.

Justice unable to proceed in taking testimony.

§ 84. The Sheriff, for the service of such subpoenas, and the Justices for issuing the same and taking the depositions, shall receive from the party at whose instance such services are performed, the same fees as are allowed them for similar services in other cases.

Fees of sheriff and justices.

§ 85. It shall be the duty of said clerk to seal up such depositions, together with the original statements of the grounds of such contest, and the copy of the notice served upon the party whose right is contested, and the commission issued to the Justices of the Peace, and transmit the same by mail to the Secretary of State, endorsing thereon the names of the contesting parties, and the branch of the Legislature before which such contest is to be tried.

Testimony to be transmitted to secretary of state.

§ 86. It shall be the duty of the Secretary of State to deliver the same unopened to the presiding officer of the House in which such contest is to be tried, on or before the second day of the session of the Legislature next after taking such depositions, and such presiding officer shall immediately give notice to said House that said papers are in his possession.

Secretary of state to deliver same to presiding officer of house in which contest to be tried.

§ 87. Each House of the Legislature is the judge of the qualifications and elections of its members, and shall try all contested elections of its members in such manner as it may direct.

Each house to try contested elections.

§ 88. At any time after notice of any contest shall be given, and before the trial of such contested election before the proper branch of the Legislature, it may be lawful for either party to such contest to take depositions to be read on the trial thereof, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on any trial pending in the District Court; and such depositions, when thus taken, shall be sealed up by the officer taking the same and directed to the Secretary of State, who shall keep the same unopened and deliver them to the presiding officer of the House in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding sections of this Article.

Either party to contest may take depositions.

§ 89. Nothing contained in this Article shall be so construed as to abridge the right of either branch of the Legislature, trying any contested election, from granting commissions to take testimony, or from sending for and examining before such branch any witnesses it may desire to hear on such trial.

Right of Legislature to take testimony not abridged.

ARTICLE VIII.

OF CONTESTING THE ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR.

§ 90. Any qualified elector of the State may contest the election of any person, declared duly elected Governor or Lieutenant Governor of the State of California.

Who may contest.

Grounds of contest to be specified, &c.

§ 91. When such elector chooses to contest such election, he shall, within twenty days after proclamation thereof, deliver to the presiding officer of each House of the Legislature a specification of the grounds of such contest, stating therein that he is a qualified elector of said State, and the specification shall be verified by the affidavit of such elector.

Notice to person whose election contested.

§ 92. As soon as the presiding officers shall have received said specifications, they shall forthwith make out a notice in writing, directed to the person whose election is contested, and deliver the same to a Sergeant-at-arms, who shall serve such notice forthwith on the persons therein named.

Notices to members of Legislature.

§ 93. Said presiding officers shall also immediately give notice to their respective Houses that such specifications of the grounds of contest have been received.

Seven members to be chosen from each branch of the Legislature.

§ 94. Each House shall forthwith proceed separately to choose seven persons, members of its own body, in the following manner: 1st, The names of the members of each House, except the Speaker of the Assembly, written on similar paper tickets, shall be placed in a box; that is, the names of the Senators in the presence of the Senate, by their Secretary, and of the Assembly in their presence, by the Clerk. 2d, The Secretary of the Senate, in the presence of the Senate, and the Clerk of the Assembly, in the presence of the House, shall draw from their respective boxes the names of seven members each. 3d, As soon as the names are thus drawn by each House, notice thereof and of the names of the members drawn, shall be given to the other House, and the names of said fourteen members thus drawn shall be entered on the journals of the Houses respectively.

The members that are chosen to constitute a committee to determine such contested election.

§ 95. The members thus selected shall constitute a committee to try and determine such contested election, and for that purpose shall hold their meetings publicly at the seat of government, at such time and place as they may designate, and may adjourn from day to day or to a day certain, until such trial shall be ended and determined; they shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contester and the person whose right is contested, and shall report their judgment in the premises to both branches of the Legislature, which report shall be entered upon the journals of the respective Houses.

What testimony to be received.

§ 96. The testimony received in such investigation shall be confined to the points contained in the specification of the grounds of contest.

Judgment of committee final. Proceedings where election declared invalid.

§ 97. The judgment of the Committee, pronounced in the final decision of said contested election, shall be conclusive as to the validity or invalidity thereof; and, if such election is judged invalid, the office, rendered vacant by such decision, shall be filled in the mode prescribed by the Constitution.

ARTICLE IX.

OF THE PENALTIES FOR MISCONDUCT AT ELECTIONS, AND FOR VIOLATIONS OF CERTAIN PROVISIONS OF THIS ACT.

Intimidating or corrupting electors.

§ 98. If any person shall directly, or indirectly, use any threats, menace, or force, or any corrupt means or device, at, or previous to, any election held pursuant to this Act, towards any elector, to hinder or deter him from voting at such election; or shall attempt by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

False statement as to name on ticket.

§ 99. If any person shall furnish any elector, wishing to vote at any election, held pursuant to the provisions of this Act, who cannot read, with a ticket, such person informing or giving such elector to understand that it contains a name or names written or printed thereon, different from the name or names which are written or printed thereon, such person shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

Causing an elector to vote for a person other than he intended.

§ 100. If any person shall defraud any elector at any such election by deceiving and causing him to vote for a different person for any office than such elector desired or intended to vote for, or shall fraudulently attempt to deceive, and cause such elector thus to vote for a different person for any office

than he intended and desired to vote for, such person, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars.

§ 101. If any person, not having the legal qualifications of an elector, shall fraudulently vote, or shall fraudulently attempt to vote at any election, such person, on conviction thereof, shall be fined in any sum not less than twenty nor more than two hundred dollars. Voting without being qualified

§ 102. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets folded together, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars. Voting more than once.

§ 103. If any Inspector, Judge, or Clerk of any election, while acting as such, shall induce or attempt to induce any elector, either by menace, or reward, or promise thereof, to vote differently from what such elector shall intend or desire to vote, such person so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars. Inspector, judge, or clerk intimidating or corrupting electors.

§ 104. If any Inspector, Judge, or Clerk of an election shall, previous to putting the ballot of any elector in the ballot-box, attempt to pry into or find out any name, or names, on such ballot which shall have been handed in by said elector in a folded form; or if any Inspector, Judge, or Clerk of any election shall open, or suffer the folded ballot of any elector, which has been handed in to the Board of Judges, to be opened or examined into previous to putting the same into the ballot-box; or if any Inspector, Judge, or Clerk of an election shall make or place any mark or device on any folded ballot which has been handed in to the Board of Judges by any elector, with a view to ascertain the name of any person, or persons, for whom such elector shall have voted at any such election; or if any Inspector, Judge, or Clerk of an election, without the consent of the elector, shall disclose the name of any person or persons which such Inspector, Judge, or Clerk shall have fraudulently or illegally discovered to have been voted for by such elector at any election, every such Inspector, Judge, or Clerk of an election so offending, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars. Inspectors, &c., unfolding or marking tickets.

§ 105. If the Secretary of State, or any Inspector, Judge, Board of Judges, County Clerk, or Clerk of an election, or Clerk of the District Court, on whom any duty is enjoined by this Act, shall be guilty of any wilful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year. Misconduct in officers as to electors.

§ 106. It is hereby made the duty of the Secretary of State, after the expiration of sixty days from and after each election for Governor, Lieutenant Governor, and Representatives in Congress, to certify to the proper District Attorneys any and all failures and omissions of the County Clerks in their respective counties, to comply with the provisions of this Act, in returning or certifying the returns or certificates of any such election to the office of the Secretary of State; and every such certificate of the Secretary of State, sealed with the State seal, shall be sufficient presumptive evidence of any such failure or omission herein specified on the part of the County Judge, in any trial or indictment against him therefor. Secretary of state to report to district attorneys all omissions of duty by county clerks.

§ 107. It shall be the duty of the District Attorney of each District Court to present all violations of the provisions of this Act, which may come to his knowledge, to the special consideration of the proper grand jury. District attorney to present all violations of act to grand jury.

Chap. 39.

AN ACT concerning the office of County Attorney.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Persons elected to take oath and give bond.

§ 1. Each person elected to the office of County Attorney, shall, before entering on the duties of his office, take the oath prescribed by the Constitution, and give bond to the State in the sum of two thousand dollars.

To conduct all prosecutions for public offences.

§ 2. The County Attorney must attend the Court of Sessions of his county at each term thereof, and prosecute therein, on behalf of the people, all prosecutions for public offences.

Court may appoint person to perform duties of county attorney in certain cases.

§ 3. If he fail to attend any term of the court, or be interested in any case, or shall have been employed as counsel, or be, from any cause, disqualified to act therein, the court shall designate some attorney to perform his duties during his absence, or in those cases in which he may be disqualified, who shall be entitled to the same fees for his services as the County Attorney.

Other duties of county attorney.

§ 4. He shall institute all proceedings for the recovery of debts, fines, forfeitures, and penalties, accruing to the State or to his county, which are required by law to be prosecuted before the County Court, Court of Sessions, or a Justice of the Peace. He must also institute proceedings before Magistrates for the arrest of persons charged or reasonably suspected of public offences cognisable in the Court of Sessions, whenever he has information of any such offence having been committed, and for that purpose must attend before the Magistrate in cases of arrest, when required by him.

County attorney to act for district attorney in his absence.

§ 5. In the absence of the District Attorney, the County Attorney shall also attend all examinations in his county before Magistrates, of persons charged with offences cognisable in the District Court.

Liability for official moneys, and how proceeded against on his failure to pay over same.

§ 6. He shall be liable for all moneys coming into his hands by virtue of his office, and may be proceeded against on his bond in like manner as the District Attorney may be proceeded against; and upon his failure to pay any money collected by him by virtue of his office, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to the use of his county.

Punishment for misdemeanor in office.

§ 7. Any County Attorney may be punished for any misdemeanor in office, or neglect of duty, by removal from office, or by fine not exceeding five hundred dollars, for the use of the county, or by both such removal and fine.

To receive ten per cent. on amount of certain moneys collected.

§ 8. In addition to the fees allowed by law for the prosecution of offences and forfeited recognisances, he shall be entitled to receive ten per cent. on the amount of money collected on any suit instituted or prosecuted by him for the State or county.

Chap. 40.

AN ACT concerning the office of District Attorney.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Persons elected to take oath and give bond.

§ 1. Each person elected to the office of District Attorney shall, before entering on the duties of his office, take the oath prescribed by the Constitution, and give bond to the State in the sum of ten thousand dollars.

District attorney to attend court.

§ 2. The District Attorney must attend the District Court held in each county of his district, and prosecute therein, on behalf of the people, all prosecutions for public offences.

§ 3. If he fail to attend any term of the Court, or be interested in any case, or shall have been employed as counsel, or be from any cause disqualified to act therein, the Court shall designate some attorney to perform his duties during his absence, who shall be entitled to the same fees for his services as the District Attorney.

Court may appoint some person to perform duties of district attorney in certain cases.

§ 4. For his failure to attend at any term of the Court for any county, the District Attorney shall forfeit the sum of two hundred dollars, to be deducted from his salary, and to be paid to the person by whom the duties of the office may be discharged at such term, upon the certificate of the Court. The certificate shall be sufficient authority for the Comptroller to audit the claim of such person, and draw a warrant on the treasurer for the amount.

Penalty for failing to attend court.

Claim of person appointed in his place.

§ 5. The District Attorney, when not attending at any term of the District Court, must also institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offences cognisable in the District Court, whenever he has information of any such offence committed, and for that purpose must attend upon the magistrate in cases of arrest, when required by him.

District attorney to institute proceedings against persons charged with public offences.

§ 6. It shall be his duty to draw indictments when required by the Grand Jury; to advise the Grand Jury in any matter when asked so to do; to defend all suits brought in the District Court against the State or any county of his district; to prosecute all recognisances forfeited in the District Court or sued upon therein; and all actions therein for the recovery of debts, fines, penalties, and forfeitures accruing to the State or any county in his district; he shall also perform such other duties as may be required of him by law.

To draw indictments, advise grand jury, defend suits against the State or county, and prosecute forfeited recognisances.

§ 7. When he shall receive any money in his official capacity, he shall deliver a receipt therefor to the person from whom he received it, and file a duplicate thereof with the County Treasurer.

To give receipt for moneys received officially.

§ 8. Within thirty days after receiving the money, he shall pay it over to the officer entitled to receive it. If he fail or neglect to account for and pay over the same, as required by the last section, the officer entitled thereto may recover the amount, with fifty per cent. damages and interest, from the District Attorney and the sureties on his official bond, by action or motion in the District Court, three days' previous notice thereof having been given. For such neglect or refusal, the District Attorney shall also be deemed guilty of a misdemeanor in office.

To pay over moneys, and penalty for neglect.

§ 9. The District Attorney shall, without fee, give his opinion to any Assessor or Collector, or any County Auditor or Treasurer, in any matter relating to the duties of his office.

To advise assessor or collector, or county auditor or treasurer.

§ 10. He shall keep a register of his official business, in which shall be entered a note of every action, whether criminal or civil, prosecuted by him officially, and of the proceedings thereon, which shall, upon the expiration of his term of office, be turned over to his successor.

To keep a register of official business.

§ 11. Upon the close of each term of the District Court in his district, he shall make a report to the Attorney General of the number of actions in which the State is a party, commenced at the term, their character, the number tried, the judgment in each, the number remaining on the docket, and the state of the proceedings in each. He shall make his report in such form as may be directed by the Attorney General, and shall at all times communicate to him such information concerning the business of the State in the district as the Attorney General may require.

To report state of business to attorney general.

§ 12. Any District Attorney may be indicted for misdemeanor in office, or neglect of duty, and be punished by removal, or by fine, not exceeding two thousand dollars, for the use of the county in which he is convicted, or by both such fine and removal.

Misdemeanor in office.

§ 13. The District Attorney shall receive such salary as may be fixed by law, in addition to the fees allowed for the prosecution of offences and of forfeited recognisances. He shall also be entitled to receive for all amounts collected for the State by action, ten per cent. on the amount collected; and for all informations filed by him in the District Court and successfully prosecuted, such fees as may be allowed by the Court, to be paid by the defendant.

Salary and fees.

Chap. 41.

AN ACT concerning Notaries Public.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Notaries may be appointed: their term of office.

§ 1. The Governor shall, in his discretion, appoint and commission Notaries Public in each County of the State, in proportion to the population and business thereof, and the persons appointed shall hold office for the term of two years, and until their successors are appointed and qualified.

To take oath of office, and give bond.

§ 2. Each notary public, before entering upon the duties of his office, shall take the oath of office, which shall be endorsed on his commission, and shall enter into bond to the State, in the sum of five thousand dollars, with sureties to be approved by the County Judge of the county for which such notary may be appointed.

Bond and oath to be recorded.

§ 3. The bond, together with a certificate of the oath, shall be filed and recorded in the office of the County Clerk of such county.

Duties of, respecting foreign bills.

§ 4. Notaries public have authority to demand acceptance and payment of foreign bills of exchange, and to protest the same for non-acceptance and non-payment, 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 other State, government, or country, may be performed by notaries public.

Duties of, respecting inland bills and notes.

§ 5. They may also demand acceptance of inland bills of exchange, and payment thereof, and of promissory notes, and may protest the same for non-acceptance, or non-payment, as the case may require.

May take acknowledgment of deeds, &c.

§ 6. Each notary public shall have power to take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing executed by any married woman, to take depositions, and to administer oaths and affirmations, in all matters incident or belonging to the duties of his office.

To record official acts.

§ 7. Each notary public shall keep a fair record of all his official acts, and when required, shall give a certified copy of any record in his office, to any person, upon the payment of the fees therefor.

To provide a seal.

§ 8. Each notary public shall provide a notarial seal, containing his name, surname, office, and place of residence, and shall authenticate therewith all his acts and attestations. Until such seal can be obtained, he may use his private seal.

Effect of notarial seal, &c.

§ 9. Any certificate or instrument, either printed or written, purporting to be the official act of a notary public of this State, and purporting to be under the seal and signature of such notary public, shall be received as *prima facie* evidence of the official character of such instrument, and of the truth of the facts therein set forth.

Original protest and certificate, *prima facie* evidence of facts contained in it.

§ 10. The original protest of a notary public, under his hand and official seal, of any bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment by him of such bill of exchange or note, for acceptance or payment, and the non-acceptance or non-payment thereof, and the service of notice on any or all of the 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 specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, shall be *prima facie* evidence of the facts contained therein. The certificate of a notary public, drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts, in like manner as the original protest.

Misconduct or neglect of duty.

§ 11. For any misconduct or neglect of duty in any of the cases in which any notary public, appointed under the authority of this State, is authorized to act, either by the law of this State, or of

any other State, government, or country, or by the law of nations, or by commercial usage, he shall be liable on his official bond, to the parties injured thereby, for all damages sustained. For any wilful violation or neglect of duty, any notary public shall be subject to criminal prosecution, and may be punished by fine not exceeding two thousand dollars, and removal from office.

§ 12. If any notary public die, resign, be disqualified, or remove from the county, his record, and all his public papers, shall within thirty days be delivered to the Recorder of the county, who shall deliver them to the successor of said notary when qualified.

Disposition of record in case of death, &c.

§ 13. When the term of office of any notary public expires, and his successor is appointed and qualified, he shall deliver over his record and public papers to such successor.

To deliver records to successor.

§ 14. Any notary public, having in his possession the records and papers of his predecessor or predecessors in office, may grant certificates, or give certified copies of such record and papers, in like manner, and with the same effect as such predecessor or predecessors could have done.

Successor may give certified copies of predecessors' records.

§ 15. Each notary public shall receive for his services such fees as may be allowed by law.

Fees.

Chap. 42.

AN ACT concerning the office of County Treasurer.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The County Treasurer shall hold his office for the term of two years from the time of his election, and until his successor is chosen and qualified.

Term of office.

§ 2. Each County Treasurer, before entering on the duties of his office, shall enter into bond, with two or more sufficient freehold sureties, to the acceptance of the Court of Sessions of his proper County, in a penalty of double the probable amount of money that may at any time come to his hands as such Treasurer, with condition for the paying over all moneys according to law which shall come into his hands for State, County or other purposes, and that he will faithfully and promptly discharge all the duties of his said office, that are now or may hereafter be enjoined on him by law.

To give bond.

§ 3. He shall likewise take the oath prescribed by law, to be endorsed on his certificate of election, before entering on the duties of his office.

Take oath of office.

§ 4. Whenever the office of County Treasurer shall become vacant by death, removal out of the county, resignation, neglect to give bond, or from any other cause, the Court of Sessions shall forthwith convene and appoint some suitable person to fill such vacancy ; and the person so appointed shall give bond and take the oath in the like manner as required of County Treasurers in the second section of this Act, and shall hold his office until the expiration of the term for which his predecessor was elected or appointed, and until his successor is chosen and qualified.

Vacancies how supplied.

§ 5. Each County Treasurer shall keep his office at the seat of justice for his county, and shall keep a fair and accurate account of all money by him received, showing the amount thereof, the time when, from whom, and on what account received ; also of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid ; and he shall so arrange his books that the amount received and paid on account of separate and distinct funds or specific appropriations shall be exhibited in separate and distinct accounts, as well as that the whole receipts and expenditures shall be shown by one general or cash account ; but no money received for taxes charged on the duplicate of the current year shall be by the Treasurer entered on his account with the county, until he shall have made his annual settlement therefor with the County Auditor.

To keep office at seat of justice, and account of receipts and disbursements.

§ 6. It shall be the duty of the County Treasurer to receive all moneys due and accruing to the county,

To receive and pay moneys.

or which are required by law to be paid to him or into the County Treasury, and to pay and disburse the same on the warrant of the County Auditor, founded on orders made by the Court of Sessions.

To give receipts for moneys paid him.

§ 7. When any money shall be paid to the County Treasurer (except such as shall have been paid on account of taxes charged on the duplicate), he shall give to persons paying the same a receipt therefor; which receipt such person shall forthwith deposit with the County Auditor, who shall charge the Treasurer therewith, and give the person paying the same a quietus.

Books and accounts to be inspected by court of sessions.

§ 8. The books, accounts, and vouchers of the County Treasurer shall at all times be subject to the inspection and examination of the Court of Sessions, and it is hereby made their duty to make such examination and count the money on hand at least once each year.

To redeem orders of auditor.

§ 9. The County Treasurer, when an order drawn on him as such Treasurer, by the Auditor of his County, is presented for payment, shall, if there be money in the Treasury for that purpose, redeem the same, and shall write on the face of such order "redeemed," the date of redemption, and shall sign his name thereto.

Orders not paid for want of funds to be so endorsed.

§ 10. When any order or warrant shall be presented to the County Treasurer for payment, and the same is not paid for want of funds, the Treasurer shall endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time till redeemed, said order or warrant shall bear ten per cent. per annum.

To give notice when in funds to redeem orders.

§ 11. So soon as there shall be sufficient funds in the treasury of the county to redeem the orders or warrants drawing interest, the County Treasurer shall give notice in some newspaper in his county, or if no newspaper be printed in his county, then by written or printed notices posted upon the Court House door, stating therein that he is ready to redeem said orders or warrants, and from the date of such notice said orders or warrants shall cease to bear interest.

Payments for interest to be entered separately.

§ 12. When the County Treasurer shall redeem any order on which any interest is due, he shall note on the order or warrant the amount of interest paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Certain orders to have preference.

§ 13. Orders or warrants drawn on the County Treasury and properly attested, shall be entitled to preference as to payment out of moneys in the Treasury properly applicable to such order, according to the priority of time in which the same may have been presented. The time of presenting such order shall be noted by the Treasurer; and upon the receipt of any moneys into the Treasury not otherwise appropriated, it shall be the duty of the Treasurer to set apart the same, or so much thereof as may be necessary for the payment of such order or warrant.

Orders payable out of county revenue to be received in payment of county tax. Redeemed orders to be deposited with auditor.

§ 14. All orders or warrants drawn on the County Treasurer and payable out of the county revenue shall be received in payment of the county tax, when tendered in payment therefor, without regard to the priority of the number thereof or time at which the same may have been presented for payment.

§ 15. The County Treasurer shall, on the first Mondays of March, June, September, and December in each year, deposit with the County Auditor all orders and warrants by him redeemed, and take the Auditor's receipt therefor.

Removal from office.

§ 16. Whenever suit shall have been commenced against any delinquent County Treasurer, the Court of Sessions may, in their discretion, remove such Treasurer from office and appoint some person to fill the vacancy thereby created as hereinbefore directed.

Duty on quitting office.

§ 17. Each County Treasurer, on going out of office, shall deliver to his successor in office all the public money, books, accounts, papers, and documents in his possession; and in case of the death of any County Treasurer, his legal representatives shall in like manner deliver up all such moneys, books, accounts, papers, and documents as shall come into their possession; *Provided*, however, no per centage shall be allowed to the Treasurer on any money by him received from his predecessor in office or from the legal representatives of such predecessor.

Proviso.

To settle his accounts annually.

§ 18. Every County Treasurer shall make a full settlement of all his accounts with the County Auditor annually, between the second and third Monday of January, in the presence of the Court of Sessions, who shall have a supervisory control of such settlement; said settlement to be governed in

the manner prescribed by law, and said Treasurer shall be credited with all sums paid for printing and publishing notices required to be given by him in the course of his official duties, and with all sums paid by him for blank books, stationery, and office furniture, to be paid on the order of the County Auditor.

§ 19. The Treasurer shall keep his office open for the transaction of business from 10 o'clock A. M. until 4 o'clock P. M. of every day in the year, Sundays excepted. Office hours.

Chap. 43.

AN ACT concerning the office of County Assessor.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

- § 1. The County Assessor shall hold his office for the term of one year from the date of his election and until his successor is elected and qualified, and shall do and perform all the duties which are now or may hereafter be required of him by law. Term of office.
- § 2. He shall, before entering on the duties of his office, execute bond, with two or more freehold sureties, to the acceptance of the County Judge of his county, in the penal sum of five thousand dollars, conditioned for the faithful discharge of all duties imposed on him by law, and take the oath of office prescribed by law, which shall be endorsed on his certificate of election. To give bond, and take oath of office.
- § 3. In all cases where the office of County Assessor becomes vacant, from any cause whatever, and the interests of the county and State require that such vacancy should be filled previous to the next annual election, the Court of Sessions of the county shall appoint some suitable person possessing the qualifications of an elector, residing within such county, to fill the vacancy, and the person thus appointed shall give bond and take the like oath as is required of Assessors chosen by the people, and shall hold his office until the next annual election and until his successor is chosen and qualified. Vacancies—how supplied.
- § 4. Said Assessor shall have the power of appointing one or more deputies to aid in his official duties, for whose conduct he shall be responsible. May appoint deputies.
- § 5. If any Assessor shall, by himself or deputy, be guilty of any neglect of duty enjoined on him by law, the Court of Sessions may make such deduction from his account for services rendered as they may deem just and reasonable, and shall, moreover, be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars. Penalty for neglect of duty.
- § 6. Each County Assessor and deputy Assessor shall, at the end of each week in which he shall have been engaged in the performance of any of the duties required of him by law, enter an account in writing of the number of days or parts of days he may have been so engaged during the week, and at the next regular term of the Court of Sessions, after the return of his assessment roll, shall present such statement to said Court, and shall make oath to the truth thereof, and shall answer such questions respecting the same as may be propounded to him by said Court. To make out weekly an account of time occupied in official duties, which is to be verified and presented to court of sessions.
- § 7. The Assessor and his deputy shall each be allowed such sum per day, not exceeding sixteen dollars, as said Court of Sessions may see fit to allow, for each day the Court shall be satisfied they shall have been respectively employed in the discharge of the duties required of them by law. Compensation to assessor and deputies.
- § 8. Suit may be instituted on such Assessor's bond, in the manner designated by law, for the benefit of any person who may be aggrieved by the wrongful conduct of such Assessor or his deputy. Suit on assessor's bond.
- § 9. The Assessor and his deputy are hereby authorized to administer all oaths and affirmations contemplated by law in the discharge of their duties as such Assessors. Assessor and deputies may administer oaths.

Chap. 44.

AN ACT concerning Jails and Jailors.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

County jail in each county.

§ 1. The Court of Sessions of each County of this State shall cause a County Jail to be erected at the Seat of Justice for their County, or procure some suitable place for the safe keeping of prisoners, and to be kept in good condition and repair.

Sheriffs to have charge of jails and prisoners, to appoint Jailors, Sheriff, and Jailors to receive and keep prisoners, and penalty for refusing.

§ 2. The Sheriff of each County shall have charge of the Jail of his County and the custody of all prisoners in such Jail; he may appoint a Jailor, for whose conduct he shall be responsible.

§ 3. It shall be the duty of the Sheriff and Jailor to receive from Constables and other Peace Officers, and confine in Jail, all persons who shall be apprehended by them for any public offence, or who may be committed to such Jail by any competent authority; upon refusal to do so, any Sheriff or Jailor shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding one thousand dollars.

Female prisoners. Sheriff to provide food, &c., for prisoners.

§ 4. Female prisoners shall be confined and kept separate from male prisoners.

§ 5. The Sheriff shall provide every prisoner with necessary food, for which he shall be allowed a reasonable compensation, to be ascertained by the Court of Sessions, and paid as other County charges. If, from the inclemency of the season, the sickness of a prisoner, or other cause, the Sheriff shall be of opinion that additional clothes or bedding are necessary for such prisoner, and such prisoner shall be unable to obtain them, the Sheriff shall furnish the same for the use of such prisoner, for which he shall be allowed a just compensation to be paid as aforesaid.

Convicted prisoners to be charged with costs of their conviction, &c.

§ 6. All necessary expenses incurred in arresting and conveying a prisoner to Jail, and in supporting him while in Jail, shall, in cases of conviction, be charged as costs against the person convicted, and, when collected, they shall be paid into the County Treasury.

Sheriff and Jailors to receive persons committed by authority of the United States.

§ 7. It shall be the duty of the Sheriff or Jailor, in any County within this State, to receive into his custody any prisoner who may be committed to his charge under the authority of the United States, and to keep such prisoner safely until he is discharged by due course of law; such Sheriff or Jailor shall be subject to the same penalties for any neglect or failure of duty herein, as he would be subject to, by the Laws of this State, for the like neglect or failure in case of a prisoner committed under the authority of said Laws; *Provided*, provision be made by the United States for the support of such prisoner.

Prisoners may be sent to a jail out of the county in certain cases.

§ 8. Whenever the Sheriff of any County shall be of opinion that the Jail of his County is insufficient, or there shall be no Jail in his County, he may commit the person in his custody to the nearest Jail in some other County; and it is made the duty of the Sheriff or Jailor of such County to receive such person, and keep him safely, subject to the order of the proper Court of the County from which such prisoner is brought. The expenses of supporting such prisoner shall be borne by the County from which such prisoner is brought.

Imprisonment of sheriffs.

§ 9. The Sheriff may be imprisoned in the Jail of his own County; and, for the time that he shall be confined, the Coroner shall have the custody, rule, keeping, and charge of the said Jail, and by himself and his sureties be answerable for the faithful discharge of his duties in that office.

Allowance to sheriffs and Jailors.

§ 10. The Court of Sessions of each County shall allow to the Sheriff or Jailor for their services in keeping and attending to the Jail of their County, such compensation as they shall deem proper.

Chap. 45.

AN ACT to incorporate the City of Benicia.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The corporate powers of the City of Benicia shall be vested in a Mayor, who shall be *ex officio* President of the Board of Councilmen, and six other Councilmen, who shall be citizens of the State, and shall have resided in the City of Benicia for thirty days next preceding the election.

Corporate powers of city vested in mayor and board of councilmen.

§ 2. The inhabitants of said city shall henceforth be a body corporate and politic, having perpetual succession, and in the name and style of the "Mayor and Council of Benicia," may purchase, hold, and sell real and personal estate within the city, sue and be sued, plead and be impleaded, in any court of record or before any competent authority, make and use a common seal which they may alter at pleasure, make contracts and be contracted with, and do all other things which natural persons might or could do, not inconsistent with this Act or the Constitution and laws of this State.

Inhabitants of city to be a body corporate, and styled "the mayor and council of Benicia."

§ 3. The Council shall have power to levy and collect an *ad valorem* tax on all real and personal estate within said city not exceeding one per centum per annum, and a capitation tax not exceeding five dollars per annum on all male inhabitants above the age of twenty-one years, and grant license to all exhibitions of shows, to provide for licensing all business not prohibited by law, and to fix the amount of license tax for the same, provided it shall not exceed the amount of State tax for similar business, and be proportioned to the amount of business done by each person; to open, grade, and pave streets and alleys, to construct wharves and fix the rates of wharfage, and build schoolhouses and other public buildings that may be necessary for the common benefit of the city, and superintend and apply any school fund that may arise from ferries, lease or sale of any public grounds, or from any donation, or otherwise; to pass ordinances to promote the health, convenience, and good government of the city, and fix the penalties for the violation of them, provided no fine shall be imposed exceeding five hundred dollars, and no offender be imprisoned for more than five days. No ordinance shall be in force until three days after its publication in legible manuscript or printed placards, posted in at least three public places in the city; to make sanitary regulations, to provide for the sick and poor, and the burial of the dead leaving insufficient means, and for this purpose they shall have power to purchase, if necessary, out of the city limits, and improve it in a suitable style; to punish contempts offered to them while in session; to create debts by loan, or otherwise, not to exceed in the aggregate at any one time twenty-five thousand dollars; to create such offices as they may deem necessary to the proper exercise of the powers herein conferred, to provide for filling such offices, to require of the persons chosen to file their bonds in such penalties as they may deem sufficient for their faithful performance; to establish and regulate markets; to provide for watering the city by public wells or otherwise; to provide against the destruction of property by fire; to maintain an efficient guard or watch; and if instructed by a vote of a majority of the qualified voters, to provide for lighting the city. And all other powers to carry into full effect the foregoing powers.

Powers of council.

§ 4. The Council shall appoint a clerk, who shall keep a fair record of all their proceedings, and produce the same for the inspection of any citizen whenever required.

Council to appoint a clerk, and keep record of their proceedings. City marshal.

§ 5. There shall be a City Marshal, who shall collect the revenue of the city, and execute all process issued by the Mayor or Council.

§ 6. There shall be an Assessor and Treasurer, whose duty shall be defined by the Council; and the offices of Assessor and Marshal shall be incompatible.

Assessor and treasurer.

§ 7. All officers whose duty shall require them at any time to have custody of the public funds, before entering upon the duties of their offices, shall enter into bond, with security, to be approved by

Certain officers to give bond.

the Council, in such penalty as the Council shall require, payable to the "Mayor and Council of Benicia," for the use of the city, with such conditions as the Council may prescribe for the faithful performance of their several duties.

Election of officers.

§ 8. The Mayor and six other Councilmen, the Marshal and Treasurer, shall be elected by the citizens of Benicia qualified to vote for members of the Assembly, by ballot, on which shall be legibly written or printed the names of the persons voted for for each office, which election (except the first) shall be held at the place or places and in the manner prescribed by the Council; and the persons chosen shall hold their offices for one year from the day of election, and until their successors be duly elected and qualified, and all other city officers shall hold their offices for the same period, unless sooner removed by the Council for good cause.

Last named officers to take oath of office.

§ 9. Before entering upon the duties of their several offices, the above named officers shall take an oath before some competent authority to support the Constitution of the United States and of the State of California, and that they will faithfully perform the duties of their several offices.

Failing to take oath to vacate election.

§ 10. If any of the above named officers shall fail or refuse to take the above oath, or give the required bond, for the space of five days after his election or appointment, his office shall be vacated, and another election directed or another appointment made, to serve the remainder of the time for which he may have been elected or appointed; or if a vacancy shall happen from any other cause, a new election shall be immediately directed or an appointment made to fill such vacancy.

New election may be ordered.

Jurisdiction of mayor.

§ 11. The Mayor shall have exclusive jurisdiction of all violations of any of the city ordinances, and shall have all the powers of a Justice of the Peace.

Mode of assessing city tax

§ 12. The mode of assessing and collecting the city tax shall be the same as that prescribed by law for assessing and collecting the State tax.

Fees and salaries of officers. No fees to councilmen and mayors or proceedings at meeting of council.

§ 13. The fees and salaries of all the officers herein named shall be fixed by the Council. The Councilmen and Mayor, when in council, shall receive no fee or compensation for their services.

Proviso.

§ 14. At all the meetings of the Council, a majority shall constitute a quorum, but a smaller number may compel the attendance of absent members, in such manner as the Council previously by ordinance may have prescribed; *Provided* no tax shall be levied or appointment of officers made unless a majority of all concur therein.

Time and place of holding meetings of council to be fixed.

§ 15. The Council shall by ordinance fix the times and places of holding their stated meetings, which shall be public, and at least once a month. But the Mayor, in his absence, and three Councilmen may call extra meetings at any time.

Powers of council over its members and officers.

§ 16. The Council shall judge of the qualifications, elections, and returns of their own members, and shall decide contested elections of the other city officers, and shall have power at any time to require additional security of any officer who may have given bond, and if such new bond and additional security shall not be given within three days after notice, they may declare the office vacant.

Semi-annual tax may be levied. Proviso.

§ 17. The Council may, if they deem it best, direct that an assessment and collection of tax be made semi-annually, *Provided* the whole shall not exceed the maximum hereinbefore established.

Regular elections to be held on the first Monday of May. First election under this act.

§ 18. All regular elections decreed by this Act, except the first, shall be held on the first Monday of May of each year, until otherwise directed by law.

§ 19. The first election under this Act shall be held at the California Hotel in said city, by Sarshall Cooper, O. H. Evans, and Jabez Hatch, or any two of them, who shall act as judges of election after being duly sworn. The judges above named shall fix the time of holding said election, and give public notice thereof, of not less than five days, by posting up notices in at least three of the most public places in said city. They shall have power to appoint two competent persons as clerks of election, who shall also be sworn, and the officers who shall be elected at this first election shall hold their offices until the first Monday of May next, and until their successors are qualified.

City boundaries.

§ 20. The boundary of the city on the east, north, and west, shall be as surveyed by Captain Warner, of the United States Topographical Corps, and designated by his map now on file in the office of the

Judge of First Instance at Benicia; the southern boundary shall extend to the middle of the channel in the Straits of Carquinez, directly in the front of the city.

Chap. 46.

AN ACT to incorporate the City of San Diego.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. All that tract of land known as the Presidio of San Diego, included in the survey made by Lieut. Cave J. Coutts, first Dragoons, U. S. A., for the Ayuntamiento of San Diego, shall henceforth be known as the City of San Diego, said limits not to exceed an area of more than ten square miles; *Provided*, nothing in this chapter shall be construed to divest, or in any manner to prejudice any rights or privileges, which the Presidio may hold to any land beyond the limits of the charter, and its municipal jurisdiction shall extend to said limits and over the waters of the Bay of San Diego to the extent of one marine league from the shore.

Extent of city.

Proviso.

§ 2. For the government of said City, there shall be elected a Mayor and Common Council to consist of five members, one of which shall be elected president. The said Mayor and Councilmen shall be a body politic and corporate by the name and style of "the Mayor and Common Council of the City of San Diego," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued in all courts and in all actions whatsoever; may grant, purchase, hold, and receive property real and personal within said City; may lease, sell, and dispose of the same for the benefit of the City; may provide for the regulation and use of all commons belonging to the City, and may have a common seal and alter the same at pleasure; *Provided*, that they shall not purchase or receive any real estate other than such lands or lots within the same as shall be necessary for the erection thereon of public buildings, or for the laying out of streets or public grounds, or such lands without the City as may be required for burial grounds.

City to be governed by mayor and council.

Mayor and council to be a body corporate.

Proviso.

§ 3. There shall be elected in said City at the times and in the manner hereinafter provided, a Mayor, five Councilmen, a City Marshal, a City Attorney, Assessor, and Treasurer; but no person shall be eligible to any of said offices nor to any other office which may be established by ordinance, nor shall any person be entitled to vote for the same, who shall not be a qualified elector according to the Constitution and laws of this State, and who shall not have resided in said City for thirty days next preceding the election.

Election of officers.

§ 4. The members of the Common Council under this Act, shall assemble within five days after their election and choose a presiding officer from their number, and some suitable person as Clerk. In case of the absence of the President they may elect a President *pro tempore*, who shall have all the powers and perform all the duties of President. They shall, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time; a majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the Council may previously by ordinance have prescribed; they shall judge of the qualifications, elections, and returns of their own members and the other officers elected under this Act, and determine contested elections; they may determine rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and with the concurrence of two thirds of their number expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken, and entered on any question, and their proceedings shall be public.

First meeting of common council; the conduct thereof.

Council may
make by-laws
and ordinances.

§ 5. The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and laws of the United States, or of this State; to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements, within the city; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same, to be proportioned to the amount of business done by each person; to regulate and establish markets; to establish a board of health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, forfeitures, and penalties, for breaches of their ordinances; and to provide for the punishment of breaches of the city ordinances: *Provided*, that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a police; to make appropriations for any object of city expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases; and to pass such other by-laws and ordinances for the regulation of the police of said city, as they shall deem necessary; which by-laws and ordinances shall be published in the manner to be prescribed by the aforesaid City Council.

City council may
borrow money.

§ 6. The City Council shall have power to borrow money and pledge the faith of the city therefor: *Provided*, the aggregate amount of the debts of the city shall never exceed its annual estimated revenue.

Limit to amount
of taxes.

§ 7. The aggregate amount of taxes levied by said Council, shall not exceed the sum of one per cent. upon the value of all taxable property with said city, during one year.

Demands on city
—how audited
and paid.

§ 8. All accounts and demands against said city, shall be submitted to the decision of the Common Council; and no money shall be drawn from the city treasury, unless upon the certificate of the President, pursuant to an ordinance of the Common Council, specifying the funds out of which the same shall be paid. Whenever any account or demand has been approved by the Common Council, the President shall specify in his certificate the ordinances authorizing him to issue the same.

Salaries and fees
of Mayor and
officers to be
fixed and pub-
lished.

§ 9. It shall be the duty of the Common Council to establish and fix the salaries of the Mayor and other city officers; and also to fix a tariff of fees for the officers entitled to such; designating the fee which shall be allowed for each particular item of service; and cause the same to be published in like manner with the ordinances passed by the said Common Council.

Ordinances to be
approved by
Mayor.

§ 10. Every ordinance which shall have been passed by the Common Council, shall, before it becomes effective, be presented to the Mayor for his approbation: if he approve, he shall sign it; if not, he shall return it, with his objections in writing, to the Common Council, who shall cause the same to be entered upon its journal, and shall proceed to reconsider the same; if, after such reconsideration, two thirds of all the members of the Common Council elect shall agree to pass the same, it shall become an ordinance. In all such cases the vote shall be taken by yeas and nays, and the names of the members voting for and against the same shall be entered upon the journal of the Common Council. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective, as if the Mayor had signed it.

When ordi-
nance may pass
without approval
of Mayor.
Mayor to report
semi-annually to
council.

§ 11. It shall be the duty of the Mayor to communicate to the Common Council at least once every six months, and oftener if he shall deem it expedient, a general statement of the situation and condition of the City in relation to its government, finances, and improvements; to recommend to the Common Council the adoption of all such measures, connected with the public health, cleanliness, and ornament of the City, and the improvement of the Government and finances, as he shall deem expedient; to be vigilant and active in causing the laws and ordinances of the City government to be duly executed and enforced; to exercise a constant supervision and control over the conduct and acts of all subordinate Officers; to receive and to examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same; and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filed as is hereinafter mentioned.

Other duties of
Mayor.

§ 12. The Mayor, as to offences committed within the limits of the City, shall have the like jurisdiction as is, or may be, conferred on Justices of the Peace, and shall have the same power as a Justice of the Peace to examine and commit persons brought before him, and charged with commission of crimes within the limits of the City; to take recognisances to appear, and to keep the peace; and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices of the Peace.

Jurisdiction of mayor as to offences committed within city.

§ 13. The Mayor shall also have jurisdiction over all violations of the City ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison, persons found guilty of a violation thereof.

Further jurisdiction of mayor.

§ 14. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all processes issued by the Mayor, or directed to him by any legal authority, and to attend upon the Mayor's Court regularly; he may appoint one or more deputies, who shall possess the same power and authority as the Marshal; he shall arrest all persons guilty of a breach of the peace, and of violation of the City ordinances, and bring them before the Mayor for trial; and he shall possess superintending control over the City Police; he shall also, until otherwise provided by ordinance, perform all the duties of Collector of City Taxes.

Duty of city marshal.

§ 15. It shall be the duty of the Assessor, in addition to the duties that may be prescribed to him by the Common Council, to make out, within such time as the Common Council shall order, a correct list of all the property taxable by law within the limits of said City, with the valuation thereof, which list, certified by him, shall be returned to the Common Council. The mode of making out said list, and of ascertaining the value of property, and of collecting all taxes, shall be the same as that prescribed by the law for assessing and collecting the State tax.

Duty of assessor.

§ 16. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the City may be legally interested; to give his advice or opinion in writing, whenever required by the Mayor or Common Council; and to do and perform all such things touching his office as by the Common Council may be required of him.

Duty of city attorney.

§ 17. It shall be the duty of the Treasurer to receive all moneys that shall come to said City, either by taxation or otherwise, and to pay the same out on the certificate of the President of the Common Council, as prescribed in section eighth, and to do and perform all such other acts as shall be prescribed to him by the Common Council. He shall, on the first day of January, April, July, and October, of each year, make out and present to the Mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published in the manner prescribed by section fifth.

Duty of treasurer.

§ 18. The Common Council shall have the power to create the office of City Collector, and such other officers as they may deem necessary, and to prescribe the duties of all city officers, subject to the provisions of this act.

Council may create certain offices.

§ 19. All city officers, before entering upon the duties of their office, shall take the oath of office. The Marshal, Attorney, Assessor, and Treasurer shall also give bonds, with sureties to be approved by the Mayor, payable to the Mayor and Common Council of the City of San Diego in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and the like bond may be required of any officer whose office may be created by ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

All city officers to take oath of office, and certain to give bond.

§ 20. On the first Monday in the month of May next, there shall be had, in the City of San Diego, an election to fill the offices created by this charter. At said election, the electors present shall appoint three persons to act as Judges, who shall, with two clerks to be appointed by them (the said officers having been first sworn), conduct the election, and declare the result. The persons who shall have received a plurality of votes for the several offices, shall be declared duly elected. The Mayor and Councilmen chosen at such election, shall be qualified within three days thereafter, and shall enter upon

Election of officers.

the discharge of their duties, the other officers elected shall qualify within ten days after the day of election. The said officers shall hold office until the first Monday of January next, and until their successors are elected and qualified.

Subsequent election of officers.

§ 21. After the first election, the officers mentioned in the second section of this act, and all others whose office may be created by ordinance, shall be elected on the first Monday in January of each year, and their term of office shall be for one year, or until their successors are chosen and qualified. In case of a vacancy in any city office, an election shall be ordered by the Mayor to fill the same. It shall be the duty of the council to order all general elections, and to designate the places of holding the same, to give at least ten days' notice thereof, and appoint three persons to act as judges at each place of voting; said judges shall appoint two clerks, and shall conduct such elections according to the general regulations prescribed by law concerning elections. In case any of such judges fail to attend, the electors present may appoint others in their stead. The returns of all elections shall be made to the Common Council, who shall declare the result thereof.

Offices—when deemed vacant.

§ 22. If any person elected to any city office, shall remove from the city, absent himself therefrom for more than thirty days without leave from the council, or shall fail to be qualified within ten days after the election, his office shall be deemed vacant.

Corporation to succeed to certain rights and liabilities.
Proviso.

§ 23. The Corporation created by this act, shall succeed to all the legal rights and claims of the Presidio of San Diego, and shall be subject to all the liabilities incurred, and obligations created by the Ayuntamiento of said Presidio; *Provided*, that said Corporation shall not exercise municipal authority over any of said public lands, not embraced in the boundaries as declared in the first section of this Act, except to rent, lease, or sell.

Chap. 47.

AN ACT to incorporate the City of San José.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Boundaries of city

§ 1. All that tract of land lying between the following limits and bounds, that is to say, Beginning on the centre line of Second street, at a point one mile and a half south-easterly from its intersection with the centre line of San Fernando street, thence running in a straight line parallel with San Fernando street to the eastern bank of the Coyote creek, thence down said creek, along its eastern bank, to its intersection with a line drawn through the centre of Rosa street, thence along said line in a straight course to a point forty rods southwesterly from the west bank of river Guadalupe, thence in a straight line to a point in the centre line of San Fernando street produced forty rods southwesterly from said west bank, thence in a straight line to such a point forty rods southwesterly from said west bank, that a line drawn from it to the place of beginning shall be parallel with San Fernando street, thence along said line to the place of beginning, shall henceforth be known as the "City of San José."

Style of city.

City to be governed by mayor and common council.

§ 2. For the government of said City there shall be a Mayor and Common Council to consist of seven members, one of whom shall be elected president; the said Mayor and Councilmen shall be a body politic and corporate by the name and style of the "Mayor and Common Council of the City of San José," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued in all courts, and in all actions whatsoever, may grant, purchase, hold and receive property real and personal within said city, may lease, sell, and dispose of the same for the benefit of the City, may provide for the regulation and use of all commons belonging to the City, and may have a common seal and alter the same at pleasure. *Provided*, that they shall not purchase or receive any estate other than lands or lots within the same, as shall be necessary for the erection thereon of public buildings, or

for the laying out of streets or public grounds, or such lands without the city as may be required for burial grounds.

§ 3. There shall be elected in said City, at the times and in the manner hereinafter provided, a Mayor, seven Councilmen, a City Marshal, a City Attorney, Assessor, and Treasurer; but no person shall be eligible to any of said offices, or to any other office which may be established by ordinance, nor shall any person be entitled to vote for the same, who shall not be a qualified elector according to the Constitution and laws of the State, and who shall not have resided in said city for thirty days next preceding the election.

Officers to be elected.

§ 4. The members of the Common Council under this Act shall assemble within five days after their election, and choose a presiding officer from their number, and some suitable person as Clerk. In case of the absence of the President they may elect a president *pro tempore*, who shall have all the power and perform all the duties of President; they shall by ordinance fix the time and places of holding their stated meetings, and may be convened by the Mayor at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as the Council may previously by ordinance have prescribed; they shall judge of the qualifications, elections, and returns of their own members and the other officers elected under this act, and determine contested elections; they may determine rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and with the concurrence of two thirds of their number expel any member, but not a second time for the same cause. They shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on any question, and their proceedings shall be public.

Common council — meetings and powers of.

§ 5. The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and laws of the United States or of this State, to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements within the city; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same, to be apportioned and classified according to the amount of capital invested; to regulate and establish markets; to introduce water into the limits of the city, for irrigation and other purposes; to establish a board of health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances; and to provide for punishment of breaches of the city ordinances, provided that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer time than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a police; to make appropriations for any object of city expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases; and to pass such other by-laws and ordinances for the regulation of the police of said city as they shall deem necessary; which by-laws and ordinances shall be published in the manner to be prescribed by the aforesaid City Council.

To keep a journal.

Common council may make by-laws.

§ 6. The City Council shall have power to borrow money and pledge the faith of the city therefor: *Provided* the aggregate of the debts of the city shall never exceed its annual estimated revenue.

City council may borrow money.

§ 7. The aggregate amount of taxes levied by said Council shall not exceed the sum of one per cent. upon the value of all the taxable property within said city during one year.

Amount of taxes.

§ 8. All accounts and demands against said city shall be submitted to the decision of the Common Council, and no money shall be drawn from the city treasury unless upon the certificate of the President, pursuant to an ordinance of the Common Council, specifying the funds out of which the same shall be paid. Whenever any account or demand has been approved by the Common Council, the President shall specify in his certificate the ordinance authorizing him to issue the same.

All demands on city to be submitted to common council

§ 9. It shall be the duty of the Common Council to establish and fix the salaries of the Mayor or other city officers, and also to fix a tariff of fees for the officers entitled to such, designating the fees which shall be allowed for each particular item of services, and cause the same to be published in like manner with the ordinances passed by the same Council.

Salaries and fees of mayor and officers to be fixed and published.

City ordinances
to be approved by
mayor.

§ 10. Every ordinance which shall have been passed by the Common Council shall, before it becomes effective, be presented to the Mayor for his approbation. If he approve it, he shall sign it; if not, he shall return it, with his objections in writing, to the Common Council, who shall cause the same to be entered upon its journal, and shall proceed to reconsider the same; if, after such reconsideration, two thirds of all the members of the Common Council elect shall agree to pass the same, it shall become an ordinance. In all such cases, the vote shall be taken by yeas and nays, and the names of the members voting for and against the same shall be entered upon the journal of the Common Council. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective, as if the Mayor had signed it.

Mayor to report
situation and
condition of city,
&c.

§ 11. It shall be the duty of the Mayor to communicate to the Common Council, at least once every four months, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city in relation to its government, finances, and improvements, to recommend to the Common Council the adoption of all such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances as he shall deem expedient, to be vigilant and active in causing the laws and ordinances of the city government to be duly executed and enforced, to exercise a constant supervision and control over the official conduct and acts of all subordinate officers, to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same, and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filled as is hereinafter mentioned.

Mayor to have
the power of a
justice of the
peace.

§ 12. The Mayor, as to the offences committed within the limits of the city, shall have the like jurisdiction as is or may be conferred upon Justices of the Peace, and shall have the same power as a Justice of the Peace to examine and commit persons brought before him, and charged with the commission of crimes within the limits of the city, to take recognisances to appear, and to keep the peace, and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices' Courts of the Peace.

Violations of city
ordinances.

§ 13. The Mayor shall also have jurisdiction over all violations of the city ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison persons found guilty of any violation thereof.

Duties of city
marshal.

§ 14. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all processes issued by the Mayor, or directed to him by any legal authority, and to attend upon the Mayor's Court regularly; he may appoint one or more deputies, who shall possess the same power and authority as the Marshal; he shall arrest all persons guilty of a breach of the peace and of violation of the city ordinances, and bring them before the Mayor for trial, and he shall possess superintending control over the city police; he shall also, until otherwise provided by ordinance, perform all the duties of Collector of city taxes.

Duties of assess-
ors.

§ 15. It shall be the duty of the Assessor, in addition to the duties that may be prescribed to him by the Common Council, to make out, within such time as the Common Council shall order, a correct list of all the property taxable by law within the limits of said city, with the valuation thereof, which list, certified by him, shall be returned to the Common Council. The mode of making out said list and of ascertaining the value of property and of collecting all taxes, shall be the same as that prescribed by law for assessing and collecting the State tax.

Duties of city
attorney.

§ 16. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the city may be legally interested: to give his advice or opinion in writing whenever required by the Mayor or Common Council; and to do and perform all such things touching his office as by the Common Council may be required of him.

Duties of treas-
urer.

§ 17. It shall be the duty of the Treasurer to receive all moneys that shall come to said city, either by taxation or otherwise, and to pay the same out on the certificate of the President of the Common Council, as prescribed in section eighth, and to do and perform all such other acts as shall be prescribed

to him by the Common Council. He shall, on the first day of January, April, July, and October, of each year, make out and present to the Mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published in the manner prescribed by section fifth.

§ 18. The Common Council shall have the power to create the office of City Collector, and such other offices as they may deem necessary, and to prescribe the duties of all city officers subject to the provisions of this Act.

Other offices may be created.

§ 19. All city officers, before entering upon the duties of their office, shall take the oath of office. The Marshal, Attorney, Assessor, and Treasurer shall also give bonds with sureties to be approved by the Mayor, payable to the Mayor and Common Council of the City of San José, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office, and the like bond may be required of any officer, whose office may be created by ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

City officers to take oath, and certain to give bonds.

§ 20. On the second Monday of April next, and on the second Monday of April each year thereafter, there shall be had in the City of San José an election, to fill the offices created by this charter. At the first election, the electors present shall appoint three persons to act as judges, who shall, with two clerks to be appointed by them, the said officers having been first sworn, conduct the election and declare the result. The persons who shall have received a plurality of votes for the several offices shall be declared duly elected. The Mayor and Councilmen chosen at such election shall be qualified within three days thereafter, and shall enter upon the discharge of their duties; the other officers elected shall qualify within ten days after the day of election. The said officers shall hold office until the first Monday of January next, and until their successors are elected and qualified.

Annual election of officers.

§ 21. All the officers mentioned in the second section of this Act, and all others whose office may be created by ordinance, shall be elected on the second Monday in April of each year, and their term of office shall be for one year, or until their successors are chosen and qualified. In cases of a vacancy in any city office, an election shall be ordered to fill the same. It shall be the duty of the council to order all elections, and to designate the place of holding the same, to give at least ten days' notice thereof, and to appoint three persons to act as judges at each place of voting; said judges shall appoint two clerks, and shall conduct such elections according to the general regulations prescribed by law concerning elections. In case any of said judges fail to attend, the electors present may appoint others in their stead. The return of all elections shall be made to the Common Council, who shall declare the result thereof.

What officers to be elected.

Special election.

Election returns.

§ 22. If any person elected to any city office, shall remove from the city, absent himself therefrom for more than thirty days without leave from the council, or shall fail to be qualified within ten days after the day of election, his office shall be deemed vacant.

Offices—when deemed vacant.

§ 23. The corporation created by this act, shall succeed to all the legal rights and claims of the Pueblo of San José, and shall be subject to all the liabilities incurred and obligations created by the Ayuntamiento of said Pueblo, provided that said corporation shall not exercise municipal authority over any of said Pueblo Lands, not embraced in the boundaries as declared in the first section of this Act, except to rent, lease, or sell.

Rights, &c., of corporation created by this act.

Proviso.

Chap. 48.

AN ACT to provide for the incorporation of Towns.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Petition for incorporation, and proceedings thereon.

§ 1. Whenever a majority of the inhabitants of any town or village within this State, who shall be qualified electors under the Constitution and laws of this State, and shall have resided in such town or village thirty days, shall present a petition to the County Court of the county, setting forth the metes and bounds of their town and commons, with a plot of the same, and praying that they may be incorporated, and a police established for their local government, or for the preservation and regulation of any commons appertaining to such town, and the Court shall be satisfied the population of such town exceeds two hundred in number, and that a majority of the inhabitants thereof have signed the petition, the said Court shall declare such town incorporated, designating in such order the metes and bounds of the town, which shall in no case include an area of more than three square miles; which order, together with the petition and town plot, shall be entered on the records of said Court, and thenceforth the inhabitants within such bounds shall be a body politic and corporate, by name and style of the inhabitants of the town of (naming it), and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued in all courts, grant, purchase, hold, and receive property, real and personal, within such town and no other (burial grounds and cemeteries excepted), and may lease, sell, and dispose of the same for the benefit of the town, and may have a common seal, and alter the same at pleasure. Until the county courts are organized, the Governor shall have power to act upon petitions for incorporations, in like manner as any county court might do, and may by proclamation declare any town incorporated, and fix the time and place for the first election to be held for town officers. So soon as the county courts are organized, the Governor shall transmit to the proper court all petitions which have been acted upon by him, and they shall be recorded as herein provided.

Governor to exercise certain powers until county courts organized.

Corporate powers to be vested in board of trustees.

First board of trustees—how to be chosen.

§ 2. The corporate powers and duties of every town so incorporated shall be vested in a board of Trustees, to consist of five members, who shall be elected by the qualified electors of the town on the first Monday of May in each year, and shall hold their offices for the term of one year, and until their successors are chosen and qualified: *Provided*, that the first board of Trustees and the other town officers hereinafter mentioned, shall be chosen in like manner, at some time and place to be designated by the County Court in the order incorporating said town, which time shall not exceed twenty days from the date of such order, and the Trustees so chosen shall hold their offices until the first Monday of May next ensuing, until their successors are elected and qualified.

Trustees to meet and choose a president, &c.

§ 3. The board of Trustees shall assemble within ten days after their election, and choose a President from their number, and some person as Clerk; they shall, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the President at any time.

Proceedings at meetings.

§ 4. At all meetings of the board, a majority of the Trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the board previously, by ordinance, may have prescribed.

Powers of trustees as to election of members, &c.

§ 5. The board of Trustees shall judge of the qualification, elections, and returns of their own members, and determine contested elections of all town officers. They may establish rules for their own proceedings, punish any member, or other person, for disorderly behavior in their presence, and with the concurrence of four of the Trustees, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member, shall cause the yeas and nays to be taken on any question and entered on the journals; and their proceedings shall be public.

To keep a journal.

§ 6. The Board of Trustees shall have power to make such By-Laws and ordinances, not inconsistent with the Constitution and laws of the United States, and of this State, as they shall deem necessary ; to prevent and remove nuisances ; to prohibit disorderly conduct ; to provide for licensing public shows and lawful games ; to regulate and establish markets ; to construct and keep in repair wharves ; construct pumps, aqueducts, reservoirs, or other works necessary for duly supplying the town with water ; to keep in repair public wells ; to lay out, alter, keep open, and repair the streets and alleys of the town ; to provide such means as they may deem necessary to protect the town from injuries by fire ; to levy, and collect annually a tax, on all property in the town, not exceeding fifty cents on every hundred dollars, of the assessment valuation thereof, and to pass such other By-Laws and ordinances for the regulation and police of such town, as they shall deem necessary.

Trustees may make certain by-laws and ordinances, and

§ 7. The Board of Trustees may impose fines for the breach of their ordinances, but no fine shall be inflicted on any one person, for any one breach of any ordinance, of more than one hundred dollars, which fine may be recovered before any Justice of the Peace by suit, in the name of the inhabitants of the town of (naming it), and collected by execution, or in such other manner as fines imposed by the laws of this State are collected ; and persons living in the town shall be competent jurors and witnesses, if in other respects competent and qualified. All fines collected in pursuance of this Act, shall, by the officer collecting the same, be paid over to the treasury of the corporation ; and for any omission so to do, such officer may be proceeded against upon his bond, in the name of the corporation, in the manner authorized by law, in the case of the failure of such officer to pay over money collected.

Impose fines.

Application of fines.

§ 8. There shall be chosen, in every town incorporated under this Act, a Treasurer, Assessor, and a Marshal, who shall also be the Collector of all the taxes levied by the Board of Trustees. The mode of election and term of office shall be the same as is prescribed in the second section of this Act, in regard to the office of Trustee.

To elect a treasurer, assessor, and marshal.

§ 9. The Board of Trustees shall have power to establish such other offices as they may deem necessary, to be filled in such manner as they may designate, and subject to the provisions of this Act. They shall prescribe the duties and fix the compensation of all town officers.

Other offices may be created. To fix duties and compensation.

§ 10. Any person shall be qualified to hold any town office, or vote for any town officer, who shall be a qualified elector under the Constitution and laws of this State, and who shall have resided in the town thirty days next before the election. At the first election, if ordered by the County Court, said Court shall appoint three Judges to hold and conduct the same. If by the Governor, the Judges shall be chosen by the electors present. All subsequent elections shall be conducted by three Judges, appointed by the Board of Trustees. In case of a vacancy of any town office, the Board of Trustees shall order an election to fill the same ; and shall give previous public notice thereof, for a period not less than five nor more than ten days. The like notice shall be given in all cases of elections of town officers except the first election. Should any of the judges appointed to hold any elections for any town officer fail to attend, the electors present may appoint others in their stead. All elections for town officers shall be conducted according to the laws regulating elections, by the Judges and Clerks to be appointed by them ; and the returns shall be made to the Board of Trustees, except in regard to the first election, the returns whereof shall be made to the County Judges when the election is ordered by the County Court. If ordered by the Governor, the Judges of Election shall deliver certificates of election to the persons chosen, and make their return to the Board of Trustees, when organized.

Qualification of candidates, and proceedings at first election.

§ 11. All officers of the Corporation, before entering upon the duties of their office, shall take the oath prescribed by the Constitution ; and the Treasurer, Marshal, and Assessor shall give bond for the faithful performance of the duties of their office, payable to the Corporation by its corporate name, to be approved by the Board of Trustees, in such penalties as said Board by ordinance shall have prescribed : and a like bond may be required to be given by any other officer whose office may be established by the Board. If, from any cause, such bond shall have become insufficient in the opinion of the Board, they may require of any officer such additional bond as they may think necessary.

All officers to take oath, and certain to give bond.

§ 12. If any person fail to pay any tax levied upon his real or personal property, the town Collector

Payment of taxes — how enforced.

may recover the same by suit, in the name of the Corporation, before any Court of competent jurisdiction, together with all the costs of such suits.

President of board of trustees to make and publish semi-annual statement of receipts and expenditures.

§ 13. The President of the Board of Trustees shall, on the first days of March and September of each year, make out a full and correct statement of all moneys received and expended, from whom and for what purpose received, and to whom and for what purpose expended, during the six months next preceding; and shall cause such statement, within ten days thereafter, to be published in some newspaper printed in the town, if there be any; and if not, then he shall, within said time, cause such statement to be put up in three of the most public places in said town.

Penalty for neglecting to make such statement.

§ 14. If the President of the Board of Trustees of any town shall at any time neglect to make and cause such statement to be published as required by this Act, he shall forfeit for every such neglect the sum of five hundred dollars, to be recovered by suit in any Court of competent jurisdiction, one half whereof shall be to the use of the town, and the other half to the use of any person who may sue for the same.

By-laws to be published.

§ 15. The President of the Board of Trustees shall cause to be printed or published all the by-laws and ordinances of the Board, for the information of the inhabitants, and cause the same to be carried into effect. He shall remain in office for the term for which he is elected a Trustee; but in case of his absence at any meeting of the Board, the Board may appoint a President *pro tempore*. Should any of the Trustees, or any other town officer, remove from the town, absent himself therefrom for more than thirty days without leave of the Board, or refuse or neglect to qualify within ten days after his election, or if bond is required of him, neglect or refuse, for the said time, to give bond, his office shall be thereby vacated.

Term of office of president of board of trustees.

Office of trustee—how vacated.

Other acts of incorporation repealed.

§ 16. Whenever any town shall be incorporated under the provisions of this Act, all other laws incorporating the same, or made to regulate in any way the internal police of such town, shall be considered as repealed.

Disincorporation of towns.

§ 17. The County Court of each county shall have power to disincorporate any town which they may have incorporated, upon the petition of three fourths of the legal voters of such town.

Prerequisites to disincorporation.

§ 18. No corporation shall be dissolved by virtue of this Act, unless it shall appear to the satisfaction of the Court that notice has been given of the intended application for a dissolution of the corporation, by advertisement, printed in a newspaper nearest to the town prayed to be disincorporated, or posted in writing, for at least eight weeks successively prior to such application, nor until all their liabilities have either been paid or secured, to the satisfaction of the County Clerk of the proper county.

Effect of disincorporation.

§ 19. No dissolution of any corporation under this Act shall invalidate or affect any right, penalty, or forfeiture accruing to such corporation, or invalidate or affect any contract entered into or imposed upon such corporation.

Trustee for dissolved corporation.

§ 20. Whenever the County Court shall dissolve any corporation, they shall appoint some competent person to act as Trustee for the corporation so dissolved.

Trustee to take oath.

§ 21. The Trustee, before entering upon the discharge of his duties, shall take and subscribe an oath before some Judge or Justice of the Peace, that he will faithfully discharge the duties of his office, and shall, moreover, give bond, with sufficient security, to be approved by the Court, to the use of such disincorporated town, conditioned for the faithful discharge of the duties of his office.

To prosecute and defend suits, &c.

§ 22. The Trustee shall prosecute to final judgment, and defend all suits instituted by or against the corporation, collect all money due to the same, liquidate all lawful demands against the same, and for that purpose shall sell and convey any property belonging to such corporation, or so much thereof as may be necessary, and generally do all acts required to bring to a speedy close all the affairs of the corporation; and he shall make a report of his proceedings to the County Court, at each term thereof.

To pay over moneys to county court.

§ 23. The Trustee shall pay over to the County Court, from time to time, such money as may come into his hands; and when he shall have closed the affairs of the corporation, shall make a final settlement thereof with said Court, and deliver up all books, records, papers, deeds, and all other effects

belonging to the dissolved corporation. Such Trustee shall receive for his services such compensation as the Court shall think reasonable. Compensation.

§ 24. If any town disincorporated as aforesaid, have an annual revenue accruing thereto, the same shall be paid to the County Court by the person owing the same, and all moneys thus paid, as well as all moneys paid by the Trustee, shall be held and disposed of by the Court for the benefit of such town, and may be applied by the Court to any specific object, upon the petition of a majority of the taxable inhabitants of said town. Disposition of annual revenue, if any, of dissolved corporation.

§ 25. All moneys arising from the collection of taxes, fines, penalties, and forfeitures, shall be appropriated by the Board of Trustees towards carrying out those objects, which, by this Act, are placed under their control and jurisdiction, and to none others. Appropriation of taxes, fines, &c.

§ 26. This act shall be in force from and after its passage. Commencement of act.

Chap. 49.

AN ACT concerning Lawful Fences, and Animals trespassing on Premises lawfully inclosed.

Passed March 30, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Every inclosure shall be deemed a lawful fence, which is four and a half feet high, if made of stone; and if made of rails, five and a half feet high; if made upon the embankment of a ditch three feet high from the bottom of the ditch, the fence shall be two feet high; said fence to be substantial and reasonably strong, and made so close that stock cannot get their heads through it, and if made to turn small stock, sufficiently tight to keep such stock out. A hedge fence shall be considered a lawful fence if five feet high and sufficiently close to turn stock. Lawful fence defined.

§ 2. If any horses, mules, jacks, Jennies, hogs, sheep, goats, or any head of neat cattle shall break into any grounds inclosed by a lawful fence, the owner or manager of such animals shall be liable to the owner of said inclosed premises for all damages sustained by such trespass; and if the trespass is repeated by neglect of the owner of such stock, he shall, for the second offence, be subject to double the damages sustained by the owners of said premises. Trespasses by animals on grounds inclosed by a lawful fence.

§ 3. If any owner or occupier of any grounds or crops injured by any animal or animals breaking into or entering on grounds not inclosed by a lawful fence, shall kill, maim, or materially hurt or injure any animal doing such injury, he shall be liable to the owner for all damages, and also all costs that may accrue in a suit for such damages. Penalty on owners or occupiers of lands not inclosed by a lawful fence for injuring animals entering on such lands.

Chap. 50.

AN ACT to incorporate the City of Monterey.

Passed March 30, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. All that tract of land heretofore known and acknowledged as the Pueblo of Monterey shall henceforth be known as the City of Monterey. Extent of city.

§ 2 For the government of said City there shall be a Mayor, Recorder, and Common Council to consist of nine members, one of whom shall be elected President. The said Mayor, Recorder, and Councilmen shall be a body politic and corporate by the name and style of "The Mayor, Recorder, and Council." City to be governed by a Mayor, Recorder, and Common Council.

Common Council of the City of Monterey," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, in all courts and in all actions whatsoever; may grant, purchase, hold, and receive property, real and personal, within said City; may lease, sell, and dispose of the same for the benefit of the City; may provide for the regulations and use of all commons belonging to the city, and may have a common seal and alter the same at pleasure; *Provided*, that they shall not purchase or receive any real estate other than such lands or lots within the same as shall be necessary for the erection thereon of public buildings or for the laying out of streets or public grounds, or such lands without the City as may be required for burial grounds.

Officers to be elected.

§ 3. There shall be elected in said City at the time and in the manner hereinafter provided, a Mayor, Recorder, nine Councilmen, a City Marshal, Assessor, and Treasurer, but no person shall be eligible to any of said offices nor to any other office which may be established by ordinances, nor shall any person be entitled to vote for the same who shall not be a qualified elector according to the constitution and laws of the State, and who shall not have resided in said City for thirty days next preceding the election.

Common council powers of.

§ 4. The members of the Common Council under this Act shall assemble within five days after their election and choose a presiding officer from their number, and some suitable person as Clerk. In case of the absence of the President they shall elect a President *pro tempore*, who shall have the power and perform all the duties of President; they shall by ordinance fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time; a majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the Council may previously by ordinance have prescribed; they shall judge of the qualifications, elections, and returns of their own members and the other officers elected under this Act, and determine contested elections; they may determine rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on any question; and their proceedings shall be public.

To keep a journal.

City council may make by-laws.

§ 5. The said City Council shall have power to make by-laws and ordinances not repugnant to the Constitution and Laws of the United States or of this State; to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements within the City; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same to be proportioned to the amount of business done by each person; to regulate and establish markets and wharves; to establish a Board of Health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances; and to provide for the punishment of breaches of their City ordinances: provided that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a Police; to make appropriations for any object of City expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases; and to pass such other by-laws and ordinances for the regulation of the Police of said City as they shall deem necessary, which by-laws and ordinances shall be published in the manner to be prescribed by the aforesaid City Council.

City council may borrow money.

§ 6. The City Council shall have power to borrow money, and pledge the faith of the City therefor; provided the aggregate amount of the debts of the City shall never exceed its annual estimated revenue.

Amount of taxes.

§ 7. The aggregate amount of taxes levied by said Council shall not exceed the sum of one hundred thousand dollars per annum without the assent of the inhabitants expressly given; if, in the opinion of the Common Council, more money shall be required for the purposes of the Municipal Government of

said City than is authorized to be levied and collected, as above specified, it shall be the duty of said Council to request the Mayor to issue his proclamation to the People, stating the amount thus required, and the purposes and objects for which it is to be expended, at least ten days before the same shall be voted upon by the qualified voters of the City; and if there shall be a majority of votes authorizing the collection of said sum, the same shall be collected, and not otherwise: provided that the additional amount, so authorized to be collected, by vote of the people, shall not in any one year exceed the sum of fifty thousand dollars.

§ 8. All accounts and demands against said City shall be submitted to the decision of the Common Council; and no money shall be drawn from the City Treasury unless upon the certificate of the President, pursuant to an ordinance of the Common Council, specifying the fund out of which the same shall be paid. Whenever any account or demand has been approved by the Common Council, the President shall specify in his certificate the ordinances authorizing him to issue the same.

All demands on city to be submitted to common council.

§ 9. It shall be the duty of the Common Council to establish and fix the salaries of the Mayor or other City Officers, and also to fix a tariff of fees for the Officers entitled to such, designating the fee which shall be allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the said Common Council.

Salaries and fees of mayor and officers to be fixed and published.

§ 10. Every ordinance which shall have been passed by the Common Council, shall, before it becomes effective, be presented to the Mayor for his approbation; if he approve, he shall sign it, if not, he shall return it with his objections, in writing, to the Common Council, who shall cause the same to be entered upon its journals, and shall proceed to re-consider the same; if after such reconsideration, two thirds of all the Members of the Common Council elect shall agree to pass the same, it shall become an ordinance. In all such cases the vote shall be taken by yeas and nays, and the names of the Members voting for and against the same shall be entered upon the journal of the Common Council. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective as if the Mayor had signed it.

City ordinances to be approved by mayor.

§ 11. It shall be the duty of the Mayor to communicate to the Common Council at least once every six months, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city in relation to its government, finances, and improvements, to recommend to the Common Council the adoption of all such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he shall deem expedient, to be vigilant and active in causing the laws and ordinances of the city government to be duly executed and enforced, to exercise a constant supervision and control over the conduct and acts of all subordinate officers, to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same, and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filed as hereinafter mentioned.

Mayor to report on situation and condition of city, &c.

§ 12. The Recorder, as to offences committed within the limits of the city, shall have the like jurisdiction as is or may be conferred upon Justices of the Peace, and shall have the same power as a Justice of the Peace to examine and commit persons brought before him, and charged with commission of crimes within the limits of the city, to take recognisances to appear, and to keep the peace, and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices of the Peace.

Recorder to have the power of a justice of the peace.

§ 13. The Recorder shall also have jurisdiction over all violations of the city ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison, persons found guilty of any violation thereof.

Violations of city ordinances.

§ 14. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all processes issued by the Recorder, or directed to him by any legal authority, and to attend upon the Recorder's Court regularly; he may appoint one or more deputies, who shall possess the same power and authority as the Marshal; he shall arrest all persons

Duties of city marshal.

guilty of a breach of the peace, and violation of the city ordinances, and bring them before the Recorder for trial; and he shall possess superintending control over the city police. He shall also, until otherwise provided by ordinance, perform all the duties of collector of city taxes.

Duties of assessor.

§ 15. It shall be the duty of the Assessor, in addition to the duties that may be prescribed to him by the Common Council, to make out, within such time as the Common Council shall order, a correct list of all the property taxable by law within the limits of said city, with the valuation thereof, which list, certified by him, shall be returned to the Common Council. The mode of making out said list and of ascertaining the value of property, and of collecting all taxes, shall be the same as that prescribed by law for assessing and collecting the State tax.

Duties of city attorney.

§ 16. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the City may legally be interested, and to give his advice or opinion in writing, whenever required by the Mayor or Common Council, and to do and perform all such things touching his office as by the Common Council may be required of him.

Duties of treasurer.

§ 17. It shall be the duty of the Treasurer to receive all moneys that shall come to said city, either by taxation or otherwise, and to pay the same out on the certificate of the President of the Common Council, as prescribed in section eighth, and to do and perform all such other acts as shall be prescribed to him by the Common Council. He shall, on the first day of January, April, July, and October, of each year, make out and present to the Mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published in the manner prescribed by section fifth.

Other offices may be created.

§ 18. The Common Council shall have power to create the office of City Collector, and such other offices as they may deem necessary, and to prescribe the duties of all city officers, subject to the provisions of this Act.

City officers to take oath, and certain to give bonds.

§ 19. All city officers, before entering upon the duties of their office, shall take the oath of office. The Marshal, Attorney, Assessor, and Treasurer, shall also give bonds, with sureties to be approved by the Mayor, payable to the Mayor, Recorder, and Common Council of the City of Monterey, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and the like bond may be required of any officer whose office may be created by ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

Annual election of officers.

§ 20. On the first Monday in the month of April next, there shall be had in the City of Monterey an election to fill the offices created by this charter. At said election, the electors present shall appoint three persons to act as Judges, who shall, with two Clerks to be appointed by them (the said officers having been first sworn), conduct the election and declare the result. The persons who shall have received a plurality of votes for the several offices, shall be declared duly elected. The Mayor, Recorder, and Councilmen, chosen at such election, shall be qualified within three days thereafter, and shall enter upon the discharge of their duties. The other officers elected shall be qualified within ten days after the day of election. The said officers shall hold office until the first Monday in January next, and until their successors are chosen and qualified.

What officers to be elected.

§ 21. After the first election the officers mentioned in the second section of this Act, and all others whose office may be created by ordinance, shall be elected on the first Monday in January of each year, and their term of office shall be for one year, or until their successors are chosen and qualified. In case of a vacancy in any City office, an election shall be ordered to fill the same. It shall be the duty of the Council to order all elections, and to designate the place of holding the same, to give at least ten days' notice thereof, and to appoint three persons to act as Judges at each place of voting. Said Judges shall appoint two Clerks, and shall conduct such elections according to the general regulations prescribed by law concerning elections; in case any of said Judges fail to attend, the electors present may appoint others in their stead. The returns of all elections shall be made to the Common Council, who shall declare the result thereof.

Election returns.

§ 22. If any person elected to any city office shall remove from the city, absent himself therefrom for more than thirty days without leave from the Council, or shall fail to be qualified within ten days after the day of election, his office shall be deemed vacant. Offices—when deemed vacant.

§ 23. The Corporation created by this Act shall succeed to all the legal rights and claims of the Pueblo of Monterey, and shall be subject to all the liabilities incurred and obligations created by the Ayuntamiento of said Pueblo. Rights, &c., of corporation created by this act.

Chap. 51.

AN ACT to change the name of *William H. Smith* to *William Smith Hosford*.

Passed March 30, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

It shall be lawful for the person heretofore bearing the name of *William H. Smith* to change said name to *William Smith Hosford*. Name changed.

Chap. 52.

AN ACT prescribing the mode of Assessing and Collecting Public Revenue.

Passed March 30, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. A poll tax shall be assessed upon every male inhabitant of this State between the age of twenty-one and fifty years. Poll tax to be assessed.

§ 2. All property, real and personal, within this State, shall be liable to taxation, subject to the exceptions hereinafter stated. Property liable to tax.

§ 3. The term real estate, as used in this Act, shall be construed to include all lands within this State, and all buildings or other things erected on or affixed to the same; and the terms land or real property, wherever they occur, shall be construed as having the same meaning as the term "real estate," thus defined. Meaning of terms "real estate," "land" or "real property."

§ 4. The terms personal estate and personal property, as used in this Act, shall be construed to include all household furniture, goods, chattels, and moneys; all ships, steamboats, vessels, and water craft of any and every description whatever, whether at home or abroad; all moneys at interest owing to the person to be taxed more than they pay interest for, and other debts owing to them from solvent persons more than they are indebted for, and all public stock in turnpikes, bridges, insurance companies, and monied corporations, whether within or without this State; also such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be vested in real estate. Meaning of terms "personal estate," "personal property."

§ 5. The following persons and property shall be exempt from taxation: Exemptions.

1st. The polls of all wild and unchristianized Indians, except those who may lawfully be entitled to vote.

2d. The poll or polls and property of any person that may be exonerated from taxation by any law of this State.

3d. The real and personal property of the United States and of this State.

4th. All lands sold by the United States, until the term of five years from the day of sale shall have expired.

5th. Every school house, court house, and jail, and the land or lot whereupon such buildings are situated, not exceeding ten acres; every church and its appurtenances used for religious purposes, also every graveyard or cemetery, not exceeding fifty acres, or any greater number of acres that may be authorized by any general law hereafter enacted incorporating cemeteries.

6th. Every building erected for the use of any literary, benevolent, charitable, or scientific institution, or erected for the same purpose by any town, township, or county, and the tracts of land on which such buildings are situated, not exceeding twenty acres; also the personal property belonging to any such institution, town, township, city, or county, and connected with or set apart for any of the purposes aforesaid.

7th. All lands granted for the use of common schools, so long as the same shall remain unsold.

8th. The personal property and real estate of every manual labor school or college incorporated within this State, when used or occupied for the purposes for which it was incorporated; such real estate not to exceed three hundred and twenty acres.

9th. The personal property of every widow and orphan child, to the extent of one thousand dollars.

Lands sold by State to be assessed.
Stockholder—how assessed.

§ 6. Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

Every person to be listed in county of his residence.
Enlistment for personal estate.

§ 8. Every person shall be listed for his poll tax in the county where he resides, when the enlistment or assessment is made.

§ 9. Every person shall be listed in the county where he resides, when the enlistment is made for all personal estate owned by him on the first day of March of the year in which the same is made, including all personal estate in his possession, or under his control, as trustee, guardian, executor, or administrator.

Enlistment for lands.

§ 10. Every person shall be listed in the county in which he resides when the enlistment is made, for all lands by him owned in such county, on the first day of March of the year in which the same is made, and occupied by him, or wholly unoccupied, including all such real estate owned or held by him as trustee, or in any representative capacity whatever.

Enlistment of lands occupied by person not the owner.

§ 11. Lands occupied by any person not the owner thereof, shall be listed in the name of the owner, if known; otherwise, in the name of the occupant; and for the taxes paid by such occupant, he shall have his action against the owner.

Enlistment of unoccupied lands.

§ 12. Unoccupied land shall be listed in the name of the owner, if known; otherwise, as lands of persons unknown.

Estate of incorporated companies.

§ 13. The real estate of all incorporated companies liable to taxation, shall be listed in the county in which the same shall be, in the same manner as the real estate of individuals.

Personal estate of incorporated companies.

§ 14. The personal estate of every incorporated company liable to taxation on its capital, shall be listed in the county where the principal office or place for transacting business of the company shall be carried on.

Enlistment of toll bridges and ferries.

§ 15. In the case of toll bridges and ferries, the company owning such bridge or ferry shall be listed in the county in which the tolls and ferriage are collected; and where the tolls and ferriage are collected in more than one county, the company shall be listed in the county in which the treasurer or other officer authorized to pay the last preceding dividend resides.

Personal property in mortgage.

§ 16. When personal property is mortgaged or pledged, it shall, for the purposes of taxation, be deemed the property of the party who has possession.

Real estate in mortgage.

§ 17. In cases of mortgages on real estate, the mortgagor shall, for purposes of taxation, be deemed the owner, until the mortgagee shall take possession, after which the mortgagee shall be deemed the owner.

§ 18. The undivided real estate of deceased persons may be listed to the heirs, devisees, or legatees of such descendants, without designating any of the heirs, devisees, or legatees by name, until they shall have given to the County Recorder, who shall *ex officio* discharge the duties of County Auditor or Assessor of the county or counties in which such real estate is situate, notice of the division of the same, and the names of the several heirs, devisees, or legatees, and the respective portions allotted to each; and each heir, devisee, or legatee shall be liable for the whole of such tax, until such division shall be made as aforesaid, and shall have a right to recover of the other heirs or devisees their respective proportions thereof, when so paid by said heir, devisee, or legatee.

Enlistment of undivided real estate of persons deceased.

§ 19. Partners in mercantile or other business may be jointly listed in their partnership name in the county where the business is carried on, for all their personal property employed in such business; and in case of being so jointly listed, each partner shall be liable for the whole tax.

Enlistment of mercantile partners.

§ 20. The Assessors of the several counties, between the first Monday of March and August of each year, shall proceed to ascertain by diligent inquiry the names of all the taxable inhabitants in their respective counties, and also all the taxable property, real and personal, within the same, made subject to taxation by virtue of the provisions of this Act.

Assessors to ascertain persons and property liable to taxation.

§ 21. They shall prepare a roll, in which shall be set down in separate columns, and according to the best information in their power:

Assessment roll.

1st. The names of all the taxable inhabitants.

2d. A concise description of all the real estate taxable to each, except city or town lots.

3d. The value of the same without improvements.

4th. The value of improvements.

5th. A description of city or town lots taxable to each.

6th. The value thereof without improvements.

7th. The value of the improvements.

8th. The value of personal estate taxable to each.

§ 22. When any person is listed as trustee, guardian, executor, or administrator, he shall be stated as such, with the addition to his name of his representative character, and such listing shall be carried out in a separate line from his individual property.

Enlistment of trustees, &c.

§ 23. All lands and improvements erected or built thereon, or affixed thereto, shall be valued at their true value in money, taking into consideration the fertility and quality of the soil, the vicinity of the same to roads, cities, towns, villages, to navigable rivers and water privileges on the same, together with any other local advantages of situation connected therewith upon actual view of the premises.

Valuation—how made.

§ 24. In-lots and out-lots in all cities, towns, and villages, with the improvements thereon or thereto affixed, shall be valued at their true value in money, taking into consideration the local advantages of situation upon actual view of the premises.

In-lots and out-lots—how valued.

§ 25. All personal property taxable under the provisions of this Act shall be valued at its true cash value, upon the statement of the owner or the person having the custody and control thereof.

Valuation of personal property.

§ 26. The Assessors shall, between the times specified in this Act, call upon each and every person resident in his County for a list of all their real and personal property subject to taxation, particularly setting forth in such list the name or names of the owner or owners thereof, the number of acres of land in each particular tract, lot, section, or subdivision thereof, and the number of the entry, location, and survey, and water course, or other special description, as the nature of the general or particular survey or grant may require, together with the quantity of land contained in the original survey or grant, of which the tract is a part or subdivision thereof; also all city, town, or village in or out-lots, with the numbers thereof, as designated on the recorded plots or plan of said city, town, or village, or the parts or subdivisions thereof, if the same has been subdivided; also all improvements thereon, and all personal property owned or possessed by such person or persons, bodies corporate or politic, and liable to taxation, together with the true cash valuation thereof thereto attached, and deliver the same

Lists of taxable property to be furnished.

Lists to be verified.

to said Assessor, who shall enter the same on his roll as herein prescribed, and such person or persons, or the presiding officer of such body corporate or politic, shall make oath that the same is just and true, which the Assessor is hereby authorized to administer.

Owner unknown or refusing to give list, &c.

§ 27. If the owner or owners of any property liable to taxation shall be unknown, or a non-resident or absent, or unable, or affix a false value thereto, or refuse, when called upon by the Assessor or his authorized deputy, to give a list of his property, real or personal, subject to taxation, it shall be the duty of the Assessor or his deputy, in either or all of the above enumerated cases, to make a list thereof from the best information he can obtain, and attach thereto such valuation as he may deem just, and enter the same on his roll; and the assessment thus made shall have the force and effect as though the same had been made by the owner or owners of all property thus listed, and unless altered by the Board of Equalization in the manner set forth in this Act.

Abstract from appraisement list.

§ 28. The Assessor of each County shall make an abstract from the appraisement list taken as hereinbefore provided, which abstract, together with the original list and appraisement, he shall deliver to the Auditor, on or before the first Monday of August, annually.

Board of equalization.

§ 29. The Court of Sessions of each County shall constitute a Board of Equalization, and shall, at the first term after the first Monday in August in each year, hear and determine all complaints respecting the valuation of property, both real and personal, made subsequent to the preceding first Monday in March, and shall correct any list or valuation as they may deem proper, and shall have power to equalize the valuation made by the Assessor, either by adding thereto, or deducting therefrom such sums as to them, or a majority of them, shall appear just and equitable.

Taxes for support of government—how assessed.

§ 30. All taxes for the support of the Government of the State shall be assessed on polls and on property listed and valued, in an equal and ratable proportion, in the following manner, to wit: The amount necessary to be charged on each poll and on each one hundred dollars' worth of property, real and personal, for State expenditures, shall, from time to time, be fixed by law; and the amount to be charged on each poll, and the amount to be charged on each one hundred dollars' worth of property, real and personal, for County expenditures, shall be determined by the Court of Sessions of the respective Counties, at any time after the first Monday in March and the first Monday in August of each year.

Auditors of counties to make out annually a duplicate of taxes assessed.

§ 31. The Auditor of each County shall annually, between the first and third Monday of August, make out a duplicate of taxes assessed in each County, according to the forms which shall be furnished to him by the Comptroller of State, and in doing so he shall enter in separate columns:

First. All lands in his County, with the names of the owners, whether individuals or bodies corporate or politic, in alphabetical order, the value of the lands without improvements, and opposite to this the value of improvements, and opposite to this the value of such lands with improvement.

Secondly. In like order he shall enter all city, town or village, in or out-lot or lots, or the subdivision thereof, situate in such County, with the improvements thereon.

Thirdly. In its place, all corporation stock and monied stock of private associations.

Fourthly. All personal property subject to taxation.

Fifthly. The poll; and,

Sixthly. He shall number the name of each tax payer in his County in regular progression.

State and county tax and poll tax to be set down on such duplicate.

§ 32. The County Auditor shall estimate, in dollars and cents, and set down on such duplicate, in separate columns, the State and County tax chargeable on the valuation of the property contained in such duplicate, also the State and County poll tax, and shall carry out the whole in a column of totals.

To set down and add up the several columns.

§ 33. He shall add up and set down on each page of such duplicate the several columns containing the valuation of real and personal property, the taxes charged, and the number of acres, carrying the same forward from page to page to the close of the duplicate, and at the end of the duplicate he shall add up and set down the aggregate of the above items for the whole County.

Copy of duplicate to be delivered to treasurer.

§ 34. He shall cause a copy of such duplicate to be delivered to the Treasurer of his County, on or before the third Monday of August in each year

§ 35. He shall make out and cause to be transmitted by mail or otherwise, to the Comptroller of State, on or before the first day of November of each year, a complete abstract of the property listed in his county, the valuation thereof, the number of polls, the amount of each kind of tax and the aggregate thereof in the county, and certify the same, as also the rate of each kind of tax assessed.

Complete abstract of property listed to be sent to comptroller.

§ 36. The auditor shall from time to time correct all errors which he may discover in his duplicate, either in the name of the person charged with taxes, the description of the property or amount of taxes charged, and when such correction is made, after the duplicate is delivered to the Treasurer for collection, the Auditor shall give to the person to be benefited thereby, a certificate of such correction, to be presented to the Treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the Auditor.

Auditor to correct errors in duplicate.

§ 37. The County Treasurer shall receive from the County Auditor the duplicate of taxes whenever presented between the first day of August and the third Monday of August of each year.

Duplicates to be received by county treasurer.

§ 38. Immediately on receiving such duplicate the Treasurer shall proceed to collect the same that may not have been collected as hereinafter specified, and for that purpose shall, before the tenth day of October of each year, attend one day at such places in the county as the Court of Sessions may designate, and as much longer as said court shall direct; and after the tenth day of October until the twenty-fifth day of December, he shall for the same purpose attend at his office at the county seat.

Treasurer to collect taxes.

§ 39. He shall cause notices to be posted up at each of the places of holding elections in his county, stating when he will attend to receive taxes at the respective places designated, at least four weeks before the time set forth in said notices, stating therein the amount of tax charged for State and county purposes on each one hundred dollars' valuation; also the amount of State and county poll tax, and the penalty for failing to pay the same within the time fixed by law.

Notice to be given of attending to receive taxes.

§ 40. In case any person, not being the owner of real estate, shall neglect or refuse to pay the tax imposed on him, the County Treasurer shall on the first Monday of October collect the same, together with ten per cent. damages and the cost and charges that may accrue, by seizure and sale of the goods and chattels of such person as ought to pay the same. Five days' notice of such sale shall be given in like manner as notice is required to be given of sales of personal property under execution; and no more of such property shall be sold, if susceptible of division, than will pay the taxes, costs, and damages chargeable against the owner.

Enforcing payment of taxes against any person not the owner.

§ 41. The Treasurer shall receive the same fees for making distress and sale of goods and chattels for taxes as are allowed by law to constables for levy and sale of property on execution.

Fees for making distress, &c.

§ 42. In case the owner or owners of any real estate liable to taxation shall fail or refuse to pay the amount of taxes assessed against him, on or before the first Monday of November of each year, the Treasurer shall on that day expose to sale said real estate, or so much thereof as will pay the full amount of taxes thereon, with ten per cent. damages on the amount of taxes due, and five dollars thereto added, as a compensation to the Treasurer for making a deed to the land thus sold for taxes, and continued from day to day until all the lands are sold.

Enforcing payment of taxes against owner of real estate.

§ 43. Before making such sale said Treasurer shall cause to be posted up written or printed notices at the court house door, at least ten days prior to the day fixed for sale, announcing in general terms that on a given day set forth in said notice he will sell at the court house door, between ten o'clock A. M. and four o'clock P. M. on said day, such part or portion of all real estate in the county on which taxes were unsettled as will pay and liquidate the taxes remaining due and unpaid at the day of sale, together with ten per cent. damages thereon and cost of making deeds.

Notice of sale of lands for taxes.

§ 44. The Treasurer shall be entitled to all damages levied and collected by him on the sale of goods and chattels for taxes as his compensation thereof; but all interest and damages collected by him on the sale of real estate for like purposes shall be paid into the County Treasury.

Appropriation of damages levied for non-payment of taxes.

§ 45. In selling real estate, the owner, or in default thereof the Treasurer, shall designate the part to be sold, describing the same by some definite starting point, so that the land sold can be identified by some metes and bounds, so as to make the piece or parcel sold in as near compact form as

Part of land to be sold to be designated.

Who to be the purchaser.

practicable; and in all cases the person who will pay the taxes and charges thereon for the least amount of real estate shall be the purchaser.

Treasurer to convey land sold for taxes.

§ 46. Whenever any real estate is sold for the non-payment of taxes under the provisions of this Act, it shall be the duty of the Treasurer, as soon thereafter as practicable, to execute a deed of conveyance to the purchaser or purchasers thereof, acknowledge the same before some person authorized by law to take acknowledgment of deeds, and file the same in office of County Recorder.

Redemption of land sold for taxes.

§ 47. Any person being the owner or interested in any land thus sold may redeem the same within one year from the day of sale, by paying the amount of tax charged thereon, together with one hundred per cent. damages to the purchaser: *Provided*, however, minors shall have two years within which to redeem any lands thus sold, by refunding the taxes for which the same was sold to the purchaser thereof, with like damages, or in either of the above cases by depositing the said sums and damages in the Recorder's office within the time required by law.

If not redeemed, title to become absolute.

§ 48. After the expiration of one year from the day of sale when the real estate of any adult person has been sold for taxes, and within one year from the time of attaining his or their majority, in cases where the lands of minors have been sold, the title to the purchaser or purchasers shall become absolute; and Indians shall have the power of redeeming within two years after the sale thereof: *Provided*, however, all sales and conveyances of land exempted by this Act from taxation shall be void.

Certain sales void
Lien of State on real estate—
when to attach,
and to be paramount.

§ 49. The lien of the State for all taxes for State and county purposes shall attach on all real estate on the first day of March annually; and such lien, to the absolute exclusion of all other liens, shall continue till all taxes thereon shall be paid, including the assessed value and taxes on all personal property owned by holders of real estate.

Lien on personal estate.

§ 50. The lien of the State for all taxes for State and County purposes on personal property owned by persons having no real estate, shall attach on the first day of August annually.

Power to collect to continue with treasurer.

§ 51. The power to collect taxes shall continue in such Treasurer after his return and settlement with the County Auditor, and until the taxes and all penalties, costs, and damages chargeable thereon shall be fully paid. Should goods, chattels, or real estate of the delinquent or delinquents be found in the county, the sale of personal property shall be conducted as specified in this act, and real estate sold in the manner designated in the foregoing sections.

Penalty to be assessed on all returned delinquents.

§ 52. There shall be a penalty assessed of twenty per cent. upon the amount of all returned delinquents, which the person or personal property assessed shall be liable to pay, together with ten per cent. interest per annum thereon until collected or paid.

Treasurer to note payment of tax on duplicate.

§ 53. Whenever any tax is paid, the Treasurer shall not ethe same on his duplicate, and shall give to the person paying the same a receipt, specifying the amount paid, what paid for, the property on which the same was assessed, according to its description, and the number of the owner's name on the duplicate.

Treasurer to make annual settlement with auditor.

§ 54. The County Auditor and Treasurer shall attend at the office of the Auditor on the last Monday in December of each year, and said Treasurer shall then and there make settlement with said Auditor for the amount of taxes with which said Treasurer is to stand charged, as follows:

1st. The Auditor shall take from the duplicate in the hands of the Treasurer for collection, a list of all such taxes therein, describing the property on which such delinquent taxes are charged, as the same is described on such duplicate, and shall note therein in a marginal column the reasons assigned by such Treasurer why such taxes could not be collected.

2d. Such list shall be signed by the Treasurer, and he shall also testify to the correctness thereof under oath or affirmation, to be administered by the Auditor.

3d. The Auditor shall forthwith record such list of delinquencies in his office, and deliver the same to the Treasurer, who shall deliver the same to the Comptroller of State at the time he makes settlement with him as hereinafter required.

4th. After deducting the amount of taxes returned delinquent, and the collection fees allowed the

Treasurer from the several taxes charged on the duplicate in a just and ratable proportion, the Treasurer shall be held liable for the balance.

5th. The Auditor shall certify in such manner as the Comptroller of State shall direct, the balance due to the State and balance due the County, which certificate he shall deliver to the Treasurer, who shall deliver the same to the Comptroller of State at the time he makes settlement with him, as hereinafter provided.

§ 55. Each County Treasurer shall, after he commences collecting the revenue, hold himself ready to pay to the Treasurer of State, on the warrants of said Treasurer, endorsed by the Comptroller, all State revenue collected to the date of said warrant, less his lawful fees for collecting, and retain such warrant as a voucher on settlement with the Comptroller of State, and make settlement of the amount of moneys found due from him to the State, in which settlement the Comptroller shall charge the County Treasurer with the amount of money found to be due the State by the County Auditor, deducting therefrom the amount paid, if any, on the Treasurer's draft or warrant, as herein specified, as also the Treasurer's mileage, as prescribed in this Act. The residue of money left due the State shall be forthwith paid over by said Treasurer to the Treasurer of State, in the manner designated by law.

County treasurer to pay warrants of Treasurer of State.

Payment of residue.

§ 56. The County Treasurer shall be allowed for the collecting of taxes as follows, viz. Ten per centum on the first thousand dollars collected, eight per cent. on any sum between one thousand and two thousand dollars collected, six per cent. on any sum between two thousand and five thousand dollars collected, and three per cent. on all sums above five thousand dollars, which per centage shall include all compensation for the collection of the same.

Allowance for collecting.

§ 57. The County Treasurer shall be allowed twenty cents per mile for travelling fees, in going to and returning from the seat of government, in order to pay into the treasury moneys collected on account of State revenue, to be computed by the Comptroller of State according to the distance on the route most usually travelled.

Travelling fees.

§ 58. The revenue collected for county purposes shall be settled for with the County Auditor, who, in such settlement, shall give the Treasurer credit for the amount of the delinquent list, founded on the amount assessed for county purposes, and deduct in a ratable proportion the Treasurer's fees for collecting; said Treasurer shall be held liable for the balance, and shall pay the same out in the manner prescribed by law.

County revenue to be settled for with county auditor.

§ 59. Such settlement of the County Treasurer with the County Auditor shall be made annually, between the second and third Monday of January.

Such settlement to be annually.

§ 60. If any County Treasurer shall refuse or neglect to make return or settlement with the Auditor of his county, as in this Act specified, he and his sureties shall be held liable to pay the full amount of taxes charged on the duplicate respecting which he so neglects or refuses to make return or settlement, together with the interest and damages prescribed by law.

County treasurer refusing to make return or settlement.

§ 61. If any County Treasurer shall neglect or refuse to make return on settlement with the Auditor of his county, as in this Act required, he and his sureties shall be held liable to pay the full amount which he should have paid over, together with twenty per cent. damages.

County treasurer refusing to make return on settlement.

§ 62. In any such case the District Attorney, on being instructed so to do by the Comptroller of State, or by the Court of Sessions of the county, shall cause suit to be instituted against such County Treasurer and his sureties, by or under the instructions of the Attorney General, and no stay of execution or appraisement of property shall be allowed on a judgment rendered on execution issued in such suit.

District attorney to institute suit against county treasurer, &c.

§ 63. In all suits brought against the County Treasurer and sureties, the County Auditor shall be a competent witness, and books and papers belonging to his office shall, when proved by the oath of the Auditor, be admissible testimony.

In such suit county auditor may be a witness.

§ 64. The Sheriff or other officer who shall collect any money from a delinquent County Treasurer or his sureties, shall, within ten days after the collection thereof, pay into the County Treasury such

Disposition of moneys collected of delinquent county treasurer.

portion thereof as shall belong to the county, and within thirty days after such collection, pay to the Treasurer of State, on the warrant of the Comptroller of State, obtained for that purpose, the amount due the State, taking the Treasurer's receipt therefor, which he shall deposit with the Comptroller, who shall thereupon give him a discharge; and for his services in travelling to and from the seat of government, said Sheriff shall receive the same travelling fees herein allowed to County Treasurers for similar services, or said Sheriff shall pay the same over in such other manner as the Comptroller of State may order and direct.

County treasurer
may appoint
deputies.

§ 65. It shall be lawful for any County Treasurer to appoint one or more deputies to aid in collecting the State and county revenues in their respective counties, and should any deputy fail or refuse to pay over to his principal, on demand, any taxes or other money collected by him as such deputy, such Treasurer, in his own proper name, may proceed against such deputy in any Court of competent jurisdiction, and recover against him the amount due and penalties thereon, as herein provided against delinquent Treasurers.

County treasurer
or his deputy
may accompany
assessor to make
assessment list,
and may demand
taxes, &c.

§ 66. Should the County Treasurer deem it advisable, he may, by himself or deputy, accompany the County Assessor in his travels over the county to list the property subject to taxation, and assess poll tax as in this Act prescribed, and shall have power in his discretion to demand any or all taxes due the State or county from any person liable to taxation so soon as the Assessor shall list such tax payer, and to enforce the collection of the same, and said Treasurer be and is hereby invested, as in this Act specified, for the collection of taxes on personal property.

Court of sessions
to assess amount
of taxes to be
paid.

§ 67. The Court of Sessions for each county shall, on or before the third Monday in April, annually, assess the amount of taxes that shall be levied for county purposes, designating the number of cents on each one hundred dollars of taxable property, real or personal, levied for each specific object of county expenditure, also the poll tax for county purposes, and shall add thereto the amount levied by law on each one hundred dollars of property taxable, real and personal, and poll tax for State purposes, which shall be entered on the records of said Court, and the clerk thereof shall forthwith make out certificates of the same, one of which he shall deliver to the County Auditor and the other to the County Treasurer; provided the assessment for the present year shall not commence until the second Monday of May.

When notice
specified in sec.
39 need not be
given.

§ 68. In making collections of taxes, when the Treasurer follows the Assessor, it shall not be necessary for him to give the notice specified in the thirty-ninth section of this Act, and he shall be governed in the amount of taxes collected by the amount assessed for State and county purposes by the Court of Sessions, and shall receipt therefor as in other cases.

Payment for
taxes as pre-
scribed in sec. 66
to be noted on
list

§ 69. Whenever any person pays the amount of taxes with which he is chargeable to the Treasurer, in the manner prescribed in the sixty-sixth section of this Act, the Treasurer shall note the same paid on his list, opposite the name of the tax payer.

County auditors
to add to tax-lists
all delinquents
for preceding
year.

§ 70. It shall be the duty of the County Auditor of each County, in the year one thousand eight hundred and fifty-one, to add to the list of taxable property all delinquents for the year one thousand eight hundred and fifty, together with ten per cent. damages thereon; and annually thereafter it shall be the duty of the Auditor to carry forward the list of delinquents of the past year to the current one, with lawful damages, to be collected as other taxes; *Provided*, however, the Court of Sessions may, in their sound discretion, at any time cause said delinquents to be stricken from the roll.

Delinquent taxes
may be paid at
any time before
sale of lands.

§ 71. Delinquent taxes may, at any time before the land is sold therefor, with the penalty, interest, and damages thereon, be paid into the County Treasury, at any time after the delinquent list is returned as herein provided, and the person so paying taxes shall file the Treasurer's receipt therefor with the County Auditor, and take his receipt therefor, which he shall file with the Treasurer of the proper county.

Disposition of
portion of pay-
ments by delin-
quents which
belongs to State.

§ 72. The portion belonging to the State, of such payments made into the County Treasury, shall be certified to the Comptroller of State by the County Auditor, and paid to the State Treasurer by the County Treasurer, at the time and in the manner provided for certifying and paying over State revenues.

Regulations concerning the assessment of taxes on Incorporated Companies and Private Associations, and of the collection thereof.

§ 73. All monied or stock corporations or private associations, deriving an income or profit from their capital, whether the capital stock of such corporation or private association be located in or without the limits of this State, shall be liable to taxation in the manner hereinafter prescribed. Taxation of monied corporations, &c.

§ 74. The President, Cashier, Secretary, Treasurer, Agent, or other proper officer of every incorporated company, that is now or shall hereafter be, under and by virtue of any law of this State authorizing the same, or that may exist by virtue of the laws of any other State, who derive an income or profit on their capital in this State, and the principal person having charge of the affairs of every private association engaged in selling foreign bills of exchange, drafts, or certificates of deposit on capital within this State, shall, on or before the first Monday of May, annually, make and deliver to the Assessor of the County in which the company or private association is liable to be taxed, by virtue of the provisions of this Act, a written statement, specifying,— President, &c., of every incorporated company to make annually a statement as specified.

1st. The real estate, if any, owned by such company, the county or counties in which it is situate, and the sums of money actually paid therefor.

2d. The capital stock actually paid in and secured to be paid in.

3d. The city, town, or place in which the principal office or place of transacting the financial business of such company or private association is situated, or if there be no such principal office, the place where its operations are carried on, and such statements shall be certified under the oath of such President or other officer or person to be in all respects just and true.

§ 75. If the statement above required shall not be furnished within thirty days after the time above specified, the company or private association neglecting to furnish such statement, shall forfeit to the State the sum of five hundred dollars; and it shall be the duty of the Assessor to furnish the County Auditor with an account of all companies or private associations that shall neglect to render such list. Penalty for neglecting to furnish such statement.

§ 76. Such forfeiture may be recovered by action of debt in the name of the State, in any court of competent jurisdiction, to be prosecuted by the District Attorney, under the order and direction of the County Auditor, and when collected shall be paid to the County Treasurer, who shall pay the same over to the Treasurer of State, in the manner prescribed by law. Penalty—how recovered.

§ 77. The Assessors of the several counties shall enter all companies and private associations from which such statements have been received, and the property of such company or private association liable to taxation, on their appraisement rolls, in the same manner, as near as may be, as required in other cases, showing the names of such company or private association, the amount of capital stock paid in by such company, and the amount of such capital used by private associations without this State, on the faith of which they are transacting business in this State, the amount paid by said company for real estate then belonging to said company, wherever the same may be situate; also, a proper description of all real estate of such company taxable in their respective counties, with the value thereof. County assessors to enter all companies, &c., making such statement on their appraisement roll.

§ 78. The provisions of the foregoing section shall be applicable to all lands in this State owned or claimed by any corporation, aggregate or sole, known to the laws of Mexico, and familiarly denominated as pueblos and pueblo lands, mission and mission lands, and not owned or claimed by any individual residing thereon, with such exception in behalf of mission buildings and grounds as is herein extended to churches used as places of public worship. To what preceding section shall apply.

§ 79. The Treasurer shall demand and enforce the collection of taxes from companies and private associations in the same manner as in other cases. Enforcing payment of taxes by companies.

§ 80. If the Treasurer shall be unable to collect the taxes from any such company or private association, he shall return the same to the County Auditor, as in other cases of delinquent taxes, noting the reason why he could not collect the same; and the County Auditor shall certify the same to the Comptroller of State, and if said corporation or private association have no real estate out of which to Attorney general to file a bill against delinquent companies.

make such taxes, the Comptroller of State, if he deems it advisable, shall require the Attorney General to file a bill or petition against such company or private association for the discovery and sequestration of its property.

Court may order property to be sequestered.

§ 81. The court, on filing such bill or petition, or on coming in of the answer thereto, shall order such part of the property of such company or private association to be sequestered as they shall deem necessary for the payment of all taxes due thereon, together with the damages and costs, and may in their discretion enjoin for any given time, or perpetually, any such company or private association from further prosecuting their respective avocations.

Delinquents barred from prosecuting any action at law until tax paid.

§ 82. Every person liable to pay a poll tax by virtue of the provisions of this Act, who shall refuse so to do when legally demanded by the County Treasurer or his deputy, shall not be permitted to prosecute any suit in the courts of this State for the recovery of any debt or demand, or for the redress of any personal wrong, until such poll tax shall be paid.

County treasurers *ex officio* collectors of state and county revenues. County treasurer's office where to be kept, &c.

§ 83. The County Treasurers shall be *ex officio* collectors of the State and County revenue within their respective counties.

§ 84. He shall keep his office at the county seat, and the same shall be open for the transaction of business from ten o'clock A. M. until four o'clock P. M. of each day in the year, Sundays excepted.

Chap. 53.

AN ACT to establish a Standard of Weights and Measures.

Passed March 30, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Standard of weights and measures

§ 1. There shall be but one standard of measure of length and surface, one of weights, and one of measure of capacity throughout this State, which shall be in conformity with the standard of measure, length, surface, and weight established by Congress.

Heaped measure.

§ 2. All commodities sold by heaped measure shall be duly heaped up in the form of a cone, the outside of the measure by which the same shall be measured to be the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit.

Stricken measure.

§ 3. The measure used for measuring dry commodities not heaped, shall be stricken with a straight stick or roller, and of the same diameter from end to end.

Contracts to be executed by weight or measure to mean standard weight and measure. Hundredweight and ton.

§ 4. Contracts hereafter to be executed, made within this State, for any work to be done or for any thing to be sold, delivered, done, or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure thus ascertained.

§ 5. The hundred weight shall consist of one hundred pounds, and twenty such hundreds shall constitute a ton.

Grain to be sold by the bushel.

§ 6. Whenever wheat, rye, Indian corn, barley, buckwheat, or oats shall be sold by the bushel, and no special agreement as to the weight or measurement shall be made by the parties, the bushel shall consist of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of fifty pounds of barley, of forty pounds of buckwheat, and thirty-two pounds of oats.

Capacity of bushel.

Standard weights and measures to be procured by state sealer.

§ 7. The following original standards, made in conformity to the provisions of this Act, to wit: a yard, a pound, liquid gallon, and a half bushel, shall be procured by the State Sealer of Weights and Measures, and deposited in a chest or case in his office, which shall only be opened for the sole purpose of comparing such standards with the copies hereinafter described, unless by a joint resolution of the two Houses of the Legislature, or on the call of either House for information, or by the order of the Governor for scientific purposes.

§ 8. Copies of the said original standards, to be made of such materials as the State Sealer shall direct, shall be deposited by him in the office of the County Sealers of the respective Counties of this State, at the expense of said Counties, who shall severally be responsible for the preservation of the copies respectively delivered to them.

Copies of standard weights, &c., to be deposited with county sealers.

§ 9. The State Sealer shall cause to be impressed on each of the copies of such original standards the letter "C," and such other additional device as he shall direct for the particular County; which device shall be recorded in the State Sealer's office, and a copy thereof delivered to the respective County Sealers.

Copies of such standard weights, &c., to be marked.

§ 10. The several County Sealers shall compare all weights and measures which shall be brought to them for that purpose, with the above mentioned copies of such standards in their possession; and when the same are found or made to conform to the legal standards, the officer comparing them shall seal and mark such weights and measures.

All weights, &c., to be compared with standards and marked.

§ 11. It shall be the duty of the County Sealers of weights and measures to compare the copies in their possession, once in every ten years, with those existing in the office of the State Sealer; and every County Sealer who neglects to have the copies in his possession compared as aforesaid, shall pay into the County Treasury one hundred dollars for County purposes. Whenever any County Sealer fails for one month to pay the aforesaid sum, it shall be the duty of the County Attorney to commence suit therefor, in the name of the County, before any Justice of the Peace of the County; and when collected, the same shall be paid into the County Treasury for the uses aforesaid.

Copy standards to be compared with originals.

Penalty for neglecting to compare.

§ 12. Each County Sealer shall be entitled to receive for his services at and after the following rates: For sealing and marking every beam, one dollar; for sealing and marking measures of extension, at the rate of fifty cents per yard, not to exceed two dollars for any one measure; for sealing and marking every weight, twenty-five cents; for sealing and marking liquid and dry measures, if the same be of the capacity of a gallon or more, fifty cents; of less than a gallon, twenty-five cents; they shall also be entitled to a reasonable compensation for making such weights and measures conform to the standard established by this Act.

Fees of county sealer.

§ 13. If any person or persons shall hereafter use any weights, measures, or beams in weighing or measuring, which shall not be conformable to the standards of this State established by this Act, whereby any purchaser of any commodity or article of trade or traffic shall be injured or defrauded, such purchaser may maintain an action on the case against the offender; and if judgment shall be rendered for the plaintiff, he shall recover five times the damages, with costs of suit.

Penalty for using weights, &c., not conformable to standards.

§ 14. The Secretary of State shall be *ex officio* State Sealer of Weights and Measures, and the Clerks of the County Court shall be County Sealers of Weights and Measures for their several counties.

Secretary of state *ex officio* state sealer.

§ 15. This Act to take effect three months after its passage.

Commencement of act.

Chap. 54.

AN ACT concerning Volunteer or Independent Companies.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever a sufficient number, by the provisions of this Act, of the citizens of any one county of this State, subject to military duty, shall wish to form themselves into a volunteer or independent company, it shall be the duty of the Judge of the County Court of such county to cause some suitable person, residing in such county, to open a book, in which he shall enter the names of all persons able to perform military duty, who may make application to become members of such company; and it shall be the duty of the person so appointed, to give notice, by publication in some newspaper, or by

Books may be opened to enter names of applicants to become volunteers.

Notice of opening books to be given.

When sufficient number volunteered, meeting to be called.

Meeting to be organized, and notice given of electing officers.

Commissioned and non-commissioned officers to be elected.

Election to be by ballot.

Musicians to be appointed.

Certificate of election to be made out and delivered to officers.

Return to adjutant general of state.

How companies to be armed and equipped, and of what to consist.

Companies may adopt constitutions and by-laws.

Record of constitution, by-laws, &c., to be kept.

Constitution may fix fines, &c.

Recovery of fines.

posting up such notice in at least three of the most public places in such county, of the time and place such book shall be opened to receive the names of volunteers.

§ 2. As soon as such book shall be opened for volunteers, and the number in this Act required, subject to military duty, shall have volunteered, the person so appointed shall fix a time and place for the meeting of the same, by giving at least ten days' notice thereof, by publication in some newspaper, or by posting up written notices in at least three of the most public places in such county; and it shall be his duty to attend at such meeting, and present the book aforesaid, containing the names of the volunteers.

§ 3. It shall be the duty of the person so appointed, to attend and act as chairman of such meeting, and to organize the same. He shall call the name of each volunteer written in said book, and when all the members of said company are present, he shall give notice, by proclamation, that said company will forthwith proceed to an election of officers.

§ 4. The members of the company so volunteering, shall then proceed to the choice of their commissioned and non-commissioned officers, and it shall be the duty of the person so appointed to take in writing the names of all persons nominated for election, and in connexion with any other two or more persons determined on by a majority of said company, to receive, and after all the members of the company present have voted, to carefully count and add up the votes cast, and make proclamation of the names and rank of the persons elected. In the choice of officers, the election shall be by ballot.

§ 5. Commanding officers of companies may appoint the musicians for their respective companies, under the provisions of this Act.

§ 6. It shall be the duty of the person so appointed, after such election shall have been determined, to make out in writing and sign a certificate of election of each of the officers so elected, which certificate he shall deliver to the respective officers of the company. He shall also, within the next ten days, make out a return, stating the time of the formation and organization of such company, its name and numerical strength of rank and file, and the names of its commissioned and non-commissioned officers, and forthwith forward the same to the Adjutant General of this State.

§ 7. The volunteer or independent companies shall be armed and equipped in the same manner that similar corps are in the army of the United States, and shall consist of the following officers, non-commissioned officers, musicians, and privates, to wit: To each company of cavalry there shall be one captain, one first and two second lieutenants, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and not less than forty nor more than eighty privates. To all other volunteer or independent companies there shall be one captain, one first and two second lieutenants, four sergeants, four corporals, one drummer, one fifer, and not less than fifty nor more than one hundred privates.

§ 8. Every volunteer or independent company may adopt a constitution and form by-laws, rules, and regulations, not inconsistent with the Constitution of the United States, or of this State, for the government and improvement of its members in military science, and when approved by two thirds of all the members belonging to any such company, shall be binding, but may be altered from time to time, as may become necessary.

§ 9. It shall be the duty of the acting orderly sergeant of the company, to keep a perfect and complete record of the constitution, by-laws, rules, and regulations of said company, which shall be signed by the captain of the company, and countersigned by the acting orderly sergeant, and said record shall at all times be subject to the inspection of any member of the company, and all military officers, and any person interested therein.

§ 10. Said constitution, by-laws, rules, and regulations may fix the fines and penalties which shall be imposed on any member of the company for an infraction of any of the provisions thereof, and may also fix the fines which shall be imposed on any member for a failure to parade at any muster which may be called, in accordance with the constitution, by laws, rules, and regulations of the company.

§ 11. When any member of the company shall have been guilty of a violation of the provisions of the constitution, by-laws, rules, and regulations of the company, and a fine shall have been assessed

upon him in accordance therewith, it shall be the duty of the acting orderly sergeant of the company, or in case he is interested, then of the next sergeant of the company, to demand of such member such fine, and in case of his refusal to pay the same, it shall be lawful to bring a suit therefor, in the name of the company, before any Justice of the Peace of the County, subject to an appeal to the District Court, as in other cases: *Provided*, however, that when such suit shall be brought, security for cost shall be given, by some responsible person or persons, in case such suit shall be determined against said company.

§ 12. It shall be sufficient evidence, that the constitution, by-laws, rules, and regulations have been regularly adopted, if they are signed by the actual captain, and countersigned by the acting orderly sergeant of the company, and any member of the company may be a witness, unless otherwise disqualified, in all cases brought under the provisions of this Act.

§ 13. All fines collected shall be received by the acting orderly sergeant, or acting captain of the company, and shall be used for the benefit, and under the direction of the company.

§ 14. That from and after the passage of this Act, when any volunteer or independent company of artillery, cavalry, infantry, or riflemen, shall become organized and uniformed, according to law, the captain, or commanding officer, may petition the commander-in-chief to furnish him for the use of his company, with such a number of muskets, rifles, sabres, pistols, or other arms, with their accoutrements, or if an artillery company, cannon or field pieces, and swords, with their necessary accoutrements and equipments, as his company may require, and set forth in said petition the brigade and county to which his company belongs, the number it contains, and specific number and description of the arms and accoutrements requisite for it, which shall not be greater than the rank and file his company shall contain: which petition shall be accompanied by a bond, payable to the Governor and his successors in office, for the use of the People of the State of California, in a penal sum of double the amount of the value of all the arms and accoutrements so petitioned for, according to the prices at which they are rated by the United States, when furnishing them, and signed by himself as principal, with good and sufficient sureties, conditioned to safely keep, and have in readiness for use, the arms and accoutrements by him received, and to return them in good order, if at any time required so to do, which bond must be approved, as to the sufficiency of the security, by the Judge of the County Court of the County where such company is formed; and his certificate thereof, together with the bond, shall be filed in the office of the Secretary of State.

§ 15. The commander-in-chief, upon application being made to him as aforesaid, shall, if there be any arms and accoutrements belonging to the State, furnish such officer so making application with an order upon the quartermaster general for the same: and it shall be the duty of the quartermaster general to have them directed and forwarded to the officer so petitioning, at the place specified by him, and the officer so applying, shall, upon their being delivered at such place, consider them in his care, and from that time become responsible for the same upon the conditions of his bond, and shall provide a place for the safe keeping thereof, and said company shall be permitted to use the same, upon all occasions, whenever they may be called together for duty of any kind.

§ 16. Whenever the number of members of any volunteer or independent company shall be reduced by death, withdrawal, expulsion, or otherwise, to a less number than that prescribed by this Act for such company, it shall be the duty of the commanding officer of such company to make a return to the Adjutant General of this State, setting forth the fact, and to provide forthwith, by proclamation, or notice published in one or more newspapers, or posted up in at least three of the most public places of the county, for filling such vacancies.

§ 17. It shall be the duty of the commanding officer of any volunteer or independent company, to make out, within ten days after the complete organization of such company, triplicate muster rolls, setting forth the number and names of the members of his company, the officers in the order of their rank, the privates in alphabetical order, and the rank, place of residence, and date of joining the company, of each member. It shall be his duty also, thereafter, to make out like muster rolls, semi-annually, on

Evidence of adoption of constitution, &c.

Member of company may be witness.

Application of fines, &c.

Commanding officer may petition for arms.

Petition to be accompanied by a bond.

Arms—when and how to be furnished.

Vacancies in company—how supplied.

Muster rolls to be made, and what to contain.

the first days of April and October, with the addition, if any, of all alterations which shall have occurred in his company; to the correctness of all such muster rolls the commanding officer of the company shall certify, and as soon as made out, transmit one to the Adjutant General of the State, and one shall be by him filed in the office of the County Auditor, and the third shall be preserved with the records of the company.

Compensation for making out muster rolls.

§ 18. Such commanding officer shall receive a compensation of twenty dollars for each muster roll so made out, and disposed of as prescribed in the last preceding section. He shall certify, on honor, to the correctness of his account, and it shall be paid by the Paymaster General, out of the military fund.

Commissioned officer—how commissioned.

§ 19. All commissioned officers elected under the provisions of this Act shall be commissioned by the commander-in-chief, and shall take the oath of office prescribed by the Constitution, before some officer authorized to administer oaths, a copy of which oath shall be endorsed on the commission.

Penalty for non-attendance in cases of invasion.

§ 20. All officers or members of volunteer or independent companies, when summoned or commanded, in accordance with the provisions of law, in case of invasion, or for the suppression of rebellion, riots, insurrection, or resistance to the execution of law, shall render prompt assistance and full obedience to the officer so summoning or commanding them, under the penalty, in case of neglect or refusal to comply with such summons or command, if an officer, of the forfeiture of his commission, and a fine of not less than five hundred dollars, or, if a private, of expulsion from his company, and a fine of not less than two hundred dollars; said fines to be recovered in any court of competent jurisdiction in the State.

Volunteer companies—how uniformed.

§ 21. Volunteer or independent companies, formed under the provisions of this Act, shall be uniformed as companies or corps of the same arm of the service are required to be, by the regulations of the United States Army, or as each of such companies or corps may respectively determine upon for itself.

Companies to assemble for muster and drill four times a year.

§ 22. It shall be the duty of volunteer or independent companies to assemble for the purpose of muster, drill, and inspection, on at least four days in each year, and as much oftener as a majority of all the members of any such company may direct.

Discipline and exercise to conform to that of United States army.

§ 23. Volunteer or independent companies shall conform their system of discipline and exercise to that of the army of the United States, as it is now, or shall hereafter be, prescribed by the Congress of the United States.

Officers to take rank by date of commission.

§ 24. All officers of volunteer or independent companies shall take rank according to the date of their commissions, and when two of the same grade bear an equal date, then their rank shall be determined by lot, to be drawn by them before any three commissioned officers present; and officers of volunteer or independent companies shall in all cases be deemed of superior rank to officers of the enrolled militia of the same grade, irrespective of the date of commission.

Officers to rank higher than un-enrolled militia.

Companies heretofore formed.

§ 25. It shall be the duty of the commanding officer of any volunteer or independent company heretofore formed and organized in this State, to comply forthwith with the requirements of the seventeenth section of this Act, and on such compliance, such company shall be considered as formed under this Act, and shall be subject to its provisions: *Provided*, that nothing in the constitution, by-laws, rules, and regulations of such company, shall conflict with the Constitution and laws of the United States or of this State.

Chap. 55.

AN ACT to authorize the formation of Limited Partnerships.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Limited partnerships may be formed.

§ 1. Limited partnerships for the transaction of mercantile, mechanical, mining, or manufacturing business within this State, may be formed by two or more persons, upon the terms, and subject to the

conditions and liabilities proscribed in this Act; but nothing contained in this Act shall authorize such partnerships for the purpose of banking or insurance.

Not to apply to banking or insurance.

§ 2. The said partnerships may consist of one or more persons, who shall be called general partners, and shall be jointly and severally responsible as general partners are by law; and of two or more persons who shall contribute to the common stock a specific sum in actual cash payment, as capital, and who shall be called special partners, and shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned.

Such partnerships to consist of general and special partners.

§ 3. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are 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.

Persons forming such partnerships to sign a certificate, in form presented.

§ 4. No such partnership shall be deemed to have been formed, until a certificate, made as aforesaid, shall be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, and recorded in the office of the Recorder of the County in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different Counties, a copy of the certificate, certified by the Recorder in whose office it shall be recorded, shall be filed and recorded in like manner in the office of the Recorder in every such County. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

Certificate to be acknowledged and filed.

§ 5. The partners shall, for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned, in a newspaper printed in the County where their principal place of business is situated, and if no such paper be there printed, then in a newspaper in the State nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

False statement in certificate.

Copy certificate to be advertised.

§ 6. Upon every renewal or continuation of a limited partnership, beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded, and published, in like manner as is provided in this Act for the original formation of limited partnerships; and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

Renewal of such partnerships.

§ 7. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, and the general partners only shall transact the business. If the name of any special partner shall be used in such firm, with his consent or privity, or if he shall personally make 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.

Style of firm.

§ 8. During the continuance of any partnership under the provisions of this Act, 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 before mentioned. If at any time during the continuance, or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon, from the time when they were so withdrawn respectively.

Capital not to be withdrawn.

Liability of special partners.

§ 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims.

Assignment for benefit of creditors.

§ 10. In case of an assignment, as provided for in the preceding section, the assent of the creditors shall be presumed, unless, within sixty days after notice thereof, they shall dissent; and no such

Notice of assignment to be given.

assignment shall be valid, unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in this State nearest thereto, within fourteen days after the making such assignment.

Suits—how prosecuted

§ 11. All suits respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this Act, that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits, and excepting also those cases where special partners shall be held severally responsible on account of any sum by them received or withdrawn from the common stock, as before provided.

Partnership—how dissolved.

§ 12. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the Recorder's office in which the original certificate, or the certificate of renewal or continuation of the partnership, was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificates of the formation of such partnerships were published, according to the provisions of this Act; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in this State nearest thereto.

Cases not provided for.

§ 13. In all other cases not otherwise provided for in this Act, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

Chap. 56.

AN ACT to incorporate the City of Sonoma.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

City incorporated.

§ 1. The Town of Sonoma, in the County of Sonoma, is hereby declared to be incorporated, according to the provisions of an "Act to provide for the Incorporation of Cities," approved March the eighteenth, one thousand eight hundred and fifty.

Boundaries.

§ 2. The boundaries of the City shall include only the town of Sonoma, as surveyed and laid out by Jasper O. Farrell, according to the original grant.

City council.

§ 3. The Council for the government of the city of Sonoma shall consist of five members.

No recorder

§ 4. There shall be no Recorder of the city of Sonoma, but the Mayor shall have all the powers and perform all the duties of Recorder.

Election of officers.

§ 5. The first election of city officers under the charter shall be held on the second Monday of May, eighteen hundred and fifty.

Rights of corporation.

§ 6. The Corporation created by this Act shall succeed to all the rights, claims, and powers of the town of Sonoma in regard to property.

Treasurer to pay over money.

§ 7. The Treasurer of the town of Sonoma shall pay over to the Treasurer of the city of Sonoma all money in the treasury of said town, whenever the Council of the city of Sonoma shall so direct.

Ayuntamiento to govern until, &c.

§ 8. The Ayuntamiento of the town of Sonoma shall continue to govern said town until notified by the Mayor of the city of Sonoma of the qualification of the Council created by this charter, and when so notified, the Ayuntamiento shall deliver to the Council all books and papers belonging to said town.

Chap. 57.

AN ACT defining the Compensation of Clerks employed by the Secretary, Treasurer, and Comptroller of State.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

That for the present year the Clerk employed by the Secretary of State, and the Clerk employed by the Treasurer, be and are hereby allowed each the sum of three hundred dollars per month, and the Clerk employed by the Comptroller be allowed the sum of three hundred dollars per month, and the extra clerks employed by the Secretary of State thirty cents per hundred words for all work done in that office, to be paid out of the general fund, founded on the certificate of services rendered by the officer of State in whose office the services were performed.

Salaries of clerks to secretary of state and treasurer. Clerk to comptroller. Extra clerks.

Chap. 58.

AN ACT establishing Recorders' Offices, and defining the Duties of the Recorder and County Auditor.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. There shall be an office of Recorder in each county of this State, to be styled the Recorder's office.

Recorder's office.

§ 2. Such office shall be kept at the seat of justice of each county.

Office—where to be kept.

§ 3. The Recorder shall duly attend the service of such office, and shall keep the same open for the transaction of business every day in the year, Sundays excepted, between the hours of 10 o'clock A.M. and 4 o'clock P.M., and shall provide the same with suitable well bound books, wherein shall be recorded in fair and legible hand all instruments of writing authorized or required to be recorded.

Hours for attendance.

Books to be provided.

§ 4. Before entering upon the duties of his office, the Recorder shall take the oath of office prescribed by the Constitution, and shall enter into bond in the penal sum of not less than five nor more than fifty thousand dollars, at the discretion of the County Judge of his county, with two or more sufficient sureties to be approved by said Judge; which bond shall be made in conformity with the requirements of an "Act concerning official bonds of Officers."

Recorders to take oath, and give bond.

§ 5. Such bond shall be filed in the office of the County Clerk of the county, and no Recorder shall enter upon or officiate in his office before he has given such security, upon pain of forfeiting the sum of five hundred dollars.

Bond to be filed. Penalty for taking office without giving bond.

§ 6. The Recorder shall appoint a deputy, who shall hold his office during the pleasure of the Recorder; such appointment shall be in writing, filed, and recorded in the office of such Recorder; and the Recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy.

Deputy recorder.

§ 7. In case of a vacancy in the office of Recorder, or his absence or inability to perform the duties of his office, such deputy shall perform the duties of Recorder during the continuance of such vacancy, absence, or inability.

Vacancy in office of recorder.

§ 8. The Recorder shall provide an official seal, to be kept in his office and used by him in his official capacity. He may, however, use his private seal until an official seal can be procured.

Official seal.

Accounts of—
how settled

§ 9. It shall be the duty of the Court of Sessions to audit and settle the accounts of the Recorders of their respective counties for books purchased for the use of their offices, and allow, in their discretion, such other and further sums as shall be reasonable, to be paid out of the County Treasury.

Certain deeds,
&c., to be re-
corded.

§ 10. The Recorder shall have the custody of and shall safely keep and preserve all the books, records, deeds, maps, and papers deposited and kept in his office, and it shall be his duty to record or cause to be recorded correctly :

1st. All deeds, mortgages, releases of mortgage, conveyances, deeds of trust, bonds, covenants, powers of attorney, leases, transcripts of judgments, or other instruments of writing, whereby any real estate is conveyed or may be affected, which shall have been proved or acknowledged according to law and authorized to be recorded.

2d. All papers and documents found in or transmitted to their respective offices, of and concerning lands or tenements, and which were received from the Mexican authority at the change of government.

3d. All marriage contracts and certificates of marriage.

4th. All commissions and official bonds required by law to be recorded in their offices.

5th. All transcripts of judgments from the District and Justices' Courts which by law are made liens upon real estate and matter of record.

Documents to be
recorded in sepa-
rate books.

§ 11. The several classes of instruments of writing mentioned in the several subdivisions of the preceding section shall be recorded in separate books, according to their classification therein.

General index to
be kept

§ 12. Every Recorder shall keep a general index, each page of which shall be divided into eight columns, with heads to the respective columns as follows : Time of reception ; name of grantor ; name of grantee ; description of trust ; name of instrument ; volume and page where recorded ; to whom delivered ; fees received.

Time of record-
ing to be en-
dorsed on each
document.

§ 13. When any conveyance or instrument in writing, authorized by law to be recorded, shall be deposited in the Recorder's office for record, he shall endorse upon each conveyance or instrument the time when it was recorded, noting the day, hour, and minute of its reception, and shall make correct entries in his index of every such conveyance or instrument under the respective and appropriate heads, entering the names of the grantors in alphabetical order, and entering in the appropriate columns and in the order of time in which it was received, the day, hour, and minute of its reception, and the same shall be considered recorded at the time so noted, and he shall give to the person depositing the same (if required), a receipt, specifying the particulars aforesaid.

Receipt to be
given
Documents—
how and when
to be recorded.

§ 14. The Recorder shall record without delay every conveyance or instrument authorized by law to be recorded and delivered to him for record, with the acknowledgments, proofs, and certificates written over or under the same, with the plats, surveys, schedule, and other papers therein referred to and thereto annexed, in the order and as of the time when the same shall have been delivered for record, by entering them word for word, in a fair hand, noting at the foot of each record all interlineations and erasures and words visibly written on erasures, and noting at the foot of the record the day, hour, and minute of its reception.

Erasures to be
noted.

§ 15. He shall endorse upon each conveyance or instrument the book or page or pages of the book in which it was recorded, and when recorded deliver it to the party leaving the same for record, or his order.

To endorse book
and page where
recorded.

Index to each
volume of
records.

§ 16. The Recorder shall keep in his office an index, direct and inverse, to each volume of records kept in his office ; such index shall contain, in alphabetical order :

1st. The names of the several grantors and grantees.

2d. The names of the several grantees and grantors.

3d. In case the conveyance be made by the Sheriff, the name of the Sheriff and the defendant in the execution and of the grantee.

4th. If by executors or administrators, the name of such executor or administrator and of the testator or intestate, and of the grantee.

Separate prop-
erty of married
women—how to
be recorded.

§ 17. He shall keep in his office a separate and distinct set of books, with the index required to be

kept by him, for the registration of the separate property of the wife, and shall record all instruments in writing relating thereto, in the manner prescribed in this Act for the recording of other instruments required to be recorded.

§ 18. If any Recorder to whom any conveyance or instrument proved or acknowledged according to law shall be delivered for record, shall,

Penalty for neglecting to record documents, &c.

1st. Neglect or refuse to make an entry thereof, or give a receipt therefor as required by this Act; or,

2d. Neglect or refuse to record such conveyance or instrument within a reasonable time after receiving the same; or,

3d. Record any conveyance or other instruments untruly, or in any other manner than as hereinbefore directed; or,

4th. Neglect or refuse to keep in his office such an index as is required by this Act, he shall pay to the party aggrieved double the damages which may be occasioned thereby, to be recovered on the official bond of the Recorder.

§ 19. If any Recorder shall wilfully neglect or refuse to perform any of the duties required of him by this Act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and on conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars.

Penalty for wilful neglect of duty.

§ 20. The Recorder shall not be bound to make any record for which a fee may be allowed by law, until such fee shall have been paid or tendered by the party requiring the record to be made.

Fees for recording must be paid in advance.

§ 21. Copies of all papers duly filed in the Recorder's office, and transcripts from the books of records kept therein, certified by him, shall be presumptive evidence of the facts therein contained.

Copies, &c., of records presumptive evidence.

§ 22. All books and entries of records under this Act shall at all office hours be open for the inspection of any person who may desire to inspect them.

Records to be open for inspection.

§ 23. County Recorders shall be *ex officio* County Auditors of their respective counties.

Ex officio county auditors. Account to be kept with county treasurer.

§ 24. The County Auditor shall keep an account current with the Treasurer of his county, and when any person shall deposit with the Auditor any receipt given by the Treasurer for any money paid into the Treasury, the Auditor shall file such receipt in his office, and shall charge the Treasurer with the amount thereof.

§ 25. All accounts, debts, and demands justly chargeable against any county, and which are not directed by law to be settled and allowed by some other person or tribunal, shall be examined and settled by the Auditor of such county; and for all such just accounts, debts, and demands settled and allowed by any other person or tribunal authorized by law so to do, and for all demands against such county, the amount of which is fixed by law, the County Auditor shall issue orders on the Treasury of such county, payable to the several persons entitled thereto.

Auditor of county to settle all demands on county.

§ 26. All orders issued by the Auditor shall be numbered progressively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall, at the time of issuing the same, be entered in a book to be kept by the Auditor for that purpose.

Orders on county treasurer.

§ 27. The Auditor shall make settlement with the County Treasurer at the time and in the manner prescribed by law, for all moneys received and disbursed by said Treasurer by virtue of his office.

Orders to be numbered, &c.

§ 28. Each County Recorder shall procure the necessary books for the office of County Auditor including stationery and office furniture, and the amount had for the same shall be paid out of the County Treasury on the warrant of the Auditor, founded on an order of the Court of Sessions for that purpose.

Settlement with county treasurer.

Books, &c., for county auditor.

§ 29. The Auditor shall receive such compensation for his services as the Court of Sessions shall deem just and reasonable, to be paid out of the County Treasury on the order of said Court.

Compensation to auditor.

§ 30. Whenever the office of County Recorder shall become vacant by death, removal out of the county, resignation, neglect to give bond, or for any other cause, the Court of Sessions shall appoint some suitable person, possessing the qualifications of elector, to fill such vacancy; and the person so

Vacancy in office of county recorder—how supplied.

appointed shall give bond and take the oath in like manner as required of County Recorders in the fourth section of this Act, and shall hold his office until the expiration of the term for which his predecessor was elected, and until his successor is chosen and qualified.

Recorder's duty on retiring from office.

§ 31. Each Recorder, on going out of office, shall deliver to his successor all books, papers, documents, maps, records, stationery, and furniture belonging to his office, as also the Auditor's office; and in case of the death of any County Recorder, his legal representatives shall in like manner deliver all books, papers, documents, maps, records, stationery, and furniture that shall come into his or their possession, belonging to the Recorder's and Auditor's office.

Records to be kept in fireproof place of deposit.

§ 32. The Recorders are hereby required to keep all books and papers belonging to their offices in iron fire-proof chests, or in some fire-proof vault or building.

Chap. 59.

AN ACT to regulate the Senatorial and Assembly Districts.

Passed April 4, 1850.

Senatorial districts.
First.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The County of San Diego shall be the first Senatorial District, and elect one Senator and one member of the Assembly.

Second.

§ 2. The County of Los Angeles shall be the second Senatorial District, and elect one Senator and two members of the Assembly.

Third.

§ 3. The Counties of Santa Barbara and San Luis Obispo shall compose the third Senatorial District, and elect one Senator jointly; the former two, and the latter one member of the Assembly.

Fourth.

§ 4. The Counties of Monterey and Santa Cruz, otherwise Branciforte, shall compose the fourth Senatorial District, and elect one Senator jointly, and each one member of the Assembly.

Fifth.

§ 5. The Counties of Santa Clara and Contra Costa shall compose the fifth Senatorial District, and jointly elect one Senator, and the former two and the latter one member of the Assembly.

Sixth.

§ 6. The County of San Francisco shall be the sixth Senatorial District, and elect two Senators and five members of the Assembly.

Seventh.

§ 7. The County of San Joaquin shall be the seventh Senatorial District, and elect one Senator and two members of the Assembly.

Eighth.

§ 8. The County of Calaveras shall be the eighth Senatorial District, and elect one Senator and two members of the Assembly.

Ninth.

§ 9. The County of Tuolumne shall be the ninth Senatorial District, and elect one Senator and three members of the Assembly.

Tenth.

§ 10. The County of Mariposa shall be the tenth Senatorial District, and elect one Senator and two members of the Assembly.

Eleventh.

§ 11. The Counties of Marin, Sonoma, Napa, Solano, Mendocino, Yolo, Colusi, and Trinity, shall compose the eleventh Senatorial District, and elect one Senator. The five first named Counties shall elect one, and the three last mentioned one member of the Assembly.

Twelfth.

§ 12. The County of Sacramento shall be the twelfth Senatorial District, and elect one Senator and three members of the Assembly.

Thirteenth.

§ 13. The County of El Dorado shall be the thirteenth Senatorial District, and elect one Senator and three members of the Assembly.

Fourteenth.

§ 14. The Counties of Sutter and Yuba shall compose the fourteenth Senatorial District, and elect one Senator, and Sutter one and Yuba one member of the Assembly.

§ 15. The Counties of Butte and Shasta shall be the fifteenth Senatorial District, and elect one Senator, and each County one member of the Assembly. Fifteenth.

§ 16. That the first, fifth, seventh, tenth, eleventh, twelfth, and fifteenth Senatorial Districts shall elect one member of the Senate for each of said districts at the second general election, to be held in the year one thousand eight hundred and fifty, and thereafter every two years; and that the second, third, fourth, eighth, ninth, thirteenth, and fourteenth Senatorial Districts shall elect one member of the Senate for each of said districts at the third general election, to be held in the year one thousand eight hundred and fifty-one, and every two years thereafter; and that the sixth Senatorial District shall elect one member of the Senate at the second general election, to be held in the year one thousand eight hundred and fifty, and thereafter every two years; and shall also elect in like manner one member of the Senate at the third general election, to be held in the year one thousand eight hundred and fifty-one, and thereafter every two years. Number of senators to be elected in each district.

Chap. 60.

AN ACT to incorporate the City of Los Angeles.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. All that tract of land included within the limits of the Pueblo de Los Angeles, as heretofore known and acknowledged, shall henceforth be known as the City of Los Angeles, and the said City is hereby declared to be incorporated according to the provisions of the Act entitled "An Act to provide for the Incorporation of Cities," approved March 18, 1850. *Provided*, however, that if such limits include more than four square miles, the Council shall, within three months after they are elected and qualified, fix by ordinance the limits of the City, not to include more than said quantity of land, and the boundaries so determined shall thenceforth be the boundaries of the City. Boundaries of city.

§ 2. The number of Councilmen shall be seven; the first election of City officers shall be held on the second Monday of May next. Number of officers.

§ 3. The Corporation created by this Act, shall succeed to all the rights, claims, and powers of the Pueblo de Los Angeles in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the Ayuntamiento of said Pueblo. Rights of corporation hereby created.

Chap. 61.

AN ACT amendatory of sections 7, 8, 9, 10, and 14, of "An Act subdividing the State into Counties, and establishing the seats of justice therein." Approved February 18, 1850."

Passed April 5, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The seventh section of the Act entitled "An Act subdividing the State into Counties, and establishing the seats of justice therein," approved February 18, 1850, is hereby so amended that the same shall read as follows: Amendment of section 7.

§ 7. COUNTY OF SANTA CRUZ—Beginning in the ocean three English miles from land, at a point due west of the head of San Francisquito creek, and running due east to the summit of the Santa Cruz

mountains; thence in a southeasterly direction, along the summit of said mountains, to the Pajaro river, thence along the middle of said river to the Bay of Monterey, and three English miles into the ocean, and thence in a northwesterly direction, parallel with the coast, to the point of beginning. The seat of justice shall be at Santa Cruz.

Amendment of
section 8.

§ 2. The eighth section of the same Act is hereby so amended that the same shall read as follows :

§ 8. COUNTY OF SAN FRANCISCO—Beginning at low water mark on the north side of the entrance of the Bay of San Francisco, and following the line of low water mark along the northern and interior coast of said bay to a point due northwest of Golden Rock; thence due southeast to a point within three miles of high water mark of Contra Costa County; thence in a southerly direction to a point three miles from and opposite the mouth of Alameda creek; thence in a direct line to the mouth of San Francisquito creek; thence up the middle of said creek to its source in the Santa Cruz mountains; thence due west to the ocean and three English miles therein; thence in a northwesterly direction, parallel with the coast, to a point opposite the mouth of the Bay of San Francisco; and thence to the place of beginning; including the islands of Alcatrazes, Yerba Buena, and the rock islands known as the Farrallones. The seat of justice shall be at the city of San Francisco.

Amendment of
section 9.

§ 3. The Ninth Section of the same Act is hereby so amended that the same shall read as follows :

§ 9. COUNTY OF SANTA CLARA—Beginning at the mouth of Alameda Creek, and running up the middle of said creek to its source in the Coast Range; thence in a southeasterly direction, following the summit of the Coast Range, to the northeast corner of Monterey County; thence in a westerly direction, following the northern boundary of Monterey County to the southeast corner of Santa Cruz County; thence in a northwesterly direction, following the summit of the Santa Cruz Mountains, to the head of San Francisquito Creek; thence down the middle of said creek to its mouth; and thence in a direct line to the mouth of Alameda Creek, which was the place of beginning. The Seat of Justice shall be at the City of San José.

Amendment of
section 10.

§ 4. The Tenth Section of the same Act is hereby so amended that the same shall read as follows :

§ 10. COUNTY OF CONTRA COSTA—Beginning at the mouth of Alameda Creek, and running to the southeast corner of San Francisco County to Golden Rock; thence up the middle of the Bay of San Pablo to the Straits of Carquinez; thence up the middle of said straits and Suisun Bay to the mouth of the San Joaquin River; thence up the middle of said river to the place known as the Pescadero or Lower Crossing; thence in a direct line to the summit of the Coast Range at the head of Alameda Creek; thence down the middle of said creek to its mouth, which was the place of beginning. The Seat of Justice shall be at the Town of Martinez.

Amendment of
section 14.

§ 5. The Fourteenth Section of the same Act is hereby so amended that the same shall read as follows :

§ 14. COUNTY OF YOLO—Beginning on the summit of the Coast Range at a point due west from the northwest corner of Sutter County, and running thence due east to the Sacramento River; thence down the middle of said river to the head of Merrit's Slough; thence northwesterly and westerly, following the boundary of Solano County to the summit of the Coast Range; and thence northerly, following the summit of the Coast Range, to the place of beginning. The Seat of Justice shall be at the Town of Fremont.

Chap. 62.

AN ACT concerning Water Craft found adrift, and Lost Money and Property.

Passed April 5, 1850.

The taker up of
any water craft
of the value of
\$100 found adrift
to report same to
a justice of the
peace.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That if any person or persons shall hereafter stop or take up any keel boat, flat or batteau, perogue, canoe, or other vessel or water craft found adrift on any waters or water courses within the

limits of, or on the borders of this State, and the same is of the value of one hundred dollars, it shall be the duty of such person or persons, within five days thereafter, provided the same is not proven and restored to the owner, to go before some Justice of the Peace of the county in which such property is taken up, and make affidavit in writing, setting forth the exact description of such vessel or water craft; when and where the same was found; whether any, and if so, what cargo, tackle, rigging, or other appendage was found on board or attached thereto; and that the same has not been altered or defaced within the whole or in part, since the taking up, either by him, her, or them, or by any other person or persons, to his, her, or their knowledge: and the said Justice of the Peace shall thereupon issue his warrant, directed to some constable of his township, commanding him forthwith to summon two respectable householders of the neighborhood, whose duty it shall be to proceed without delay to examine such boat or vessel, her cargo, tackle, rigging, and all appendages as aforesaid, and to make report thereof, under their hands and seals, to the Justice issuing such warrant as aforesaid, and value the same, who shall enter the same, together with the affidavit of the taking up, in full in his estray book; and it shall be the further duty of said Justice, within ten days after the said proceedings shall have been entered on his estray book as aforesaid, to transmit a certified copy thereof to the office of the Recorder of his county, to be by him registered in his estray book, and file the same in his office.

Justice to issue warrant for appraisalment of.

Appraisalment to be entered in estray book, and copy transmitted to recorder.

§ 2. In all cases where the appraisalment of any such boat or vessel, including her cargo, tackle, rigging, or other appendages as aforesaid, shall not exceed in value one hundred dollars, the taker up shall advertise the same on the door of the Court House, and also in three other of the most public places in his county, in ten days after the Justice's said certificate shall have been entered on the estray book; and if no person shall appear to claim and prove such boat or craft within six months from the taking up as aforesaid, the property shall be vested in the taker up; but if the value thereof shall exceed one hundred dollars, it shall be the duty of the Recorder of the county, within ten days from the time of the reception of the Justice's certificate at his office, to cause an advertisement to be set up on the Court House door, and in three public places in his county, and also in a public newspaper in his county; and if the said craft and appendages be not claimed and proven within three months from the time of such notice, it shall be the duty of the person taking up to deliver the same to the Sheriff of the county wherein such boat or craft was taken up, who shall thereupon proceed to sell the same at public auction to the highest bidder for ready money, having first given fifteen days' notice of the time and place of sale; and the proceeds of such sales, after deducting the costs and other necessary expenses, shall be paid into the County Treasury: *Provided*, further, that the proper owner, by making satisfactory proof of the same, within one year from the time of said sale, shall be entitled to draw on said Treasury for the full amount of said sale, deducting all costs and charges thereon.

Where appraisalment less than \$100.

Appraisalment more than \$100.

Proviso.

§ 3. If any person or persons shall hereafter find any lost goods, money, or choses in action, of any description whatever, of the value of five dollars and upwards, it shall be the duty of such person or persons to inform the owner thereof, if he is known to the finder, and to make restitution of the same without compensation, except such as may be voluntarily given, further than a reasonable charge for taking care of the same: but if the owner be not known, such person or persons shall within five days after such finding, as aforesaid, go before some Justice of the Peace of his County, and make affidavit of the description and value thereof; and also of all circumstances relating to the finding that may have come to his knowledge, and that no alteration had been made in the appearance thereof since; also the time of finding the same, whereupon the Justice shall enter a description of the property found, and the value thereof as near as he can, in his estray book, together with the affidavit of the taker up; and shall also within ten days after the entering of the same in his estray book, transmit to the Recorder of the proper County a certified copy thereof, to be by him recorded in his estray book, and to file the same in his office. In all cases where such lost goods, money, or choses in action, shall not exceed twenty-five dollars in value, it shall be the duty of the finder to advertise the things found on the door of the Court House, or in three public places in the County wherein the property was found; and if no person shall

Finder of lost goods to restore them to owner if known.

Where owner unknown, finder to report to a justice of the peace

Description of property found to be entered in estray book.

Goods, &c., not exceeding \$25 value.

appear to claim and prove such goods, money, or choses in action, within twelve months from the time of such advertisement, the right of such property shall be vested in the finder; but if the value thereof shall exceed twenty-five dollars, it shall be the duty of the Recorder of the proper County, within ten days from the time of the reception of the certificate of the Justice at his office, to cause an advertisement to be set up on the door of the Court House, and in three other public places in the County, and also if the amount exceed two hundred dollars, notice thereof to be published three weeks in a newspaper, if there be one printed in his County; and if the said money, goods, or choses in action, be not claimed in three months from the time of the said advertisement aforesaid, it shall be the duty of the finder, if it be in money, to deliver the same to the County Treasurer, after deducting the proper expenses hereinafter provided for. If it be in notes of hand, bonds, deeds of conveyance, articles of apprenticeship, mortgages, or instruments of value, the same shall be delivered to the Recorder of the County, to be preserved in his office for the benefit of the owner when legal application is made therefor: if in goods, wares, and merchandise, the same shall be delivered to the Sheriff of the proper County, who shall proceed to sell the same at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of said sale; and all money arising from such sales, after deducting the costs and charges that may have accrued thereon, shall be paid into the County Treasury: *Provided*, that the proper owner may, within one year from the date of said sale, make satisfactory proof of his ownership before the County Court, and shall be entitled to draw on said Treasury for the whole amount of said sale, after deducting all costs and legal charges.

§ 4. In all cases where any water craft shall be taken up, or any goods, money, or choses in action, or other things shall be found as aforesaid, which shall be of a value less than ten dollars, it shall be the duty of the taker up to advertise the same, by setting up advertisements in three of the most public places in the County within five days of the taking up of the same, and in such case the taker up or finder shall be required to keep and preserve the same in his or their possession, and shall go before some Justice of the Peace, and make affidavit of the description thereof; the time and place, when and where the same was found; whereupon the Justice shall enter the same on his estray book. The taker up or finder shall make restitution to the proper owner when legal application is made, and just compensation, with cost, is tendered: *Provided*, it be done within three months from the time of such taking and finding; but if no owner shall appear to claim such property within the time aforesaid, the exclusive right to the same shall be vested in the taker up or finder.

§ 5. The net proceeds of all such sales as may at any time be made by the Sheriff in pursuance of this act, and all such money and notes as may be paid over to the County Treasurer, as directed in this act, shall remain in the hands of the Treasurer, in trust for the owner, if any such shall apply within six months from the time the same shall have been paid over; but if no owner shall appear within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner there to for ever barred; in which event the money shall remain in the Treasury to be appropriated for County purposes.

§ 6. The owner of any such property as aforesaid, which at any time may be taken up or found as aforesaid, shall have restitution of the same, or the proceeds thereof, at any time before the same shall have become vested in the taker up or finder, or forfeited as aforesaid, by making the requisite proof before the Clerk of the County Court of the proper County; who shall grant him a certificate of such proof to the taker up, or finder, the Sheriff or Treasurer, as the case may be, to make restitution thereof without delay; whereupon the money or property, as aforesaid, shall be forthwith delivered or paid over to such claimant.

§ 7. If the taker up of any vessel or water craft, or the finder of any lost goods, money, or other valuable things, shall be faithful in taking care of the same, and unavoidable accident should happen thereto, without the neglect of the taker up or finder, before the owner shall have had an opportunity of reclaiming the same, such taker up or finder shall not be answerable therefor: *Provided*, that in all cases of accident, as aforesaid, it shall be the duty of the finder or taker up, within ten days thereafter,

Goods, &c., ex-
ceeding \$25
value.

Goods, &c., ex-
ceeding \$200
value.

Disposition by
finder of un-
claimed goods,
&c.

Right of owner.

Water craft or
goods found of
less value than
\$10.

Owner may
claim.

Property vested
in finder.

Proceeds of
goods, &c., sold.

Restitution to
owner.

Accident to prop-
erty while in
finder's custody.

to certify under his hand and seal to the Clerk of the County Court of the proper County, or to the Magistrate before whom the proceedings have been had, where the amount did not exceed ten dollars in value; said Clerk or Justice shall enter the same in their estray book or record kept for that purpose. If any person shall trade or carry away out of the limits of the county such property as is or may be taken up or found, as aforesaid, before he or she shall be vested in the right to the same, agreeably to the provisions of this Act, he or she so offending shall forfeit and pay double the value thereof, to be recovered by any person who is entitled to sue for the same, in any Court, or before any Justice of the Peace having cognisance thereof by action of debt, or upon the case; one half whereof shall go to the person suing, the other half to the County.

Penalty for appropriating found property.

§ 8. If any person shall take up any boat or vessel, or shall find any goods, money, or choses in action, and shall fail to comply with the requisitions of this Act, every such person so offending shall forfeit, and pay fifty per cent. on the value of said property so neglected, to be recovered before any Court having cognisance of the same; the one half to be for the use of the person suing, and one half for the County: *Provided*, that nothing herein contained shall prevent the owner from having and maintaining his action against such person for the recovery of any damages he or she may sustain.

Penalty on finder not complying with this act.

§ 9. In all cases where services shall be performed by any officer or other person or persons under this Act, the following fees shall be allowed, to wit; To the Justice of the Peace administering the oath and making out the affidavit of the taker up or finder, and making an entry thereof, two dollars; for making and transmitting a certified copy thereof to the Recorder of the County three dollars; to the Clerk for taking proof of the ownership of the property, and granting a certificate of the same, two dollars; the Recorder for each certificate transmitted to him from any Justice of the Peace as aforesaid, two dollars; for advertising, exclusive of the newspaper publication, two dollars; the cost of each publication; to the Sheriff, on account of all sales made by him in pursuance of this Act, ten per cent. on the amount of all sales; to the Constable for each warrant served on any persons complained of in pursuance of this Act, the usual fees for similar services. The fees authorized in this Act and cost of advertisements shall be paid as soon as the articles found or taken up are sold or claimed.

Fees.

§ 10. Any person shall have the right at any time to search the estray book of the Recorder of any County in the State for any information he or she may want in relation to property lost or estrayed; and also the estray book of any Justice of the Peace of a Township of this State; and for such search, as aforesaid, the Clerk or Justice shall be entitled to one dollar to be paid by the person so applying.

Estray book may be searched.

Fee for search.

§ 11. If any person knowingly or willingly neglect or refuse to comply with the requisitions enjoined by this Act (for which no penalty is hereinbefore provided), the person so offending shall, on conviction, forfeit and pay for every such offence, any sum not less than five dollars, nor more than one hundred dollars, together with all damages that may accrue by such neglect. In all cases where the fees for services rendered under this Act are not provided for, they shall be the same as provided by law for similar services.

Willful neglect of this act not before provided for.

Fees not before provided for.

§ 12. Nothing contained in this Act shall be construed to conflict with any provision contained in the Act, entitled "An Act concerning Wrecks and Wrecked Property."

Construction of the act.

Chap. 63.

AN ACT to establish a Municipal Court in the City of San Francisco, to be called the Superior Court of the City of San Francisco.

Passed April 5, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. There shall be, and hereby is, established within the Town or City of San Francisco, a Municipal

Superior court established.

Court, to be called and known by the name of "The Superior Court of the City of San Francisco;" which Court shall consist of a Chief Justice and two Associate Justices.

Election of justices.

§ 2. The Justices of the Superior Court shall be elected at the general election, by the qualified electors of the said city, and shall hold their office for the term of three years from the first day of January next after their election: *Provided*, that the Legislature shall, immediately after the passage of this Act, elect a Chief Justice and two Associate Justices of the said Superior Court, by joint vote of both houses; and so classify them that one shall go out of office each year, commencing with the first day of January, 1851. After the first election, the senior Justice in commission shall be the Chief Justice.

Proviso.

Classification of justices.

Vacancies—how filled.

When any vacancy occurs in the office of Chief Justice or Associate Justice of the said Superior Court, an election to fill the unexpired term shall be immediately ordered by the Governor; who shall also appoint some person to fill such vacancy, until such election can be held, and the person chosen shall have been qualified.

Place of holding court.

§ 3. The said Court shall hold its sessions in the Town or City of San Francisco, in such central and convenient place as shall be provided for that purpose by the Council of said Town or City.

Original jurisdiction.

§ 4. The said Superior Court shall have the same original jurisdiction within the limits of the City of San Francisco, in civil cases, as is, or may be conferred by law upon the District Court.

Mode of transacting business.

§ 5. Either of the Justices of the said Court may hold the same for the trial of causes, and different trials may take place before different Judges thereof, at the same time; but all points reserved at trials, motions for new trials, and issues of law, shall be argued and submitted in the said Court before a majority of the said Judges; and a majority of said Judges shall sit together, on a stated day in each week, for the hearing and determining thereof.

To be a court of record, and have a seal.

§ 6. The said Court shall be a Court of Record, and shall have a seal, to be devised by the Justices thereof, a description of which shall be entered on the minutes of the Court, and filed in the office of the Secretary of State. And the said Court shall have the same power as the District Court, to regulate its forms of process and proceedings, and to make rules for its own government.

Power over process and proceedings.

Forms of writs and processes.

§ 7. All writs and processes issued out of the said Superior Court, shall be in the form prescribed by law for writs and processes issuing out of the District Court, and shall be executed and returned in like manner.

Process limited to town or city, except

§ 8. The said Court shall have no power to send any process beyond the limits of the said Town or City: *Provided*, however, that writs of subpoena, issuing out of the said Court, shall be obligatory upon any witness duly served therewith, within the District of San Francisco. Obedience to any such subpoena, when properly issued and duly served, may be enforced in like manner as obedience to a subpoena may be enforced by the District Court. *And provided*, further, that final process may be issued out of the said Superior Court, beyond the limits of the said Town or City, in the same cases as may be provided by law for the issue of final process out of District Courts, beyond the limits of their districts.

Subpœnas and

Final process.

Appeal, and how taken.

§ 9. An appeal may be taken to the Supreme Court, from any judgment or order of the said Superior Court, in like manner as from any judgment or order of the District Court, and all laws regulating appeals from the District Court, shall be deemed applicable to appeals from the said Superior Court, unless otherwise expressly provided.

Laws of district court, and rules of supreme court to apply.

§ 10. All laws regulating proceedings in the District Court shall, so far as they are not inconsistent with the provisions of this Act, be deemed applicable to the proceedings of the said Superior Court, unless otherwise specially provided; and the said Superior Court shall be subject to all the rules which may from time to time be legally prescribed by the Supreme Court for the government of the District Courts.

Powers of justices at chambers.

§ 11. The Chief Justice, and each of the Associate Justices of the said Court, may exercise all the authorities incident to their offices at chambers, touching interlocutory proceedings in any suit or proceedings in the said Court; and it shall be the duty of at least one of them to attend daily, at all reasonable hours, in the office to be provided for them by the said Council of the said town or city, for the dispatch of chambers business.

Attendance at chambers.

§ 12. The District Court in and for the district of San Francisco, may, by consent of both parties, order and direct that any action of a civil nature pending therein, of which the said Superior Court is competent to take jurisdiction, in which issue of fact shall be joined, and in which no verdict shall have passed, or plea to the merits have been decided, be transferred and continued over to the said Superior Court hereby established; and such action or proceedings shall be there proceeded in with the like effect, and in the same manner as if originally had or commenced therein. And the said District Court shall possess all the necessary powers for the removal of all papers and files relating to such action or proceeding to the said Superior Court; but nothing herein contained shall be construed to invalidate any bond or recognisance made or entered into in any action that may be so removed, but the same shall continue of as much validity as though this Act had not been passed.

Transfer of causes from district court.

§ 13. The said Superior Court, and each of the Justices thereof, shall have the power to issue writs of Habeas Corpus, at the instance of any person held in actual custody, and said Justices shall be conservators of the peace in the said town or city, and may exercise all the powers conferred by law upon District Judges as magistrates.

May issue writs of habeas corpus.

§ 14. The said Justices shall appoint a clerk of the said Superior Court, who shall hold his office until the first day of January, 1852. At the general election in the year 1851, a clerk of the said Court shall be elected by the qualified electors of the said town or city, who shall hold his office for the term of two years from the first day of January next succeeding his election, and the term of said office shall thereafter be two years. Vacancies in said office shall be filled by appointment, made by the said Justices, until a clerk shall be elected and qualified according to law. The clerk may appoint one or more deputies, who shall possess the powers of clerk in any suit or proceeding in said Court during their continuance in office, and shall be removable at his pleasure.

Clerk to be appointed.

Vacancies in office of clerk;

Deputy clerks.

§ 15. No person elected or appointed to the office of Clerk of the said Superior Court, shall be permitted to enter upon the duties of his office until he shall have taken the oath of office, and shall have executed a bond in the penal sum of five thousand dollars to the town or city of San Francisco, by its corporate name, in a form and with sureties to be approved by an endorsement thereon in writing, by the District Judge of said district having jurisdiction in civil matters, or by a Judge of first Instance, or one of the Justices of the said Superior Court. The said bond shall be taken and filed, and recorded in accordance with the provisions of the "Act concerning the official bonds of Officers," and the provisions of said Act shall be deemed to apply to said bond, in like manner as to the bond of the clerk of the County Court. If there be no Recorder chosen and qualified when such bond is executed, it may be delivered to the Secretary or Clerk of the City of San Francisco, to be by him filed in his office until such Recorder is elected and qualified, when it shall be delivered to such Recorder, to be by him filed and recorded, as prescribed by law.

Clerk to take oath of office, and give bond.

Bond to be filed.

§ 16. The Justices, and clerk, and deputy clerk of said Superior Court, shall have power to take and certify affidavits, to be read or filed in any Court, or before any judicial officer of this State, and in other cases where a judicial oath or affidavit is required, except in those cases where such oath or affidavit shall be specially required by law to be taken before some other officer or tribunal.

Justices and clerks may take and certify affidavits
Exceptions.

§ 17. The corporate town or city of San Francisco shall pay out of its treasury to the said Chief Justice, and to each of the said Associate Justices, for their services respectively, a sum equal to that which may be established by law for the salary or compensation of the District Judge having jurisdiction in civil cases in the said town or city, annually; the same to be paid quarterly, in equal proportions.

Salaries of Judges.

§ 18. Before any process shall be issued, or any paper filed in any action in the said Superior Court, for the purpose of commencing any suit therein, the party applying for such process, or filing such paper, shall pay to the Clerk of said Court the sum of eight dollars, as a Court fee; and before any issue of fact shall be heard or trial had before the Court, or a jury, or any order to refer the trial of such issue to referees shall be entered, the party moving such trial, or hearing, or applying for such order of reference, shall pay to said Clerk the further sum of eight dollars as a trial fee. On the first

Court fee on commencing suit.

Trial fee.

Clerk to account for fees.

- day of each month (Sunday excepted), the said Clerk shall make out a detailed statement, on oath, of all the items of such Court and trial fees received during the preceding month, specifying the title of each cause in which they were received, to the Council of the said town or city; and shall, at the same time, pay over to the Treasurer of said town or city the amount of such fees so received by him. On his failure to make such report, or to pay over such moneys, he shall be liable to be removed from office by the Justices of said Court; and his official bond may be prosecuted by the said town or city.
- Penalty for failing to account.**
- Liability of clerk for court and trial fees.**
- The said Clerk shall be liable for the Court and trial fees hereinbefore provided for, whether he shall actually receive the same or not; and his books and the papers on file in his office shall be open to examination under the direction of the said Superior Court, to such person as shall be directed to examine the same by the Council of the said town or city.
- Application of court and trial fees.**
- § 19. The aggregate amount of the Court and trial fees, hereinbefore provided for, shall constitute a specific fund for defraying the expenses of the said Superior Court, and paying the salaries of the Justices thereof; and no part of the same shall be lent to any other fund, or used for any other purpose. The amount of the said fund shall be kept separate from that of the other funds of the said town or city, and a detailed statement of the amount of moneys received into and paid out of the said fund for the preceding year, and of the actual condition of the said fund, shall be made on oath by the said Treasurer to the Legislature, on the first day of January in each year.
- What shall not be deemed commencing a suit.**
- § 20. The institution of supplemental or other proceedings, to continue, enlarge, modify, or amend an action, proceeding, or suit already commenced; or to add to, or diminish the number of parties to the same; or to enforce a judgment, order, or decree already obtained, or any proceeding, as for contempt of Court, shall not be deemed the commencement of a suit for the purposes of this Act.
- Fees to be taxed as part of costs.**
- The amount of any court or trial fees, which shall be paid by any party, shall be taxed as a part of his costs, in case costs are awarded to him by the judgment of the Court.
- Sheriff of San Francisco to be sheriff of court.**
- § 21. The Sheriff of the District or County of San Francisco shall be the Sheriff of the said Superior Court, and shall execute such of its processes as may be required to be executed by a Sheriff, and shall be amenable to the said Court by proceedings, as for contempt, on his failure to execute such process. The Justices of said Court, sitting at chambers, may, however, appoint a proper person to execute process against the Sheriff, and in other special cases where it may be necessary.
- Process against sheriff.**
- Fees to clerk and sheriff.**
- § 22. The Clerk and Sheriff shall receive the same fees, allowed by law, for similar services in the District Court.

Chap. 64.

AN ACT creating Officers of Health for the Port of San Francisco, and defining their duties.

Passed April 8, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

- Board of health.**
- § 1. There shall be established at the port of San Francisco, a Board of Commissioners, entitled the "Board of Health;" said Board of Health shall be composed of the Mayor of the city of San Francisco, a Health Officer, Resident Physician, and Health Commissioner, who shall perform such duties as may be prescribed in this and all other acts relating to the public health, and of which Board of Health the Mayor shall by right of office be President.
- Who eligible as health officers, &c.**
- § 2. No person shall be eligible to the post of Health Officer, Resident Physician, or Health Commissioner, until he shall prove, to the satisfaction of the Legislature, that he is a graduate of some regular medical institution, and has had an experience of at least three years in the practice of his profession.

§ 3. The Health Officer, Resident Physician, and Health Commissioner, shall be elected by a joint vote of the Legislature for the term of two years, or until their successors are qualified. Should the offices, from any cause, become vacant before the expiration of the term aforesaid, the Governor shall have power to appoint a competent person or persons, who shall serve during the unexpired term.

Election of health officers, &c. Vacancies—how supplied.

§ 4. The Health Officer shall perform such duties as are specified in this or any other act, and such other duties as the Board of Health shall lawfully require.

Duties of health officer.

§ 5. The Health Officer shall have power to appoint an Assistant, to be first approved by the Board of Health, for whose acts he shall be responsible, and who may perform all the duties of the Health Officer.

Assistant to health officer.

§ 6. The Resident Physician shall reside at the Marine Hospital, and shall be the consulting physician at the Hospital; his further duties shall be to visit all sick seamen on board ships in the harbor, and also all sailors and other persons in the city who have paid hospital money, and come properly under the care of, and have been reported to the Board of Health. But all persons afflicted with any contagious or infectious disease shall, if it be deemed expedient by the Board of Health, and the life of such person will not be endangered thereby, be removed to the Marine Hospital.

Resident physician's duties.

§ 7. The Health Commissioner, under the direction of the Board of Health, shall assist the Resident Physician in the discharge of his official duties.

Health commissioner to assist resident physician. Health commissioner to receive and pay moneys.

§ 8. The Health Commissioner shall also receive all moneys appropriated to the use of the Marine Hospital, and shall pay all demands against the Hospital that shall be approved by a majority of the Board of Health; and before he shall enter upon the duties of his office, shall execute a bond in the penal sum of thirty thousand dollars, conditioned for the faithful performance of his trust, and with such sureties as the Comptroller of State shall approve; the bond shall be given to the People of California, and be filed in the office of the Secretary of State.

To give bond.

§ 9. In the discharge of their duties, the Resident Physician and Health Commissioner shall meet daily in San Francisco, at the office of the Board of Health, during such part of the year, and at such hours of the day, as the Board shall designate.

Daily meeting of resident physician and health commissioner.

§ 10. The Mayor of the city of San Francisco, the Resident Physician, and the Commissioners of Health, are hereby constituted a Board of Appeal from any direction or regulation of the Health Officer, with power to grant such and so much relief as may appear to the Board thus constituted, or a majority of them, expedient and proper.

Board of appeal.

§ 11. The Resident Physician shall receive annually a salary of ten thousand dollars, and such salary shall be paid out of the funds of the Marine Hospital. No person shall be eligible to the appointment of Assistant Health Officer, who has not received a regular medical education, and has had an experience of at least two years in the practice of his profession. The assistant shall receive a salary of eight hundred dollars per month, to be paid monthly or quarterly by the Health Commissioner, out of the funds of the Marine Hospital: *Provided*, the Board shall not employ an Assistant Health Officer unless in case of absolute necessity, nor without the consent of the Chief Executive of the State.

Salaries of resident physician and assistant.

§ 12. The Health Commissioner shall perform the duties of Secretary to the Board of Health, and keep a correct journal of all their proceedings, which shall at all times be subject to the inspection of the Board of Health.

Secretary to board of health.

§ 13. The Health Officer shall be entitled to receive the following fees for visiting and examining vessels in the discharge of his official duties, viz. 1st. For each vessel from a foreign port, twenty dollars. 2d. For each vessel from any United States port, not on the Pacific coast, if above one hundred tons, sixteen dollars; not exceeding one hundred tons, twelve dollars; if below one hundred tons, eight dollars. And all vessels running coastwise from any United States port on the Pacific, not within the State of California, visited by the Health Officer, shall, for each and every visit, pay the sum of six dollars; and such fees shall be paid by the respective masters of the vessels so visited and examined.

Fees to health officer.

Masters, &c., of vessels to report cases of sickness.

§ 14. Every master, owner, or consignee of a vessel lying at wharf, or in the harbor of the city of San Francisco, shall make a report of the name of every person on board such vessel, who may be sick with any contagious or infectious disease; and no such person shall be removed therefrom without a written permit for that purpose from the Board of Health.

Penalty for obstructing board of health in execution of their duties.

§ 15. Every person or persons who shall be guilty of obstructing either of the Board of Health in the discharge of their duties as prescribed in this Act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined for each offence in a sum not exceeding one thousand dollars.

Penalty on masters, &c., of vessels for not complying with act.

§ 16. Every master or owner or consignee who shall wilfully or knowingly refuse or neglect to perform the duties enjoined in this act, shall, for each offence, forfeit to the Board of Health the sum of one thousand dollars.

Imprisonment for non-payment of fines.

§ 17. Whenever any fine shall be imposed by the provisions of this Act, the person or persons so convicted to pay such fine, shall, in the discretion of the court, stand committed until such fine shall be paid, or the person or persons so offending shall be discharged from such imprisonment, by due course of law.

Appropriation of fines.

§ 18. All fines collected under this Act shall be appropriated to the funds of the Marine Hospital.

Neglect of duty by health officer, &c.

§ 19. The Health Officer, Resident Physician, and Health Commissioner, upon wilful neglect or delinquency of duty, or for exercising powers not given to them or either of them, by this Act, shall be liable in damages to any person or persons who may be injured thereby; and may be removed from office by the Governor of the State.

Fees and salaries may be altered.

§ 20. The Legislature hereby reserves the right at any time to increase or diminish the tariff of fees and salaries assessed in this Act.

Chap. 65.

AN ACT providing for the creation of a Marine Hospital for the State of California.

Passed April 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Marine hospital to be erected.

§ 1. There shall be established within and for the State of California, a Marine Hospital, and all buildings belonging to or connected therewith, shall be erected upon grounds containing not less than twenty acres, and which at the time of such erection shall belong to the State, and shall be situated upon the Bay of San Francisco, and not less than two nor more than twelve miles distant from that part of the town of San Francisco, known as "Clark's Point."

Board of health to hold hospital in trust.

To make improvements, &c.

§ 2. The said Marine Hospital, together with its lands and all buildings and improvements which may be made thereon, shall be held by the Board of Health in trust for the people of this State, for the purposes specified in this Act. And said Board of Health shall have power, and are hereby required to purchase said lands, and erect for the said Marine Hospital proper and necessary buildings and improvements, as soon as funds sufficient for such purpose, over and above salaries and other incidental expenses, shall be received by them in their official capacity; *Provided*, however, that the whole cost of the said grounds, hospital and other buildings and improvements, so to be erected, shall not exceed the sum of fifty thousand dollars; and until such time as the said grounds shall be obtained, and the necessary buildings erected thereon and ready for the use of the said Marine Hospital, the said Board of Health shall be authorized to make suitable temporary arrangements for the same, within the limits prescribed by the first section of this Act.

Cost of hospital not to exceed \$50,000.

Temporary arrangements.

Plan of hospital to be made.

To be erected by contract.

§ 3. The Board of Health shall cause a draft of such building or buildings to be made as they may deem necessary for the Marine Hospital, which draft or plan shall be subject to the inspection of the Governor of the State, and if he approve the same, they may receive sealed proposals for the furnishing

of the material, and for the erection of the same, and the contract shall be given to the lowest responsible bidder.

§ 4. The sums necessary to keep the buildings of the Marine Hospital in good repair, including the expenses of erecting all such buildings, and in making such improvements as the Board of Health shall deem indispensable, shall be charged as part of its annual expenses.

Expenses of repairs, &c.

§ 5. The Health Officer shall reside at the Marine Hospital, unless otherwise directed by the Board of Health, and shall by right of office be Physician of such Hospital, give orders for the admission of patients, and have the immediate control of its inmates, and shall employ and discharge all nurses and attendants; but the Board of Health shall, in all other respects, have the superintendence thereof; make rules and orders for its government, and provide bedding, clothing, fuel, provisions, medicine, and such other articles as shall be requisite therein, and shall pay out of the funds of the Hospital all wages for said nurses and attendants, as well as all incidental expenses of said Hospital, and shall fix the compensation of said nurses and attendants.

Health officer to reside at hospital, and have general superintendence thereof.

§ 6. The Board of Health shall at all times furnish a convenient boat, with sufficient boatmen, for the use of the Health Officer and Resident Physician, the expense of which shall be charged to the funds of the Hospital.

Boat and boatmen to be furnished.

§ 7. All sick sailors, mariners, and other persons who shall have paid hospital money, or for whom the bond hereinafter mentioned shall have been given, shall be entitled, free of charge, to all the benefits of the said Marine Hospital, and to be there provided for while sick; and also such other persons as the authorities of the city of San Francisco may request: *Provided* the said authorities shall pay therefor such charges as the Board of Health may direct; and every sick person sent to the Marine Hospital shall be there kept and attended to with all necessary and proper care; and no such person shall leave the Hospital until the Health Officer shall grant a discharge in writing.

Who entitled to admission to hospital.

How discharged.

§ 8. The Health Officer may direct, in writing, any constable to pursue and apprehend any person not discharged as aforesaid, who shall elope from the Hospital, and to deliver such person at the Hospital, to be there detained until regularly discharged. It shall be the duty of the constable so directed to obey such instructions; and every person who shall so elope shall be considered guilty of a misdemeanor, punishable by fine or imprisonment.

Patients eloping from hospital may be apprehended.

§ 9. All persons sent to the Marine Hospital other than those who shall have paid hospital money, who shall be provided for by the city of San Francisco, and such persons as the Board of Health shall exempt, shall pay a reasonable sum for their board, medicines, and attendance; and for the recovery of such sum, the Board of Health may sue in their name of office.

Certain persons to pay for their board, &c., in hospital.

§ 10. Within twenty-four hours after the arriving of any ship or vessel at the port or within the bay of San Francisco, and before leaving said port or bay for any other place within the limits of this State, from any of the United States other than this State, or from any country out of the United States, the master or commander of such vessel or ship on which such passengers shall have arrived, shall make a report in writing on oath or affirmation to the Board of Health, at their office in the city of San Francisco, which report shall state the name and number of all the cabin and steerage passengers, captains, mates, and sailors, and also the name and residence of the owner or owners and consignee of such vessel. In case any such master or commander shall omit or neglect to report fully as aforesaid, or shall make a false report or statement, he shall forfeit the sum of five hundred dollars for every such passenger or person in regard to whom any such omission or neglect shall have occurred, or any false statement shall have been made, for which the owner or owners or consignees of every such vessel or ship shall also be liable, jointly and severally, and which may be sued for and recovered, as provided in this Act.

Masters of vessels to report.

Penalty for neglecting to report.

§ 11. It shall be the duty of the said Board of Health to require the owners or consignees of the said ship or vessel on which said persons have arrived, to give a several bond to the State in the penalty of two hundred dollars for each and every person included in such report, such bond being secured as hereinafter provided, conditioned to indemnify and save harmless the Board of Health, and each and

Owners, &c., of vessels to give bond to board of health.

every city, town, or county in this State, from any costs which said Commissioners of Health or such city, town, or county shall incur for the relief or support of the person named in the bond, within five years from the date of the bond; and also to indemnify and refund to the said Board of Health, city, town, or county, any expense or charge they may necessarily incur for the support or medical care of the person therein. Each and every bond shall be secured by two or more sufficient sureties, being residents of the State of California, each of whom shall prove by oath or otherwise, to the satisfaction of the Board of Health, that he is owner of freehold in this State of the value of three hundred dollars over and above any claim or lien thereon against him, including therein any contingent claim which may accrue from or upon any former bond given under the provisions of this Act.

Owners, &c., may commute for bond.

Amount of commutation.

Receipt and certificate to be given on payment of commutation.

§ 12. It shall be lawful for any owner or consignee at any time within two days after the arrival of such person or passenger in any ship or vessel at the port or within the Bay of San Francisco, and before leaving said port or bay for any other place within the limits of this State, to commute for the bond or bonds so required, by paying to the Health Commissioner: 1st. For the master and each cabin passenger arriving in an American vessel from a foreign port, three dollars; for each steerage passenger, mate, sailor, or marine, arriving in such vessel, two dollars. 2d. For the master and each cabin passenger arriving in an American vessel from any port in the United States not on the Pacific, two dollars; for each steerage passenger, mate, sailor, or marine, arriving in such vessel, one dollar. 3d. For the master and each passenger arriving in a coasting vessel sailing from any American port on the Pacific, one dollar and fifty cents; but no such coasting vessel shall pay for more than one voyage in each month, computing from the first voyage in each year. 4th. For the master and each cabin passenger arriving in a foreign vessel from a foreign port, five dollars; for each steerage passenger, mate, sailor, or marine, three dollars: But the owners or consignees of such foreign vessels as have been placed, by treaty with the United States, on an equality with American vessels, shall be placed upon the same footing in regard to commutation as is herein established for American vessels. The Health Commissioner shall give to such owner or consignee as shall pay the commutation aforesaid, a receipt containing all the names of the persons for whom such commutation shall have been paid; and shall also give to each individual for whom such commutation shall have been paid, a certificate or receipt, setting forth the fact that such commutation has been paid, and that the person described therein shall be entitled when sick to the benefit of the Marine Hospital.

The receipt of the Health Commissioner shall be deemed a full and sufficient discharge from the requirements of giving bonds as above provided.

Master, &c., may recover hospital money paid.

State hospital moneys.

Per centage for collecting.

§ 13. Each master, owner, or consignee, paying "Hospital money," shall be entitled to demand and recover from each person for whom they shall have paid, the sum paid on his account.

§ 14. All moneys received by the Health Commissioner under and by virtue of this act, shall be denominated "State Hospital Moneys," and shall be appropriated to the use of the Marine Hospital, except as herein otherwise provided, deducting to the Health Commissioner a commission of six per cent. for and upon all collections: *Provided*, the per centage shall not exceed two thousand five hundred dollars for any one quarter.

Clergymen may visit hospital, and to be provided with a boat.

Account to be kept of unreclaimed effects of decedents.

§ 15. No clergyman shall be denied admission to the Hospital, or its patients, whenever application shall be made, or whenever such visit shall be desired by any patient therein. It shall also be the duty of the officers to provide clergymen with a boat for the purpose of performing such visits.

§ 16. The Board of Health shall keep an account of all unreclaimed effects of persons who shall have died at the Hospital, and shall, in their quarterly reports, report the same to the Comptroller; and if the same shall consist of money, they shall pay the same over to the Treasurer, to be considered a part of the State Hospital Fund, unless claimed by some person entitled thereto; and all other property of said deceased persons shall, after being unreclaimed for a reasonable time, be sold by the Commissioners of Health, and the proceeds disposed of in like manner.

Board of health to report to governor.

§ 17. It shall be the duty of the Board of Health to furnish to the Governor of this State, as often as he may require, a full and correct report of all persons in the said hospital affected with any contagious

or infectious disease, and of all such patients as may die or be discharged as cured. And the Board of Health shall, once in each year, publish a full and correct report of the number of persons received in said hospital for each month in said year, and of their diseases; also, of the number discharged as cured, and of the deaths occurring therein, and from what cause; also, of all moneys received and expended, and for what purpose the same were so expended; and shall send a copy of such annual report to the Executive of State, on or before the fifteenth day of December of each year; and the said Board of Health shall keep or cause to be kept books containing a full and correct record and account of all the affairs of the said Marine Hospital, and which shall at all times be open to inspection to any committee appointed for such purpose by the Legislature. For the expenses attendant thereon, as well as for all other expenses necessarily incurred by virtue of this Act, the Board of Health shall have the right to draw upon the funds of the hospital.

To report to executive.

§ 18. The Board of Health shall keep an office in the City of San Francisco, and be authorized to pay therefor out of the funds of the Marine Hospital, an annual rent not exceeding one thousand two hundred dollars, and shall keep the same open for the transaction of business between the hours of ten o'clock A. M. and three o'clock P. M. daily; and at said office there shall be kept an iron fire-proof chest, in which all moneys received by the Health Commissioner under this Act, shall be securely kept, and the said Health Commissioner shall once in each week make a full and complete report to the Board of Health of all moneys received or expended by him, for and on account of the said Hospital; and shall at the same time pay over to the Board of Health the balance remaining in his hands. It shall be the duty of the Health Commissioner to pay to the Health Officer of any State or City Hospital for any person who may have been under their care entitled to the benefits of the Marine Hospital, at the same rate per week as is charged for pay patients in said Marine Hospital; but no moneys of or belonging to the said Marine Hospital shall be paid out, except by said Health Commissioner, and the account for which the same is paid shall be first approved by a majority of the Board of Health.

Office of board of health.

§ 19. The Board of Health shall account quarterly to the Comptroller, under oath, for all moneys received and expended for and on account of the Marine Hospital; and if the moneys so recovered shall exceed the sum necessary to defray the expenses of their trust, including the fees or salaries to which they may be entitled, they shall pay over such surplus, quarterly, to the Treasurer of the State, to be by him kept as a State Hospital fund; and the said Board of Health by that name are hereby empowered to sue for and recover any moneys that may be due the Marine Hospital; and also all penalties and forfeitures provided in this act; and the same when recovered shall constitute a part of the funds of the Marine Hospital; and all moneys paid over by the said Board of Health to the Treasurer of this State as herein required shall be accompanied by a statement, verified by the oath of one or more of said Board of Health; to the effect, that they are the same particular moneys as shall have been received by them.

Board of health to account quarterly.

Surplus moneys to be paid to state treasurer.

Moneys due Marine Hospital, and penalties—how recovered.

Chap. 66.

AN ACT regulating the Quarantine of Vessels at the Port and Harbor of San Francisco.

Passed April 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The quarantine anchorage shall be designated by buoys, to be fixed under the direction of the Health Officer, and shall be as near as possible to the Marine Hospital; and every vessel subject to quarantine shall anchor within them.

Quarantine anchorage—how to be designated.

§ 2. Every vessel in this Act directed to be subject to quarantine shall, immediately on her arrival, proceed to and be anchored at the place there assigned for quarantine, and shall remain there, with her officers, passengers, and crew, during her quarantine, subject to the examination of the Health Officer,

Certain vessels to anchor at quarantine anchorage and to be examined.

as provided in this act, to such regulations as the Health Officer or Board of Health shall lawfully impose.

Vessels subject to act.

§ 3. All vessels arriving in the Bay of San Francisco, from sea, are declared to be subject to such quarantine regulations as are prescribed in this Act.

Quarantine of steam-vessels.

§ 4. All vessels subject to a regular quarantine shall, if navigated by steam, be subject only to such length of quarantine and other regulations as a majority of the Board of Health shall enjoin.

Quarantine of other vessels.

§ 5. The quarantine of other vessels shall be limited by the discretion of the Health Officer; but unless under special circumstances and with the sanction of the Board of Health, it shall not exceed the time requisite for a due examination of the vessel and cargo, and a compliance with the regulations of this Act.

Every vessel to be boarded by health officer.

§ 6. It shall be the duty of the Health Officer to board every vessel immediately on her arrival, and make strict search and inquiry into the health of the crew and passengers, and into the state and condition of the vessel and cargo; and in the discharge of this duty he may put all such questions to the persons on board as he shall judge necessary and proper to enable him to ascertain the condition of the vessel, and the quarantine to which she ought to be subjected; and the persons to whom such questions shall be put shall, if required, answer the same under oath, which the Health Officer is hereby authorized to administer; and the Health Officer shall make a daily report to the Board of Health respecting every vessel that he shall visit, and containing all such information as may enable the Board of Health to determine what measures in respect to such vessel ought to be adopted.

Health officer to report on the vessels visited.

Release from quarantine.

§ 7. When the regular period of quarantine has expired, if the Health Officer judge the vessel and cargo free from infection, he or the Board of Health shall release the vessel from quarantine.

Quarantine flag to be affixed to shrouds.

§ 8. Every vessel subject to quarantine must be designated by a quarantine flag, to be fixed in a conspicuous part of the main shrouds of the vessel, until the expiration of her quarantine.

Vessels not to load or unload at quarantine except, &c.

§ 9. No lighter shall be employed to load or unload vessels at quarantine, but by the permission of the Health Officer, when they shall be subject to such restrictions as he may impose.

Vessels not to quit quarantine without permit.

§ 10. No vessel subject to quarantine shall remove from the quarantine grounds without a written permit from the Health Officer.

Building for passengers of vessels under quarantine. Providing for occupants.

§ 11. It shall be the duty of the Board of Health to provide a building, at a safe distance from the hospital buildings, on the hospital grounds, for all passengers of a vessel or vessels placed under quarantine, who are not diseased, who may choose to go on shore; and those who are unable to maintain themselves shall be provided for by the master, owner, or consignee of the vessel, unless in cases where a special agreement to provide for themselves during the voyage has been entered into, in which case they shall be provided for by the Board.

Cost of erecting such building. Charge for pay patients.

§ 12. The cost of erecting such building shall not exceed twenty thousand dollars, and the weekly charge for pay patients shall not exceed twenty dollars per week; the accommodations shall be of good quality, and such as are usually provided for at boarding houses.

Masters, &c., of vessels to submit same to examination.

§ 13. Every master of a vessel subject to quarantine shall proceed with and anchor his vessel at the place assigned for quarantine at the time of his arrival; he shall submit his vessel, cargo, and passengers to the examination of the Health Officer, and furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subjected.

Penalty for refusing information or for unloading before vessel examined.

§ 14. Every master of a vessel hailed by a pilot, who shall either give false information to such pilot relative to the condition of his vessel, crew, passengers, or cargo, or refuse to give such information as shall be lawfully required, or land any person from his vessel, or unload or tranship any portion of his cargo before his vessel shall have been visited or examined by the Health Officer; or shall approach with his vessel nearer than the place of quarantine to which he shall be directed, shall be guilty of a misdemeanor, and for each offence shall be fined in a sum not exceeding five hundred dollars; and every person who shall land from any such vessel, or unload or tranship any portion of his lading under the like circumstances, shall be considered guilty of a like offence, and be subject to the like penalty.

§ 15. Every person who shall willingly or knowingly oppose or obstruct the Health Officers or pilots in performing the duties required of them in this act, shall be guilty of a misdemeanor; the fine for each offence not to exceed one thousand dollars, nor the imprisonment three months.

Obstructing health officer or pilot in discharge of duty.

§ 16. Every person who shall go on board of, or have communication or intercourse with any vessel at quarantine, without the permission of the Health Officer, shall be considered guilty of a misdemeanor, and punished by fine and imprisonment; and such offender shall also be detained at quarantine so long as the Board of Health shall direct, not to exceed twenty days, unless he shall be taken sick of some pestilential or infectious disease.

Penalty for going on board a vessel in quarantine without a permit.

§ 17. Whenever the Board of Health, or either of them, shall charge in writing any pilot with any violation or neglect of duty, the Pilot Commissioners shall suspend such pilot from his office until he shall have entered into a recognisance before some magistrate of the State of California in the sum of five hundred dollars, with sufficient sureties, to appear and answer to the offence charged, at the next term of the District Court of San Francisco.

Suspending pilots.

§ 18. It shall be the duty of each pilot belonging to the port, to use his utmost endeavors to hail each and every vessel which he shall discover to be entering the Bay of San Francisco from sea, and to demand of the master of every such vessel, whether any person has within ten days died or been sick with a malignant or contagious disease on board.

Duties of pilots to hail vessels.

§ 19. If either of the above questions shall be answered in the affirmative, the pilot shall immediately give notice to the master of the vessel that he, his vessel, crew, passengers, and cargo, are subject to the examination of the Health Officer, and shall direct him to proceed and anchor his vessel at the quarantine anchorage, there to await the future directions of the Health Officer.

Pilots to notify masters of vessels that their vessels are subject to examination.

§ 20. It shall be the duty of every pilot who shall conduct into port a vessel subject to quarantine: First. To bring such vessel to anchorage within the buoys marking the quarantine anchorage. Second. To prevent any vessel or boat from coming alongside of the vessel under his charge, and to prevent anything on board from being thrown into any other vessel or boat. Third. To present to the masters of the vessels a printed copy of this Act, when such copy shall have been delivered to him for that purpose. Fourth. To take care that no violations of this Act be committed by any person on board; and to report such as may be committed, as soon as may be, to the Health Officer.

Duties of pilots conducting vessels subject to quarantine into port.

§ 21. Any vessel arriving at the Port of San Francisco that has no malignant or contagious disease on board, shall not be subject to quarantine.

When vessels not subject to quarantine.

§ 22. The master, owner, or consignee of every vessel subject to regular quarantine of thirty days, shall forthwith, upon the requisition and under the direction of the Health Officer, cause such vessel, her cargo and clothing, to be thoroughly cleansed and purified; and shall cause said vessel to be fumigated with mineral acid gas, when required by the Health Officer.

Vessels subjected to regular quarantine to be purified.

§ 23. And when the regular period of quarantine shall have expired, if the Health Officer shall judge the vessel clean and free from infection, he shall release the vessel from quarantine, and report the same to the Board of Health, but none of the officers, passengers, or crew of any such vessels shall leave the quarantine ground until ten days after the last case of pestilential or infectious fever shall have occurred on board.

When vessels and crews may leave quarantine.

§ 24. The Health Officer, if he shall judge it necessary to prevent infection or contagion, may cause, upon the order of the Board of Health, any bedding or clothing on board a vessel subject to quarantine, or any portion of her cargo that he may deem infected, to be destroyed.

Bedding, clothing, and cargo may be destroyed.

§ 25. The Health Officer, upon the application of the master of any vessel under quarantine, and his consenting to pay for the maintenance of the offender whilst in custody, may direct to be confined, in some suitable place on shore, any sailor or mariner on board of such vessel who shall have committed an offence punishable by the Laws of this State, or of the United States, and who cannot be properly secured for punishment on board of his vessel; such confinement shall continue during the residue of the quarantine of the offender; and the expenses of maintaining the offender shall be charged and paid in the same manner as the expenses of maintaining poor passengers.

Health officer may confine mariners, charged with offence.

Penalty for refusing to anchor at quarantine, or submit vessel to examination, or remain at quarantine.

§ 26. Every master of a vessel subject to quarantine, arriving within the Bay of San Francisco, from sea, who shall refuse or neglect either: First. To proceed with and anchor his vessel at the place assigned for quarantine at the time of his arrival. Second. To submit his vessel, cargo, and passengers, to the examination of the Health Officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject. Third. To remain with his vessel at quarantine during the period assigned for her quarantine, and whilst at quarantine to comply with the directions and regulations of this Act, and with such as any of the Officers of Health, by virtue of the authority given to them by this Act, shall prescribe in relation to his vessel, his cargo, himself, or his crew, shall be considered guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offence not to exceed one thousand dollars, nor the imprisonment twelve months.

Wilfully and without authority going into quarantine grounds a misdemeanor.

§ 27. Every person who, without the authority of the Health Officer or Board of Health, shall wilfully go within the inclosure of the quarantine grounds, shall be considered guilty of a misdemeanor; the fine for each offence not to exceed five hundred dollars nor the imprisonment thirty days.

Penalty for going on board or holding intercourse with vessel at quarantine without authority.

§ 28. Every person who shall go on board of or have any communication, intercourse, or dealings with any vessel at quarantine, knowing the vessel to be in quarantine, without the permission of the Health Officer, shall be considered guilty of a misdemeanor, punishable by fine not less than one hundred dollars, nor more than five hundred dollars.

Offenders to be detained at quarantine.

§ 29. Such offender shall also be detained at quarantine so long as the Board of Health shall direct, not exceeding ten days, unless he shall be taken sick of some pestilential or infectious disease.

Offenders against this act to be reported to board of health.

§ 30. It shall be the duty of the Health Officer to give immediate information to the Board of Health of every such transgression, the circumstances attending it, and the condition of the vessel with which a communication shall have been had; and the Board may determine how long the offender ought to be detained at quarantine.

Penalty for quitting quarantine without leave.

§ 31. Every person under quarantine shall be subject to the penalty of not less than one hundred dollars nor more than two hundred and fifty dollars, who shall elope from or wilfully go beyond the bounds assigned to him for his quarantine; and it shall be the duty of every Justice of the Peace or other magistrate, before whom any such offender shall be brought, to order him by warrant to be re-conveyed to the quarantine ground, there to remain the residue of his term of quarantine. All fines or penalties, collected under the provisions of this act, shall be appropriated to the funds of the Marine Hospital.

Application of penalties.

Violating orders of board of health a misdemeanor.

§ 32. Every person who shall violate, refuse, or neglect to obey or comply with any order, prohibition, or regulation made by the Board of Health, in the exercise of the powers herein conferred, shall be considered guilty of a misdemeanor, punishable by fine at the discretion of the court by which the offender shall be tried.

Chap. 67.

AN ACT prescribing the duties, and fixing the compensation of County Surveyors.

Passed April 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

County surveyors to take oath and give bonds.

§ 1. Each County Surveyor, upon entering upon the duties of his office, shall take and subscribe the oath of office, and give bond in the sum of five thousand dollars, in conformity with the provisions of the "Act concerning the official bonds of Officers."

May appoint deputies.

§ 2. The County Surveyor may appoint such number of deputies as he may think proper, who

shall severally take the oath of office, and for the faithful performance of whose duty he shall be responsible.

§ 3. The certificate of the County Surveyor or any of his deputies shall be admitted as legal evidence in any Court in this State, but the same may be explained or rebutted by other evidence. No survey or re-survey hereafter made by any person except the County Surveyor or his deputy, shall be considered legal evidence in any Court within this State, except such surveys as are made by the authority of the United States, or by mutual consent of the parties.

Certificate of county surveyor, or deputy, legal evidence. Surveys by other persons not legal evidence. Exception.

§ 4. When it shall appear that the County Surveyor is interested in any tract of land, the title of which is in dispute before a Court, and a survey of which is necessary, the Court shall direct the survey to be made by some capable and disinterested person, who shall be authorized to administer oaths in the same manner as the County Surveyor is directed to do, and shall return such survey, on oath or affirmation, and shall receive for his services the same fees as the County Surveyor would be entitled to for similar services.

County surveyor interested, some other person to be appointed.

§ 5. During a vacancy in the office of County Surveyor of any county, the Court of Sessions of such county may appoint some person to perform the duties of Surveyor until such vacancy shall be filled in the manner prescribed by law.

Vacancies—how supplied.

§ 6. It shall be the duty of said Surveyor, by himself or one of his deputies, to execute any survey that may be required by order of any Court, or upon application of any individual or corporation.

Duty of surveyor to execute surveys.

§ 7. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the Court of Sessions for that purpose, which shall be transmitted to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the filed notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plot, together with the certificate of survey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

To keep a record of all surveys, &c.

§ 8. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the Surveyor of any county in which any part of such land is situated, and on such application being made, the Surveyor is authorized and required to make the survey, which shall be as valid as though such lands were situated entirely within the county for which such Surveyor is chosen.

Survey of lands divided by county lines.

§ 9. When lands, the title of which is in dispute before any Court, shall be divided by a county line, the Court making an order of survey, may direct the order to the Surveyor of any county in which any part of such lands is situated.

Survey of lands divided by county line, where title in dispute.

§ 10. In all surveys the courses shall be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian shall be expressed on the plot, with the year, month, and day of the survey.

Courses to be expressed according to true meridian and variations to be marked.

§ 11. The county surveyor and his deputies may demand and receive for their services, the following fees, to wit: For the first mile actually run with the compass and chain, ten dollars; for each succeeding mile thereafter, eight dollars; for each mile run with the compass alone, five dollars; for each copy of a plot and certificate, three dollars; for each lot laid out and plotted, in any city or town, five dollars; for recording a survey, two dollars; for calculating the quantity of every tract of land not divided, three dollars; for calculating the quantity of each division made in a tract of land, town lots excepted, three dollars; for travelling to the place of survey and returning, fifty cents for each mile.

Fees to county surveyor and deputies.

§ 12. If a party, for whom the survey is made, does not furnish the chainmen and markers, the County Surveyor or his deputy may employ the necessary chainmen and markers, and shall receive the reasonable hire of all assistance necessary to be employed in making the survey.

Chainmen and markers may be employed.

§ 13. Each County Surveyor, immediately after making any survey, except surveys of city or town lots, shall make out a copy of the field notes and plot, and transmit the same to the Surveyor General, indicating plainly upon the plot, at what point of any line, any river, or stream, or county line is touched or crossed. When called upon so to do, he shall communicate to the Surveyor General, such

To transmit copies of field notes and plots to surveyor general.

To give information in surveys general.

County surveyors to aid surveyor general. Proviso.

Penalty on surveyor failing to perform his duties.

information concerning surveys made by him, and other matters connected with the duties of his office, as may be required.

§ 14. Each County Surveyor shall aid and assist the Surveyor General, when required so to do, in making observation surveys within the county: *Provided*, he shall not be required to give such aid or assistance for more than two days in each year.

§ 15. Any County Surveyor who shall fail or refuse to perform any of the duties required of him by this Act, shall be fined in a sum not exceeding two hundred dollars.

Chap. 68.

AN ACT to incorporate the City of Santa Barbara.

Passed April 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

City incorporated.

§ 1. The Town of Santa Barbara, in the County of Santa Barbara, is hereby declared to be incorporated according to the provisions of the Act, entitled "An Act to provide for the incorporation of Cities," approved March 18, 1850.

Boundaries of city.

§ 2. The boundaries of the City of Santa Barbara shall be as follows:—Beginning at the old Presa of the Mission of Santa Barbara on the Creek Pedregosa, continuing in a line with said creek to its intersection with the cart road which leads to the Cinquita; from said intersection in a direct line to the easterly corner of the Positas; thence in a southwesterly direction, following the southeast boundary of the Positas, to the coast or sea shore; thence following the beach to the Salinitas; and thence in a northeasterly line, including in Santa Barbara the lands of Monticito, to the mountain range; and thence following said range to the place of beginning; *Provided*, nothing in this Act contained shall impair the rights of the Pueblo of Santa Barbara to other lands, belonging to the said Pueblo, not contained within the above mentioned limits.

Proviso.

Number of councilmen. Election of city officers.

§ 3. The number of Councilmen for the Government of the City shall be Five; there shall be no Recorder, but the Mayor shall have all the powers and perform all the duties of Recorder. The first Election of City Officers shall be held on the second Monday of May next.

To succeed to certain rights and liabilities.

§ 4. The Corporation, created by this Act, shall succeed to all the rights, claims, and powers of the Pueblo de Santa Barbara in regard to property, and shall be subject to all the liabilities incurred, and obligations created by the Ayuntamiento of the said Pueblo.

Chap. 69.

AN ACT defining the duties of the State Librarian, and prescribing rules for the government of the State Library.

Passed April 9, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

State library—how composed.

§ 1. All books now belonging to or which may hereafter come into possession of this State, by purchase or otherwise, shall be kept in the office of the Secretary of State, and shall compose the State library.

Secretary of state to have charge of library.

§ 2. The Secretary of State, as State Librarian, shall take charge of the library and all papers, maps, and charts properly belonging thereto, under such regulations as are hereinafter established, and shall take special care that none of them be lost or injured.

§ 3. Books may be taken from the State library by the members of the Legislature and its officers during the session of the same, and at any time by the Governor and the officers of the Executive department of this State who are required to keep their offices at the seat of Government, the Justices of the Supreme Court, and Attorney General: *Provided*, that no person shall be permitted to take or retain from the library more than two volumes of miscellaneous works at any one time.

Members of legislature, &c., may take books from library.

§ 4. The Librarian shall cause to be kept a register of all books issued and returned, at the time they shall be so issued or returned; and none of the books, except the laws, journals, and reports of this State, which may be taken from the library by members of the Legislature or its officers during the session, shall be retained more than two weeks, and all the books taken by the members of the Legislature or its officers, of every kind, shall be returned at the close of the session.

Number of volumes to be taken at one time.
Register of books issued.
How long books may be retained.

§ 5. If any person injure or fail to return any books taken from the library within the time prescribed in the foregoing section, he shall forfeit and pay to the Librarian for the benefit of the library three times the value thereof or of the set to which it belongs; and before the Comptroller shall issue his warrant in favor of any member or officer of the Legislature or of this State, for his *per diem* allowance or salary, he shall be satisfied that such member or officer has returned all books taken out of the library by him, and has settled all accounts for injuring such books or otherwise.

Penalty for injuring or failing to return books.

Per diem allowance not to be paid to legislators until all books returned, &c.

§ 6. All fines and forfeitures accruing under and by virtue of this Act shall be recoverable by action of debt before any Justice of the Peace or court having jurisdiction of the same, in the name of the People of the State of California, for the use of the State library, and in all such trials the entries of the Librarian, to be made as hereinbefore described, shall be evidence of the delivery of the book or books, and of the dates thereof; and it shall be his duty to carry the provisions of this Act into execution, and sue for all injuries done to the library, and for all penalties under this Act.

Penalties—how collected.

§ 7. The Librarian shall cause the third, fourth, fifth, and sixth sections of this act to be printed, and pasted inside of the cover, and the words, "California State Library," stamped upon the back of each volume belonging thereto.

Sections of this Act to be printed, and pasted in books, &c.

§ 8. The Librarian shall cause to be bound in neat substantial binding all laws, journals, reports, pamphlets, and other documents which may be received in a condition requiring such binding, from any source whatever; and all moneys necessary to carry out the provisions of this and the preceding section shall be paid out of any money in the Treasury not otherwise appropriated.

Books to be bound.

Chap. 70.

AN ACT concerning Wrecks and Wrecked Property.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. No ship, vessel, or boat, nor any goods, wares, and merchandise, that shall be cast by the sea upon the land, shall be deemed to belong to the people of this State as wrecked property, but may be recovered by the owner, consignee, or person having charge thereof at the time of the happening of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage, and necessary expenses.

Wrecked vessels, &c., to remain property of owner.

§ 2. The Sheriff of every county in which any wrecked property may be found, when no owner or other person entitled to the possession of such property shall appear, shall have power, and it shall be his duty, to pursue all necessary measures for saving and securing such property: to take possession thereof, in whose hands soever the same may be, in the name of the people of this State; to cause the value thereof to be appraised by indifferent persons, and to keep the same in some safe place to answer the claims of such persons as may hereafter appear entitled thereto.

Sheriff to keep possession of property until owner found.

Perishable property to be sold.

§ 3. If the property so saved shall be in a perishable state, so as to render the sale thereof expedient, it shall be the duty of the officer in whose custody the same shall be, to apply to the County Judge, by a petition, supported by an affidavit of the facts, for an order authorizing such sale; and if the Judge to whom such application shall be made, shall be satisfied that the sale of the property would be most beneficial to the parties interested, it shall be his duty to make the order so applied for.

Sale to be at public auction.

§ 4. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order; and the proceeds of such sale, deducting the expenses thereof, as the same shall be settled and allowed by the Judge making the order, shall be paid to the Treasurer of the County in which the property shall have been found.

On claim by owner, property or proceeds to be delivered up.

§ 5. If, within a year after such wrecked property shall have been found and saved, any person shall claim the same, or the proceeds thereof, as owner or consignee, or as the agent of the owner or consignee, and shall establish his claim by evidence which the County Judge shall deem to be satisfactory, it shall be the duty of such Judge to make an order, directing the officer in whose possession such property or the proceeds thereof shall be, to deliver or pay the same to the claimant, upon the payment of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of such property.

Claimant to indemnify against other claims.

§ 6. No such order shall, however, be made, unless the claimant shall deliver to such Judge a bond, with one or more sufficient sureties, to be approved by the Judge, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within two years after the date of such bond, by any person establishing his title as owner of the property or proceeds to be delivered. The bond shall be made payable to the State, and the penalty shall be double the value of the property or proceeds before mentioned.

Indemnity bond to be filed, and how enforced.

§ 7. The bond shall be filed in the Clerk's Office of the County in which it shall be taken. If it shall become forfeited it shall be the duty of the County Judge, upon the application, supported by due proof, of the person entitled to the damages mentioned in the condition of the bond, to make an order for the prosecution thereof for the benefit of such person, and at his risk and expense.

Rejection of claim by county judge not to bar a suit by claimant.

§ 8. The rejection by the Judge to whom it may be exhibited, of any claim for wrecked property, shall not preclude the claimant from maintaining a suit for the recovery of such property or its proceeds, against the officer in whose hands the same shall be put. If the plaintiff in any such suit shall prevail, there shall be deducted, in addition to the salvage and expenses charged on the property from the damages to be recovered, all the costs of the defendant in making his defence.

Claimant to pay salvage.

§ 9. It shall be the duty of every officer to whom any order duly made for the delivery of wrecked property, or the payment of its proceeds, shall be directed, to present to the claimant exhibiting such order a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided; and in all cases, after the payment or tender of the payment of such salvage and expenses as agreed to or adjusted, the officer in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order directed to him.

Sheriff to aid stranded vessels.

§ 10. It shall be the duty of the Sheriffs in the several counties to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise which may be cast by the sea upon the land, and in the performance of these duties they shall employ such and so many men as they may respectively think proper.

Magistrates to aid sheriff.

§ 11. It shall be the duty of all magistrates, constables, and citizens, to aid and assist the Sheriff, when required, in the discharge of his duties prescribed by this Act.

Who entitled to salvage.

§ 12. All Sheriffs, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, out of the property saved; and the officer having the custody of such property shall detain the same until such salvage and expenses shall be paid.

§ 13. The whole salvage that shall be claimed in any case shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged; and every agreement, order, or adjustment allowing a greater salvage shall be void, unless otherwise specially ordered and allowed by the County Judge.

Salvage not to exceed half value of property saved.

§ 14. If in any case the amount of salvage and expenses on property saved shall not be settled by the agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may apply to the Judge of the county in which such property shall be, for the appointment of suitable persons or appraisers to adjust and settle the amount of such salvage and expenses.

Where salvage disputed, application may be made to appoint appraisers.

§ 15. It shall be the duty of the Judge to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county to adjust and settle such salvage and expenses.

Appraisers may be appointed.

§ 16. The persons so appointed, before they shall enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorized to administer oaths; they shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced, and their decision, or that of any two of them, under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage or claiming such expenses, shall be final and conclusive.

Appraisers to be sworn—their powers.

§ 17. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved. Each appraiser shall be entitled to such *per diem* pay and expenses as the County Judge may deem just, not exceeding in all sixteen dollars for each day.

Appraisers' fees.

§ 18. If within a year after wrecked property shall have been saved no person shall have appeared to claim the same, or if within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been paid, or a suit for the recovery of the property have been commenced, it shall be the duty of the officer in whose custody such property shall be, to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the Treasury of this State, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled and allowed upon due proof by the County Judge of the county in which the property shall have been saved, a copy of which order, and of the evidence in support thereof, shall be transmitted by the Judge making it to the Comptroller.

Wrecked property not duly claimed to be sold.

§ 19. The provisions of the preceding section shall be construed to apply to the proceeds of wrecked property so far as relates to the time and manner of settling the salvage and expenses chargeable thereon. The balance of such proceeds, after the salvage and expenses, as settled, shall have been deducted, shall be paid by the County Treasurer into the Treasury of this State.

Construction of last section.

§ 20. Public notice of every sale to be made of wrecked property under the provisions of this Act, shall be published by the officer making the sale, for at least two weeks in succession, in one or more newspapers printed in the County, or, if none be printed therein, then by written or printed notices in three of the most public places in such County, posted up at least fifteen days previous to such sale. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

Public notice of sale.

§ 21. Every Sheriff into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least two weeks in succession, in one or more of the newspapers printed in this State.

Sheriff to give notice of property coming to his possession.

§ 22. Every such notice shall contain a minute description of such wrecked property, and of every bale, box, case, piece, or parcel thereof, and of the marks, brands, letters, and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel

Form of notice.

from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition.

Expense of giving notice.

§ 23. The expenses of publishing every notice, directed to be published in this Act, shall be charged on the property or proceeds to which such notice shall relate.

Penalty on officers for violating this Act.

§ 24. Every Sheriff, or other officer, or person, who shall detain in his hands any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid to him; or who shall be guilty of any fraud, embezzlement, or extortion, in the discharge of his duty; or who shall in any manner violate the provisions of this Act, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor, and be fined in any sum not more than five thousand dollars, and imprisoned for any length of time not more than two years.

Penalty for unlawfully taking or having possession of wrecked property.

§ 25. Every person who shall take away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek; or shall knowingly have in his possession any goods so taken or found, and shall not deliver the same to the Sheriff of the County where the same shall have been found, within four days after the same shall have been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken, or kept by him, to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the Court by which he shall be tried.

Penalty for obliterating marks.

§ 26. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance thereof, with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document, tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor punishable by fine and imprisonment, the fine not to exceed two thousand dollars, the imprisonment three years.

Offences against act to be presented to grand jury.

§ 27. It shall be the duty of all Judges, Sheriffs, Justices of the Peace, Coroners, and Constables, to present all offences and offenders against the provisions of this Act, that shall come to their knowledge within their respective Counties, to the Grand Jury at the next District Court therein.

Chap. 71.

AN ACT to provide for the erection of Court Houses.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Court houses to be erected.

§ 1. The Court of Sessions of each County shall cause to be erected therein, at the County Seat, as soon as the circumstances will permit, a good and sufficient building for a Court House, and also suitable offices for the use of the Sheriff, Clerk, Treasurer, and Recorder.

Existing buildings may be converted.

§ 2. If they deem it to the interest of the county, the Court of Sessions may erect, purchase, or receive by donation, any building or buildings at the county seat of the county, suitable for a Court House and Offices.

Tax may be levied.

§ 3. For the purpose of erecting or purchasing such building or buildings, the Court of Sessions is authorized to levy a tax upon the taxable property of the county, not exceeding one fourth of one per cent, the proceeds of which tax shall be applied to no other purpose.

Rooms may be hired until court house erected.

§ 4. Until such building or buildings are provided by the Court of Sessions, the Sheriff shall provide a suitable room or rooms at the seat of Justice, for the several courts of the county; and the Sheriff, Clerk, Treasurer, and Recorder, shall each procure a suitable room for the transaction of his official business. The reasonable rent for such rooms, and also the expenses of procuring the necessary furniture for the same, shall be allowed by the Court of Sessions to be paid out of the County Treasury, as other county charges.

§ 5. It shall be the duty of the Sheriff to furnish the necessary fuel and lights for the use of the District and County Courts, and Court of Sessions of his county; and the amount expended therefor shall be paid out of the County Treasury as other county charges are paid.

Sheriffs to furnish fuel, &c., for courts.

§ 6. The Clerk shall procure all such books and stationery as may be severally directed by the said Courts for their use, the costs of which shall be paid out of the County Treasury. The certificate of the District or County Judge that such books and stationery have been directed to be procured for their respective courts, shall be sufficient evidence on which to audit and allow the claims for the costs thereof.

Clerk to procure books and stationery.

§ 7. The Court of Sessions shall also make provision for the purchase of all necessary books and stationery for the use of the office of Recorder.

Books and stationery for recorder.

Chap. 72.

AN ACT concerning Wills.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all the testator's debts.

Persons over age of 18 may dispose of property by will.

§ 2. Any married woman may dispose of all her estate by will, and may alter or revoke the will in like manner as a person under no disability might do : *Provided*, that no such will, alteration, or revocation, shall be of any validity, without the consent of the husband, in writing, annexed to such will, alteration, or revocation, and attested and subscribed, and to be proven and recorded in like manner as a will is required to be witnessed, proven, and recorded, unless the wife has power to make a will, conferred by marriage contract or authority in writing, executed by her husband before marriage.

Married women may dispose of property by will.

§ 3. No will, except such nuncupative wills as are mentioned in this Act, shall be valid, unless it be in writing, and signed by the testator or by some person in his presence, and by his express direction, and attested by two or more competent witnesses subscribing their names to the will, in the presence of the testator.

Wills—except certain, to be in writing, signed, and attested.

§ 4. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Competency of subscribing witnesses.

§ 5. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void, unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

Gifts to subscribing witnesses void.

Creditor competent witness.

§ 6. But if such witness, to whom any beneficial devise, legacy, or gift, may have been made or given, would have been entitled to any share of the estate of the testator, in case the will is not established, then so much of the share as would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Witness who is a devisee and who would be entitled to share of testator's estate if no will, entitled to share to amount of devise.

§ 7. No nuncupative will shall be good, when the estate bequeathed exceeds the value of five hundred dollars, nor unless the same be proved by two witnesses, who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made at the

Nuncupative wills.

time of the last sickness, and at the dwelling-house of the deceased, or where he or she had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his or her return. Nothing contained herein shall prevent any soldier being in actual service, nor mariner being on shipboard, from disposing of his wages and other personal estate by a nuncupative will.

Proof of nuncupative wills.

§ 8. 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 wills.

§ 9. 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 process be issued to call in the widow, or other person or persons interested, to contest the probate of such will, if they think proper.

Revocation of wills.

§ 10. No will in writing shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it by the testator, or by some person in his presence, or by his direction, or by some other will or codicil in writing, executed as prescribed by this Act, or by some other writing, signed, attested, and subscribed, in the manner provided by this Act, for the execution of a will; but nothing contained in this section shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of the testator.

Antecedent not revived by revocation of subsequent will.

§ 11. If after the making of any will, the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancelling, or revocation, the first will shall be duly republished.

Effect of marriage of a man on his will.

§ 12. If after the making of any will, the testator shall marry, and the wife shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for her by marriage contract, or unless she shall be provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation, shall be received.

Effect of marriage of a woman on her will.

§ 13. A will, executed by an unmarried woman, shall be deemed revoked, on her subsequent marriage, and shall not be revived by the death of her husband.

Covenant to convey property devised not a revocation of devise.

§ 14. A bond, covenant, or agreement, made by a testator, to convey any property devised or bequeathed in any 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 the devisees or legatees, as might be had by law against the heirs of the testator, if the same had descended to them.

Mortgage not a revocation of will.

§ 15. A charge or incumbrance upon any 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 which was previously executed, but the devise and legacies therein contained, shall pass, subject to such charge or incumbrance.

Children born after making of will.

§ 16. When any child shall have been born, after the making of its parent's will, and no provision shall be made for him or her therein, such child shall have the same share in the estate of the testator as if the testator had died intestate; and the share of such child shall be assigned as provided by law, in case of intestate estates, unless it shall be apparent from the will, that it was the intention of the testator that no provision should be made for such child.

Children or issue of children of testator unprovided for by his will.

§ 17. When any testator shall omit to provide in his or her will for any of his or her children, or for the issue of any deceased child, unless it shall appear that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he or she had died intestate, to be assigned as provided in the preceding section.

Share of after-born child—out of what part of estate to be paid.

§ 18. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same

shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

§ 19. If such child or children, or their descendants, so unprovided for, shall have had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing in virtue of the provisions of the three preceding sections.

Advancement during life-time of testator.

§ 20. When any estate shall be devised to any child, or other relation of the testator, and the devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate so given by the will, in the same manner as the devisee would have done, if he would have survived the testator.

Death of devisee, being relation of testator, in life time of testator, leaving lineal descendants.

§ 21. Every devise of land in any will shall be construed to convey all the estate of the deviser therein, which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

Devises of land—how construed.

§ 22. Any estate, right, or interest in lands acquired by the testator, after the making of his or her will, shall pass thereby, in like manner as if it passed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

After-acquired property to pass by will.

§ 23. No will made in any other of the United States, or in any foreign country or state, shall be deemed valid as a will in this State, unless executed according to the provisions of this Act.

Will made out of state subject to this act.

§ 24. The term "will," as used in this Act, shall be so construed as to include all codicils as well as wills.

Will includes codicil.

Chap. 73.

AN ACT to regulate proceedings in Courts of Justices of the Peace in Civil Cases.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Every person elected to the office of Justice of the Peace shall, before he enters on the duties of his office, take the oath of office, and give bond in the penalty of five thousand dollars, conditioned for the faithful performance of his duties, and for paying over on demand, to the person entitled or authorized to receive the same, all moneys that may come into his hands as a Justice of the Peace, during his continuance in office.

Justice of peace to take oath and give bond.

§ 2. The jurisdiction of Justices of the Peace in civil cases shall, unless otherwise directed by law, be limited to the townships wherein they may have been elected; and every Justice of the Peace is hereby authorized to hold a Court for the trial of all actions enumerated in the next section, and to hear, try, and determine the same, according to law.

Jurisdiction limited to township.

§ 3. Every Justice of the Peace shall have jurisdiction over and cognisance of, the following actions and proceedings, subject to the provisions of the next following section; 1st. Actions for the recovery of money upon any contract, expressed or implied, when the amount claimed is two hundred dollars or under. 2d. Actions for damages, where the amount claimed is two hundred dollars or under. 3d. Actions for foreclosure of any mortgage on personal property, or the enforcement of any lien, when the debt secured is two hundred dollars or under. 4th. Actions for the recovery of specific property, when the value of the property claimed does not exceed two hundred dollars.

Jurisdiction in what actions.

No jurisdiction in certain cases.

§ 4. But no Justice of the Peace shall have cognisance of any action wherein the title to any lands or tenements shall come in question; nor in actions of slander; nor in any action for the recovery of damages for the breach of any marriage contract; nor in any action for the foreclosure of any mortgage on lands, tenements, or hereditaments; nor in any action by or against any person or persons with whom he may be related within the fourth degree of affinity or consanguinity; nor in any action in the event whereof he may be interested.

Docket to be kept.

§ 5. Every Justice of the Peace shall preserve a record of what takes place before him, by keeping in a bound book a docket, in which he shall set down in the order of date the different causes that are brought before him, and in this docket he shall state: 1. The title of the suit, that is, the names of the plaintiff and defendant: 2. The object and amount of the demand, if it be a sum of money which is claimed: 3. The date of the citation, and the return endorsed thereon: 4. The answer of the defendant, if he appears, or his non-appearance, if he makes default: 5. The names of the witnesses produced by both parties: 6. The date of the judgment, and its substance, which shall be written in full: 7. The date of the appeal, if one has been taken. The formalities required in the mode of keeping a record or docket are not indispensable, and their omission shall not affect the validity of the proceedings.

No person to be held to answer out of township of his residence, except in the cases mentioned.

§ 6. No person shall be held to answer to any process issued against him by a Justice of the Peace, in a civil matter, in any township other than the one where he shall actually reside, except in the cases following: 1. Where there shall be no Justice of the Peace for the township in which the defendant may reside, or no Justice competent to act in such case: 2. Where two or more persons shall be jointly or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships of the same county, or in different counties, the plaintiff may prosecute his action before a Justice of the Peace of the township in which any of the debtors or other persons liable, may reside: 3. In cases of injury to real or personal property, the plaintiff may prosecute his action in the township where the injury was committed: 4. Where personal property is claimed, the plaintiff may bring his suit in any township in which the property may be found: 5. When the defendant is a transient person, and has no fixed domicile in any county, he may be sued in any township wherein he may be found: 6. Where the defendant is a non-resident of the State, he may be sued in any township wherein he may have property: 7. When a person has contracted to perform any obligation at a particular place, and resides in another township than that in which such place is contained, but in the same county, he may be sued in the township in which such obligation is to be performed.

Instalments of debts of more than \$200 may be recovered.

§ 7. When there shall be a bond, with a penalty exceeding two hundred dollars, with a condition for the payment of money not exceeding two hundred dollars; or in specific articles not exceeding the value of two hundred dollars; or where the sum actually demanded does not exceed two hundred dollars; or where there shall be a promissory note for the payment of several sums of money, or specific articles by instalment, an action may be maintained on the conditions of such bond, or on any instalments of such bond or promissory note, not exceeding two hundred dollars, before the Justice of the Peace, and recovery on one of the conditions or instalments shall not be a bar to a subsequent suit or suits on the other conditions or instalments, or any of them.

Official bonds may be sued for where damages do not exceed \$200.

§ 8. All bonds with penalty conditioned for the performance of the duties of any office, may be sued thereon before a Justice of the Peace, where the damages sought to be recovered, for the breach or breaches of any condition of such bond, do not exceed the sum of two hundred dollars.

Justices may administer oaths and issue subpoenas.

§ 9. Justices of the Peace shall have power and they are hereby authorized to administer any oath required by law to be taken or administered, and to grant and issue subpoenas for witnesses, and cause their attendance in a cause or matter pending before them, or other cause or matter where they may be required to take testimony. But no subpoena shall issue to compel the attendance of a female. Their jurisdiction in the exercise of these powers shall be co-extensive with the county in which they have been elected or appointed.

Females not to be subpoenaed. Jurisdiction co-extensive with county court.

Contempt of court by witness.

§ 10. In all cases where any witness or other person shall be guilty of a contempt before any Justice, while sitting or acting in his official capacity, on the trial or hearing of any cause, such Justice shall

have power to punish such witness or other person by fine not exceeding fifty dollars, and imprisonment not exceeding three days, for each and every offence.

§ 11. All suits before a Justice of the Peace shall be commenced by the filing of the account, note, bill, bond, or other writing, or bill of particulars, if there be any, on which his action was brought; if there be none, he shall file a concise statement in writing of his cause of action. Suits—how commenced.

§ 12. Before entering the cause upon his docket, or at any time before trial, the Justice may, in his discretion, require and cause the plaintiff to give security for costs, which may be by bond of some approved persons, or by entry in the Justice's docket, signed by the security, or, at the election of the plaintiff, by the deposit of an amount of money with the Justice, sufficient for the payment of all costs incurred, or to be incurred on such action. Security for costs.

§ 13. Upon the filing of the written statement of cause of action, required to be filed by the 11th section of this Act, the Justice shall immediately make out and deliver to the plaintiff or to the officer to whom it is addressed, a citation in writing, signed with his hand, and directed to the Sheriff or any Constable of the county, and requiring him to cite the defendant to appear before such Justice at a certain time not to be less than six nor more than twelve days from the date thereof; unless one or more of the defendants reside out of the county, when it may extend to thirty days, and answer the complaint of the plaintiff; a brief statement of the nature of which shall be contained in the citation, the names of the parties, the date of the issuance, and when it is returnable, together with the amount of money actually demanded, or a description of the property sought to be recovered, or other relief prayed for. In case of the absence of the Sheriff or Constable, the Justice shall have power to depute any person to execute any process, making an entry of such appointment in his docket. Citation to be issued.
Sheriff or constable absent.

§ 14. The citation shall be served at least five days before the day of trial, exclusive of the day of service, and including the day of trial, by delivering a copy thereof to the defendant in person, or by leaving it at his usual place of residence with some white member of his family over the age of fourteen years. Service of citation.

§ 15. When one or two joint defendants reside in another county than that in which the Justice is elected or appointed, such Justice may issue the citation to the Sheriff or any Constable of the county in which such defendant resides, but the same shall be accompanied with the certificate of the County Clerk, under the seal of his Court, as to the official character of the person by whom it is signed: when so certified, it shall be served and returned as in ordinary cases. Citation to sheriff of another county.

§ 16. If any citation be returned not served, it shall be the duty of the Justice to renew the same from time to time as occasion may require. Citation returned not served.

§ 17. If, on the return of any process, or at any time before any trial shall have commenced, it shall be made satisfactorily to appear to the Justice of the Peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the cause: 1st, That such Justice is a material witness in the cause for either party; or, 2d, That he verily believes that he cannot have a fair and impartial trial before such Justice, for the cause of any interest, bias, or prejudice of such Justice; or, 3d, If a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in such township on account of the bias or prejudice of the citizens thereof against him; or because such adverse party has an undue advantage over him in such township, the cause shall be transferred for trial before some other Justice for the county. Transferring cause to justice.

§ 18. If such change of venue be granted for any objection to such Justice, on account of his being a material witness in the cause, or on account of interest, bias, or prejudice of such Justice, such cause shall be transferred for trial before some other Justice of the Peace of the same township, if there be one therein legally competent to try such cause; if there be no such Justice within such township, or if such change of venue be granted on account of bias or prejudice of the citizens of such township against such party, or because the adverse party has an undue advantage over him therein, then such change of venue shall be taken to some convenient Justice in an adjoining township of the same county. To what justice transfer to be made.

Transcript of proceedings to Justice to whom cause transferred.

§ 19. The Justice granting such change shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him to the Justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Parties, not miners, may appear in person or by attorney. Pleadings.

§ 20. Parties in a suit before a Justice of the Peace, except persons under twenty-one years of age, may appear and conduct their suit, either in person or by attorney.

§ 21. The pleadings and proceedings before a Justice of the Peace shall be verbal, but the plaintiff shall file the statement or writing required by the Eleventh Section of this Act to be filed, and the defendant, if he have any special matter of defence, shall, before entering on the trial, file a brief notice or statement thereof in writing, or, if such matter of defence be founded on any instrument in writing, the same shall be filed, and there shall be no further pleadings than the claim and answer.

Actions on official bonds.

§ 22. In actions against officers on their official bonds, it shall not be required of the plaintiff to assign any specific breach or breaches of the conditions of such bond.

Amendments.

§ 23. Either party may amend his statement before entering into trial.

Defendant failing to appear.

§ 24. When the defendant fails to appear, after being duly served, or appearing, fails to answer, he shall be considered as denying generally the plaintiff's claim.

Plea in abatement.

§ 25. No plea or abatement in the nature of an exception, or plea in abatement, other than to the jurisdiction of the Justice, or for matter appearing on the face of the plaintiff's statement, shall be received, unless supported by oath or affirmation.

Proof of execution of instruments.

§ 26. Whenever any instrument in writing is made the foundation of any action or defence, and set forth as such, proof of the execution thereof shall not be required, unless specially denied by the opposite party, and verified by his oath or affirmation.

Proof of signatures of notes.

§ 27. When a defendant is sought to be charged as assignor of any bill, note, or other instrument of writing, the signatures of the makers and all assignees shall be considered as fully proved, unless denied by the defendant on oath.

Plea of title to lands in question.

§ 28. In every action instituted before a Justice of the Peace, where the title to lands and tenements shall in any wise come in question, the defendant, at any time before entering upon the trial, may plead specially any plea showing that the title of lands will come in question, but no such plea shall be received by the Justice, unless the same be verified by oath or affirmation.

On filing such plea the cause to be transferred to district court.

§ 29. When such plea is filed, or when it shall appear on the trial by the proof, that the title to lands and tenements is necessarily involved, the Justice shall proceed no further in the cause; but shall forthwith make out a transcript of his proceedings therein, and, within twenty days thereafter, file the same with all the papers belonging to such cause, in the office of the Clerk of the District Court of the County in which such Justice is elected or appointed: *Provided*, that if such transfer of the cause be made upon the plea of the defendant, he shall first give bond for the payment of all costs of the cause, if it be decided against him by said District Court.

Defendant to give bond for costs.

Continuance of cause, in what cases.

§ 30. A Justice of the Peace may grant continuances of a cause from time to time, upon the affidavit of either party, if it be made satisfactorily to appear that justice requires such continuance: but no continuance shall be for a longer time than ten days. Upon the first application for a continuance on account of the absence of a witness, the party applying shall swear to the materiality of the testimony of the witness; the diligence which has been used to procure the attendance or the testimony of the witness; and that the application is not made for delay. Upon the second or any subsequent application, he shall swear that the testimony of the witness is material; and shall state the substance or principal facts expected to be proved by the witness, his place of residence, the steps which have been taken to procure his testimony, that the applicant knows no other witness by whom the same facts can be proved, and that the application is not made for delay. If the defendant be the applicant, a continuance shall in no case be granted, unless it be set forth in the affidavit that he has a good defence to the plaintiff's action.

Terms of granting a continuance.

§ 31. All continuances granted by a Justice of the Peace may be with or without costs of the party

applying therefor, at the discretion of the Justice, according to the circumstances of the case, and in conformity with the practice of the District Courts.

§ 32. If either party amend the statement of his cause of action or defence, before entering on the trial, and it shall be made to appear to the justice, by affidavit or otherwise, that the adverse party will be rendered less prepared to prosecute or defend the suit, than he would have been if no such amendment had been made, he shall be entitled to a continuance for such a length of time as to the Justice may appear reasonable, at the costs of the party making the amendment.

Continuance after amendment.

§ 33. If the plaintiff shall neglect to subpoena the defendant whom he may desire to make a witness in the cause, and shall apply on the day of trial for a continuance on account of the non-attendance of such defendant, such continuance shall not be granted unless at the costs of the plaintiff.

Continuance on account of non-attendance of defendant as a witness.

§ 34. When any continuance is granted, either party shall be allowed the privilege of having any such witness or witnesses as they may desire, then in attendance, examined on oath, and his or their testimony reduced to writing, and certified by the Justice, who shall retain the testimony so taken, and the same may be read on the trial, unless such witness or witnesses be present.

Examination of witnesses after a continuance is granted.

§ 35. Subpoenas shall be served by the officer to whom they are directed, by reading the same, or stating the contents thereof to the witness, or by leaving a copy at his usual place of residence.

Subpoenas—how served.

§ 36. If any party shall order a subpoena for, or introduce on trial more than two witnesses to prove any one fact, such party shall pay the costs of such superfluous witness or witnesses.

Costs of more than two witnesses to prove one fact.
Cost of witness subpoenaed and not examined.

§ 37. If any witness, having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter, or otherwise, renders unnecessary the examination of such witness.

§ 38. Witnesses shall not be entitled to pay as such, nor shall a Justice charge it in making up the costs of a suit, unless they shall make their claims upon the day of trial.

Witnesses must claim their pay on day of trial.

§ 39. Whenever it shall appear to the satisfaction of a Justice of the Peace, that any person has been duly served with a subpoena to appear and give testimony before him, in any matter in which he has authority to require such witness to appear and testify, that the testimony is material, and that he refuses or neglects to attend as such witness, in conformity with such subpoena, the Justice shall have power to issue an attachment to compel the attendance of such witness.

Attachment to compel attendance of witness.

§ 40. The fees for issuing and serving such attachment shall be paid by the witness, together with such fine as the Justice shall think reasonable, not less than five dollars nor more than fifty dollars, unless some reasonable excuse be shown, on the oath of such witness, or of some other person; and a witness appearing and refusing to testify, may be fined not exceeding fifty dollars, and imprisoned for a term not exceeding ten days for every such refusal.

Fees on attachment to be paid by witness.

§ 41. Every person subpoenaed as aforesaid, and neglecting to appear, or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which the party may sustain by reason of such non-appearance or refusal.

Witness not attending or refusing to testify liable for damages.

§ 42. In all trials before a Justice of the Peace, either party may require the other to be sworn as a witness, and the party so called on shall be at liberty to testify concerning the whole matter in controversy, both as to the cause of action and defence, as a disinterested witness might do.

Party to suit may be a witness.

§ 43. Either party residing in the county where the action is pending may, at the request of his adversary, be subpoenaed to attend and testify as aforesaid, in the same manner and under the same penalties as other witnesses.

Attendance of party as a witness—how enforced.

§ 44. Upon the refusal of either party when subpoenaed to appear, or appearing, upon his refusal to answer as a witness for the adverse party, the Justice shall enter judgment against the party refusing, as if the alleged claim or demand were confessed, or the defence admitted, as the case may be.

Party to suit subpoenaed refusing to appear or refusing to answer.

§ 45. The testimony of either party residing out of the county where the suit is pending, may in such cases be taken by his adversary and read in evidence, in the same manner as the depositions of other witnesses.

Testimony of party, being a non-resident.

Where witness is a female, or a non-resident, or unable to attend, or is about to leave state, testimony to be taken by commission.

§ 46. When any witness is a female, or resides without the township for which the Justice is elected or appointed, or is sick and unable to attend, or is about to depart this State, any party may take his or her testimony by filing interrogatories to such witness with the Justice of the Peace, and giving notice thereof to the opposite party, his agent or attorney. The notice shall be in writing, and shall set forth the name and residence of the witness, and a copy thereof shall be served and returned to the office of such Justice by any officer authorized to serve process; the time of service of the notice shall be endorsed thereon, and the return signed by the officer shall be of the same effect as the return of an officer upon any writ issued from a Court. The opposite party shall have five days after the service of the notice in which to file cross-interrogatories, if he choose so to do. On or after the sixth day after such service, the Justice of the Peace shall issue a commission, with a copy of the interrogatories and cross-interrogatories, which commission shall be directed, executed, and returned in the manner prescribed by law concerning commissions issued from the District Court, and the testimony taken under such commission may be read in evidence in like manner, and subject to like exceptions as in the District Court.

Execution of commission.

Jury trial—how waived.

§ 47. Whenever the parties to any suit shall appear at the time and place appointed for trial, if no jury shall have been demanded by either party, a jury shall be considered to be waived, and the Justice shall proceed to try the cause, hear the allegations and proofs of the parties, and determine the same according to law.

Suits may be entered and tried without process.

§ 48. When parties agree to enter without process before any Justice of the Peace any suit which is cognisable before him, such Justice shall enter the same in his docket, and proceed to trial, judgment, and execution in all respects and in the same manner as if original process had been issued, served, and returned.

Demand of jury trial.

§ 49. After the service of process, but before the Justice shall have proceeded to an investigation of the cause, by an examination of a witness or the hearing of any other testimony, either of the parties, or the agent or attorney of either of them, may demand of the Justice that the cause be tried by a jury.

Six jurymen to be summoned.

§ 50. Upon such demand, the Justice shall direct the constable to summon six men of the township, to appear before such Justice, either forthwith or at such time and place as may be designated, to make a jury for the trial of such a cause.

Parties may consent to reduce number of jurors.

§ 51. The parties may, by writing, signed by them, or their agents or attorneys, and filed with the papers of the cause, agree upon any less number to constitute a jury.

Who to be summoned as jurors.

§ 52. The constable shall summon a jury fairly and impartially. He shall not summon any person related to either party; nor any person who he has reason to believe is biased or prejudiced for or against either of the parties; and shall make a list of the names of the persons summoned, certified by him, which he shall return to the Justice.

Right of challenge to jurors.

§ 53. The parties shall have the right to challenge any two jurors peremptorily, and shall have the same right of challenge to any of the jurors for cause, as is provided in civil cases tried in the District Court.

Jurors to be sworn.

§ 54. The Justice shall administer an oath or affirmation to the jury, well and truly to try the matter in dispute between the plaintiff and defendant, and a true verdict give according to the evidence.

Jury to be kept together until verdict agreed upon.

§ 55. After hearing the proofs and allegations of the parties, the jury shall be kept together under the charge of a constable until they have agreed upon their verdict, or shall be discharged by the Justice.

Verdict to be delivered publicly.

§ 56. When the jurors shall have agreed upon their verdict, they shall deliver it to the Justice publicly, who shall enter it upon his docket.

Where jury cannot agree on verdict, to be discharged and another jury sworn.

§ 57. Whenever the Justice shall be satisfied that a jury sworn in any cause before him, cannot agree in their verdict, after having consulted upon it a reasonable time, he may discharge them and continue the cause, and direct a new jury to be summoned to appear at such time as to such Justice shall appear reasonable, unless the parties by consent fix a time for a second trial, or agree that the Justice may render judgment on the evidence already before him.

§ 58. It shall be lawful for the Justice before whom a cause has been tried, on motion, and for cause shown by either party, to grant a new trial at any time within four days after the entering of judgment, and set a time for the new trial, which shall not be more than ten days distant. Notice of such motion for a new trial shall be given upon the termination of the first trial, and a time shall be fixed by the Justice for hearing the motion, which shall be within four days thereafter.

New trial maybe granted.

Motion—how made.

§ 59. Not more than one new trial shall be granted to either party.

Only one new trial allowed.

§ 60. When a new trial is granted on the application of any party, on the ground of newly discovered testimony, he shall pay all costs which have accrued to the time of obtaining such new trial, and in all other causes such new trial may be granted with or without the payment of costs, or a part of the costs, in the discretion of the Justice, according to the circumstances of the case.

Costs on granting new trial.

§ 61. If the plaintiff fail to appear at the time and place appointed, either in person or by attorney, upon the expiration of one hour, the Justice shall, on the demand of the defendant, his agent or attorney, enter a judgment of nonsuit against the plaintiff: *Provided*, that if the plaintiff's action be brought on any instrument of writing, signed by the defendant, the signature whereof is not denied, the Justice shall proceed to try and determine the cause, notwithstanding the plaintiff's absence.

Plaintiff failing to appear.

§ 62. If the defendant, having had lawful notice, shall not appear at the time and place appointed for trial, personally, or by agent or attorney, and no just cause being shown for such non-appearance, the Justice shall, upon the expiration of one hour after the appointed time, at the request of the plaintiff, hear his proofs and allegations, determine the cause, and enter judgment therein.

Defendant failing to appear.

§ 63. Whenever any person shall voluntarily confess judgment in favor of another, before entering on such confession, the Justice of the Peace shall administer an oath or affirmation to the person confessing, that he does not confess such judgment to defraud any of his creditors, but that he is justly indebted to the person in whose favor such judgment is to be entered, for the full amount for which he so confessed judgment; which oath or affirmation, together with the grounds or considerations of such indebtedness, shall be reduced to writing, and filed with the Justice as in other cases; and no appeal shall be allowed from a confessed judgment.

Voluntary confession of judgment.

§ 64. Every judgment confessed, without a compliance with the provisions of the last preceding section, shall be void as against all persons except a purchaser in good faith of any goods or chattels, lands or tenements, under such judgment, and except as between the plaintiff or his assigns and the defendant, their heirs, executors, and administrators.

Confessed judgments void.

§ 65. Judgment for costs shall be rendered against a plaintiff prosecuting a suit before a Justice of the Peace: 1st, If he discontinue or withdraw his action, or be non-suited. 2d, If it appear on the trial of the cause, by his own showing, that the title to lands or tenements is in question and disputed by the defendant. 3d, If he fail to establish his claim.

Costs against plaintiff.

§ 66. Whenever a judgment shall be rendered by a Justice of the Peace against any party, it shall be with costs of suit, unless otherwise expressly provided.

Costs against any party.

§ 67. If a defendant have a set-off exceeding the plaintiff's demand to an amount which, if found for him by the Justice or jury, will be more than the Justice is authorized to render judgment for, such defendant may withhold setting off such excess, and a recovery for the amount set-off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount so withheld.

Effect of defendant proving set-off exceeding jurisdiction of Justice.

§ 68. When an amount shall be found in favor of either party by the verdict of a jury or upon trial before the Justice, exceeding the sum for which the Justice is authorized to render a judgment, such party may remit and release the excess and take judgment for the residue.

Verdict for either party exceeding jurisdiction of Justice.

§ 69. When the citation issued by a Justice of the Peace shall be returned, served as to one or more of the defendants, and "not found" as to another or other of the defendants therein, the Justice shall, if the plaintiff, his agent or attorney, require it, enter the return on his docket, and proceed to trial and judgment against the parties served with process or appearing, as in other cases where process has been served on all the defendants, and the plaintiff may, at any time afterwards, proceed against those not found or any of them.

Proceedings where only one or some of joint defendants served with process.

Judgment against one or some only of the parties to a note, &c.

§ 70. Whenever judgment shall be rendered in any case by a Justice of the Peace against some of the makers of any note, agreement, or obligation, and there are other makers thereof not included in such judgment, such note, agreement, or obligation may be withdrawn, a copy thereof being retained by the Justice.

Imposition of fine to be entered on docket and become a judgment.

§ 71. Whenever a Justice of the Peace shall impose a fine upon any person for non-attendance before him as a witness or refusal to testify, for non-attendance as a juror or arbitrator, or for refusal to serve as such, or for contempt of court, such Justice shall make in his docket an entry of such conviction and of the cause thereof, and the same shall be considered a judgment in all respects, and subject to all the provisions relative to judgments in criminal causes, but not subject to appeal.

Justices' judgments when to become a lien on real estate.

§ 72. No judgment rendered by a Justice of the Peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment, certified by the Justice, be filed and recorded in the office of the Recorder. When such transcript is to be filed in any other county than that in which the Justice resides, such transcript shall be accompanied with the certificate of the County Clerk as to the official character of the Justice. When so filed and recorded in the office of the Recorder for any county, such judgment shall constitute a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where such transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the District Court of such county.

Appeal—when and how taken.

§ 73. In all cases not otherwise specially provided for in this Act, or some other law of this State, any party may appeal therefrom to the County Court of the county where such judgment was rendered, within thirty days after the rendition of such judgment, and where judgment has been rendered without personal service of the citation, and without appearance of the defendant, he may appeal at any time within six months next after the rendition of the judgment.

Appeal not to act as supersedeas unless security given.

§ 74. No appeal shall operate as a supersedeas to any execution issued on the judgment, unless the defendant shall file with the Justice a bond, with two sufficient sureties to be approved by such Justice, in a penalty double the amount of the judgment, inclusive of interest and costs, payable to the appellee, conditioned that the appellant will prosecute his appeal to effect, or that failing therein, he will pay and satisfy such judgment as may be rendered against him by the County Court. In the absence of the appellant, such bond may be signed by his sureties alone.

Appeal by any party.

§ 75. An appeal may be taken by any party, upon filing with the Justice a bond to the appellee, with surety to be approved by the Justice, conditioned for the payment of the costs of the appeal: but in such case the appeal shall not have the effect to stay execution.

Supersedeas of execution.

§ 76. If execution be already issued when the bond mentioned in the 75th section of this Act is filed, the Justice shall issue a supersedeas thereto, commanding the officer to return the execution without further proceedings thereon.

On appeal, justice to return papers to county court.

§ 77. When an appeal has been taken, the Justice shall, within ten days, make out and certify under his hand, a full, true, and complete transcript of the proceedings and judgment before him in such case, and shall deliver the same, together with the appeal bond, and all the written statements of the cause of action and defence of the parties, and all depositions, papers, and writings in the cause, to the Clerk of the County Court to which such cause is appealed.

Affidavit of merits.

§ 78. No appeal shall be allowed to the defendants unless upon affidavit of merits in the appeal, and the same is not sought to be taken for delay merely, but for justice.

Execution to issue forthwith.

§ 79. In all cases of judgment rendered by a Justice of the Peace, it shall be the duty of the Justice to issue execution forthwith, unless stayed by direction of the plaintiff, his agent or attorney.

Executions—to whom issued; their form.

§ 80. The executions issued by a Justice of the Peace shall be directed to the Sheriff or any Constable, and shall be made returnable in sixty days. As to their form and all proceedings under them, they shall be governed by the laws regulating executions issued from the District Court, so far as they can be made applicable and consistent with the provisions of this Act.

Executions when a lien on personal property.

§ 81. Executions issued by a Justice of the Peace shall not operate as a lien upon the personal property of the defendant until a levy be actually made, and in case the property levied upon be replevied by the defendant, such lien shall cease.

§ 82. When an execution has been issued by a Justice of the Peace, and returned "no property found," he may, on application of the plaintiff, his agent or attorney, issue execution to any other county than that in which he is elected or appointed, directed to the Sheriff or any Constable of such County. In all cases the execution shall be accompanied with the certificate of the County Clerk as to the official character of the person signing the same.

When executions may issue to any other county.

§ 83. Any party against whom a judgment may be rendered by a Justice of the Peace, may obtain a stay of execution for thirty days, by filing with the Justice, within three days after the rendition of judgment, a bond, with two sufficient sureties, conditioned for the payment of the amount of the judgment with interest and costs, upon the expiration of the stay. If the money be not paid when due, the Justice shall issue execution on the bond against the principal and securities, and no forthcoming bond shall be taken when such execution is levied.

Stay of execution—when and how obtained.

§ 84. All property to be sold on execution, shall be advertised for sale at public auction, at three of the most public places in the township where the same may be found and seized, for at least ten days prior to the day of sale.

Sales on execution to be advertised.

§ 85. Such sale shall be held between the hours of ten o'clock of the forenoon and four o'clock of the afternoon, at the dwelling house of the debtor, or on the premises where found and seized, or at some public place in the township, to be designated in the advertisement, and shall be publicly made.

Sale—when and where to be held.

§ 86. It is hereby made the duty of Justices of the Peace to receive from constables all moneys by them collected on process issued by the Justices respectively; also all moneys, the collection of which may have been intrusted to them, or which may be offered to them on any judgment, account, or demand on their dockets or in their possession.

Justices to receive all money collected by constables.

§ 87. They shall pay over all moneys so collected and received by them in their official capacity, to the person or persons entitled thereto or duly authorized to receive the same, without delay.

Justices to pay over moneys forthwith.

§ 88. If any Justice shall neglect or refuse to pay over any money by him collected or received in his official capacity, when demanded by the person entitled thereto, or duly authorized to receive the same, it shall be lawful for such person to complain to some Justice of the township in which such delinquent Justice resides, whose duty it shall be to cite such delinquent Justice to appear before him forthwith, and show cause why judgment should not be rendered against him for the amount of money so collected by him and not paid over.

Justices refusing to pay over money may be cited to show cause of refusal.

§ 89. If such delinquent Justice shall not appear, the citation having been returned personally served, or if he do not show good cause, the Justice who issued such citation shall render judgment against him for the amount of money so by him received and not paid over, together with twenty-five per cent. damages and costs; and in such case there shall be no stay of execution.

Delinquent Justice not appearing, or not showing good cause.

§ 90. If there be no Justice in the township in which the delinquent Justice resides, who is legally competent to act on such complaint, then it may be made to the nearest Justice of an adjoining township.

What Justice may issue citation.

§ 91. Instead of proceeding as in the preceding sections mentioned, such person may bring an action in the proper Court on the official bond of such Justice, and judgment when recovered shall be for the amount, as specified in section eighty-nine.

Action on official bond.

§ 92. Justices shall hear and determine any application to enter a satisfaction of judgments on their dockets, whenever the debtor alleges payment or satisfaction, the creditor, his agent or attorney, first having three days' notice thereof, and if sustained by competent proof, satisfaction shall be entered accordingly.

Applications to enter satisfaction of judgments.

§ 93. If in any case, on such motion being made, it be necessary to suspend or recall any execution before the final hearing of such application, the Justice shall have power so to do, on the creditor being made safe in his demand by bond and surety, conditioned for the payment of the amount due, in the event of such motion failing, which bond shall have the force and effect of a bond given to stay execution, as provided for in section eighty-three of this Act.

After motion to enter satisfaction, execution may be suspended or recalled.

Office of justice becoming vacant, dockets, &c., to be delivered to successor.

If no successor appointed, then to some other justice.

Penalty for refusing to deliver up said dockets.

Justice with whom dockets deposited may transfer judgment due to his own docket.

Power of successor of justice.

Proceedings not regulated by this act.

§ 94. Whenever the office of any Justice of the Peace shall become vacant, all the dockets, papers, laws, and statutes pertaining to his office, shall, if a successor be chosen or appointed, and qualified, be delivered over to such successor.

§ 95. But if there be no successor chosen, or appointed, and qualified, then such Justice shall deliver said dockets, papers, laws, and statutes to the other Justice in the Township, or, if there be none, to the nearest Justice of any adjoining Township, to be kept by him until a successor shall be chosen, or appointed, and qualified, and then delivered over to such successor on request.

§ 96. If any person neglect or refuse to deliver up said dockets, papers, laws, and statutes as required by the two preceding Sections of this Act, he shall be liable, on indictment or presentment, to be fined in any sum not exceeding one thousand dollars, and shall also be responsible in damages at the suit of any person aggrieved by any such neglect or refusal.

§ 97. The Justice with whom the docket of another may be deposited during a vacancy, is hereby authorized, while having such docket legally in his possession, to transfer to his own docket any judgment in the docket left with him that may be due while in the possession of such Justice at the request of the judgment creditor, and issue execution thereon, or to give a transcript thereof in the same manner as if the judgment and proceedings had been originally had before him, and he shall note such transfer and the date thereof in the docket from which such transfer is made.

§ 98. The successor of any Justice, on obtaining his docket and papers, shall be authorized to issue executions on his judgments, and give and certify transcripts of his proceedings, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

§ 99. In all proceedings not regulated by this Act, the same shall be governed by the laws regulating proceedings in the District Court, so far as the same can be made applicable.

Chap. 74.

AN ACT to prevent Obstructions in Navigable Streams.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Penalty for obstructing navigation of any navigable stream.

§ 1. If any person shall obstruct the navigation of any river or water course of this State, which has or may become a public highway, by being by law declared a navigable stream, by constructing any dam, bridge, ferry, or machinery of any kind, or by felling trees into any such stream, or in any other manner shall obstruct the waters of any such river, the person so offending shall, upon conviction thereof before the County Court of the respective County which shall have jurisdiction in such cases, pay double damages to any person sustaining injury thereby, together with the costs of the suit, and be fined, not exceeding two hundred dollars, to be paid to the County Treasurer, and to be applied to the improvement of public highways.

Construction of certain ferries, bridges, &c., not prohibited.

§ 2. The above Act shall not be so construed as to prohibit ferries being made in such a manner as will not interfere with the navigation of any such stream, or the construction of ferries, bridges, dams, or machinery, authorized by a special permit, setting forth the manner and extent of such improvement, from the Court of Sessions of the County or Counties within the limits of which said improvement is made.

Chap. 75.

AN ACT providing for the Collection of Demands against Vessels and Boats.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

- § 1. Every boat and vessel used in navigating the waters of this State, shall be liable: 1st, For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel; on account of work done, or services rendered on board of such boat or vessel; on account of labor done, or materials furnished by mechanics, tradesmen, or others, in and for the building, repairing, and fitting out, furnishing or equipping such boat or vessel. 2d, For all sums due for the wharfage or anchorage of such boat or vessel within the State. 3d, For demands or damages accruing from the non-performance or mal-performance of any contract touching the transportation of persons or property, entered into by the master, owner, agent, or consignee of the boat or vessel, on which such contract is to be performed; and 4th. For all injuries done to persons or property by such boat or vessel: *Provided*, the wages of mariners, boatmen, and others employed in the service of such boats and vessels, shall have the preference, and be first paid. Liabilities of all vessels navigating waters of state.
- § 2. Any person having a demand as aforesaid, instead of proceeding for a recovery thereof against the master, agent, owner, or consignee of a boat or vessel, may, at his option, institute suit against such boat or vessel by name. Suits against vessels by name.
- § 3. Any plaintiff wishing to institute suit against a boat or vessel, shall file his complaint against such boat or vessel by name, with the Clerk of the District Court of the County, in which such boat or vessel may lie. Suit against vessel—how commenced.
- § 4. The complaint shall set forth the plaintiff's demand in all its particulars, and shall be verified by the affidavit of the plaintiff, or of some credible person or persons for him. Form of complaint.
- § 5. Whenever any complaint, as aforesaid, shall be filed in the office of the Clerk of the District Court, it shall be his duty to issue a warrant, returnable as other original process issued from the Court, directing and authorizing the Sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody together with its tackle, apparel, and furniture, until discharged from his custody by due course of law. Warrant to sheriff to seize vessel.
- § 6. Upon the return of any warrant issued by virtue of the preceding section, proceedings shall be had in the District Court against the boat or vessel sued in like manner as if suit had been instituted against the person on whose account the demand accrued. Proceedings on return of warrant.
- § 7. The master, agent, owner, or consignee of the boat or vessel, may appear in behalf of such boat or vessel, and plead to the action. Who may appear on behalf of such vessel.
- § 8. If the master, agent, owner, or consignee, shall, before final judgment in any suit instituted by virtue of this act, give bond to the plaintiff, with sufficient security, to be approved by the Court, or the Judge or Clerk thereof in vacation, conditioned to satisfy the amount that shall be adjudged to be due and owing to the plaintiff upon the determination of the suit, together with all costs accruing, said boat or vessel, with the tackle, apparel, and furniture belonging thereto, shall be discharged from further detention. How vessel may be discharged from detention.
- § 9. If judgment shall be rendered against any boat or vessel, in favor of the plaintiff, the Court shall make an order, directed to the Sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel, and furniture, to satisfy the judgment, and all costs that may have accrued in the cause; which order shall be executed and returned in the same manner as executions. Order on sheriff to sell vessel.
- § 10. If bond and security shall have been entered into, according to the eighth section of this Act, and judgment shall have been rendered in favor of the plaintiff, execution shall be issued for the Judgment and execution for plaintiff after bond filed.

amount of the judgment and costs, in favor of the plaintiff, against the principal and security in such bond.

Justices' Jurisdiction.

§ 11. Justices of the Peace, within their respective counties, shall have cognisance of all cases arising under this Act, wherein the demand claimed does not exceed two hundred dollars.

Proceedings by Justices—how regulated.

§ 12. In all their proceedings, Justices of the Peace shall conform to the provisions of the law governing Justices' Courts, and as near as may be to the provisions of this Act, as applying to the District Court.

Justices' warrants—when returnable.

§ 13. Each warrant issued by a Justice of the Peace under this Act shall be returnable forthwith, or within ten days after the date of its issue; and upon the return of such warrant, it shall be the duty of the Justice of the Peace to hear and determine the complaint of the plaintiff in a summary manner.

Complaint to be summarily determined.

On order for sale of vessel, enough to be sold to cover all costs &c.

§ 14. Whenever an order of sale shall be made for the sale of a boat or vessel, with its tackle, apparel, and furniture, the sheriff or constable shall have power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of the judgment rendered in favor of the plaintiff, and all the costs that have accrued.

Continuance of cause.

§ 15. Upon good and sufficient cause being shown by the master, agent, owner, or consignee of any boat or vessel sued under this Act, the Court or Justice of the Peace may grant a continuance of the cause: but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

No continuance to plaintiff
Fees of officers.

§ 16. No continuance of a cause under this Act shall be granted to the plaintiff.

§ 17. Sheriffs, constables, and other officers shall receive the same fees and compensation for their services under this Act as are allowed to them in cases of writs by attachment.

Appeal.

§ 18. In all cases arising under this Act, if judgment shall have been rendered in favor of a plaintiff, the master, agent, owner, or consignee of the boat or vessel, or other person interested, may appeal from the judgment, as if they or either of them had been sued.

Limitation.

§ 19. All actions against a boat or vessel, under the provisions of this Act, shall be commenced and sued within fifteen days after the cause of such action shall have accrued.

Chap. 76.

AN ACT concerning the organization of the Militia.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Who subject to military duty.

§ 1. All free, white, able-bodied male citizens, between the ages of eighteen and forty-five years, residing in this State, and not exempt by law, shall be subject to military duty, and enrolled as hereinafter directed.

Exemptions

§ 2. The following named persons only shall be exempt from the performance of military duty, except in time of war, invasion, or insurrection, viz. All persons who have served one complete term of enlistment, or service in the military or naval service of the United States in time of war; and all officers or members of volunteer or independent companies within this State.

Proof of exemption.

§ 3. All persons exempt by law, may prove their exemption either by oral or written evidence, or by their own testimony; and all courts and persons having a right, by law, to inquire concerning the grounds of such exemption, are hereby authorized to administer all oaths which may be necessary to satisfy themselves concerning such exemption.

Militia and volunteers to consist of four divisions and eight brigades.

§ 4. The enrolled militia and volunteer or independent companies of this State shall be organized into four divisions and eight brigades, as follows:

§ 5. The counties of Trinity, Shasta, Butte, Yuba, Sutter, El Dorado, and Sacramento, shall compose the first division. The counties of Colusa, Yolo, Napa, Solano, Sonoma, Mendocino, and Marin, shall compose the second division. The counties of San Francisco, Santa Clara, Contra Costa, San Joaquin, Calaveras, Tuolumne, and Mariposa, shall compose the third division. The counties of Branciforte or Santa Cruz, Monterey, San Luis Obispo, Los Angeles, Santa Barbara, and San Diego, shall compose the fourth division. The counties of Trinity, Shasta, Butte, Yuba, and Sutter, shall compose the first brigade of the first division. The counties of El Dorado and Sacramento shall compose the second brigade of the first division. The counties of Colusa, Yolo, Napa, and Solano, shall compose the first brigade of the second division. The counties of Sonoma, Mendocino, and Marin, shall compose the second brigade of the second division. The counties of San Francisco, Santa Clara, and Contra Costa, shall compose the first brigade of the third division. The counties of San Joaquin, Calaveras, Tuolumne, and Mariposa, shall compose the second brigade of the third division. The counties of Branciforte or Santa Cruz, and Monterey, shall compose the first brigade of the fourth division. The counties of San Luis Obispo, Santa Barbara, Los Angeles, and San Diego, shall compose the second brigade of the fourth division.

1st division.
2d division.
3d division.
4th division.
1st brigade of 1st division.
2d brigade of 1st division.
1st brigade of 2d division.
2d brigade of 2d division.
1st brigade of 3d division.
2d brigade of 3d division.
1st brigade of 4th division.
2d brigade of 4th division.

§ 6. The Governor of the State shall be commander in chief of all the forces of the State.

Governor commander-in-chief.
Governor to appoint two aides-de-camp.

§ 7. The commander in chief may nominate and appoint two aides-de-camp, who shall rank respectively as Colonels of cavalry, and who shall continue in office for the same term with the commander in chief by whom they were appointed.

§ 8. The Legislature shall elect, by joint ballot, four Major Generals and eight Brigadier Generals, who shall hold their office during good behavior, or until their successors in office shall be appointed, or elected and qualified.

Legislature to elect four major generals and eight brigadier generals.

§ 9. The Legislature shall elect, by joint ballot, one Adjutant General, to rank as Brigadier General, and one Quarter Master General, to rank as Brigadier General, who shall hold office respectively, until the first day of January A. D. 1854, or until their successors in office shall be duly appointed, or elected and qualified.

Legislature to elect adjutant general, quarter-master general, and brigadier general.

§ 10. Except the Commander-in-Chief, all the Officers hereby created, shall be commissioned by the Governor, and shall take the oath of office prescribed by the Constitution, before some Officer authorized by law to administer oaths, a copy of which oath shall be endorsed on their commission.

Officers, except commander, to be commissioned by governor.

§ 11. All other staff or commissioned Officers, who may be appointed or elected under the provisions of this Act, shall be commissioned by the Governor, and shall take the oath of office prescribed by the Constitution, a copy of which oath shall be endorsed on their commission.

Other officers to be commissioned by governor.

§ 12. The Adjutant General shall keep his office at the Seat of Government, and shall keep the same open for business every day (Sundays excepted), from the hours of 11 o'clock A.M. to 3 o'clock P.M. of each day.

Adjutant general's office—where to be kept, &c.

§ 13. It shall be the duty of the Adjutant General to receive and safely keep all reports made to him by the County Assessors concerning the number of the enrolled militia in each County, all muster rolls of volunteers or independent companies, all returns and reports made to him by any civil or military Officer, relative to the enrolled militia, to the military officers of this State, and to all volunteer or independent companies, and to perform all other duties which may be required of him by law.

Duties of adjutant general.

§ 14. In case of a vacancy in the office of the Adjutant General, the Commander-in-Chief shall have power to appoint his successor, who shall hold office until the next meeting of the Legislature, and until his successor is elected, or appointed, and qualified, if such vacancy occurs when the Legislature is not in session.

Appointment of successor in case of vacancy.

§ 15. He shall report to the Governor, on the fifteenth day of December, annually, to be laid before the Legislature: 1. The number of enrolled militia in each County of this State. 2. The total number of the enrolled militia in this State. 3. The number of volunteer or independent companies in this State; the number of volunteers belonging to such companies, and the total number of volunteers according to the muster roll in the State; how many companies are of infantry, how many of riflemen

To report annually to governor as specified.

and artillery, and how many are mounted; and shall make such suggestions as he thinks proper for the improvement of the militia system of this State.

To deliver documents to successor.

§ 16. At the expiration of his term of office, he shall turn over to his successor in office all the reports, muster rolls, returns, papers, money, and effects, belonging to his office, in good order.

Salary.

§ 17. He shall receive a salary of one thousand dollars annually, to be paid in quarterly instalments out of the military fund.

Quartermaster general's office—where to be kept, &c.

§ 18. The Quartermaster General shall keep his office at the Seat of Government, and shall keep the same open for business every day (Sundays excepted), from the hours of 11 o'clock A.M. to 3 o'clock P.M. of each day.

To give bond for performance of duties.

§ 19. He shall give bond to the State of California, with good sureties, to be approved by the Governor, in the sum of five thousand dollars, conditioned that he will faithfully perform all the duties enjoined on him by law.

Duties of quartermaster general.

§ 20. It shall be the duty of the Quartermaster General to carefully guard and provide a suitable place for the preservation of all arms, ordnance, ammunition, military clothing, military supplies, musical instruments, colors, and other effects, granted by the United States to the State of California, or which may be purchased by the State, or in any other manner may become the property of the State.

Not to leave the state.

§ 21. He shall not leave the State during his term of office, unless by the consent of the Governor.

Vacancy in office—how supplied.

§ 22. In case a vacancy occurs in the office of Quartermaster General when the Legislature is not in session, the Governor shall have power to appoint his successor; who shall hold office until the next meeting of the Legislature, and until his successor is elected, or appointed, and qualified.

To report annually to governor as specified.

§ 23. He shall report to the Governor, on the fifteenth day of December, A. D. 1850: 1. An account of all arms, ordnance, ammunition, military clothing, military supplies, musical instruments, colors, and other effects, which have come into his possession, since the first day of January, A. D. 1850; and, after the first report, shall report on the fifteenth day of December in each year, all that have come into his possession since the last preceding annual report, and how, when, and from what source they came into his possession; 2. An account of all articles issued or expended since the last annual report, to whom issued, or how expended, and by whose order; 3. A statement of the present condition of all effects in his possession; 4. How much money has been expended for the care, preservation, and repairs of arms, and other effects, since his last annual report, and shall make all such suggestions as he may deem proper regarding his own department, and for the improvement of the militia system.

May hire building for deposit of arms, &c.

§ 24. As soon as any arms, ammunition, ordnance, or other military effects of any kind whatever may come into his possession, he may, with the approval of the Governor, hire a suitable building or rooms for the care, preservation, and protection of the same, at an expense not exceeding three hundred dollars per month; which shall be paid by an order on the Comptroller, approved by the Governor out of the military fund.

Duty at expiration of term of office.

§ 25. At the expiration of his term of office, he shall turn over to his successor in office, in good order, all arms, ammunition, ordnance, and all other military effects of every kind, and all reports, returns, receipts, bonds, money, and other effects belonging to his office.

To issue arms to volunteer companies, &c.

§ 26. He shall issue to the commanding officer of any volunteer company, or to any military or civil officer, on a proper requisition, approved by the Commander-in-chief, such portion of the arms, ordnance, ammunition, or other military effects, as shall be exactly designated in such requisition, taking therefor a duplicate receipt, signed by the person bearing the requisition.

Salary.

§ 27. He shall receive a salary of two thousand dollars annually, to be paid in quarterly instalments, out of the military fund.

Commutation for military duty.

§ 28. Every free, white, able-bodied male citizen of the State of California, between the ages of eighteen and forty-five years, not exempt by law from the performance of military duty, and not a

member of any volunteer or independent company, shall be and is hereby required to pay to the Treasurer of the County in which he resides, on or before the first day of August in each year, the sum of two dollars as a commutation for the non-performance of military duty, for which sum the County Treasurer is hereby required to give him a receipt specifying therein the purpose for which it is given, which receipt shall exonerate the person to whom it is given from the performance of military duty for that year, except in case of war, insurrection, invasion, or to assist the Sheriff of the county, or Mayor of a city, or any other civil officer authorized by law in executing the laws of the State, or of a requisition for the militia, or some part thereof, from the Commander-in-chief, as specified in this Act.

§ 29. The fund thus collected, and all other sums resulting from fines or penalties imposed by this Act, after deducting the expenses of the proper officer for levying and collecting the same, shall be called the "Military Fund."

Commutation fees and fines, &c., to constitute military fund.

§ 30. If any person subject to military duty, and not exempt by law, shall refuse or decline to pay to the County Treasurer of the county in which he resides, by the first day of August in each year, the amount above specified of two dollars, for his exemption from the performance of military duty for that year, he shall be fined the sum of two dollars to be recovered by an action brought in the name of the State of California, against the person so offending in each and every year, before any Justice of the Peace of the county in which he resides; one half of which sum shall be given to the Sheriff of the county in which the action is brought, under the provisions of this Act, and the other half shall be paid over to the County Treasurer, by the Sheriff, to be placed to the credit of the military fund.

Fine for non-payment of commutation fee.

Recovery and application of fines.

§ 31. In case any person subject to military duty, and not exempt by this Act, shall refuse to pay the military exemption tax in any year, it shall be the duty of the Sheriff to inform the County Attorney of such fact, who is hereby directed to bring an action, as specified in the last preceding section, against the person so offending; and all Justices of the Peace, upon proper proof being made before them of any violation of this Act, when an action is brought according to the provisions of this Act for any fine or penalty, are required to enter judgment according to the provisions of this Act.

County attorney to sue for exemption tax, and justices to enter judgment for penalties.

§ 32. Parents and guardians of minors shall be subject to pay the military exemption tax of minors, and all fines or penalties which may be incurred by them under this Act.

Exemption tax of minors.

§ 33. It shall be the duty of each Sheriff of each county in this State to compare the list of persons subject to military duty as enrolled by the County Assessor, with the list of persons who have paid the military exemption tax as kept by the County Treasurer, on the second day of August in each year; and to make out a list of all persons so enrolled who have not paid the military exemption tax, and to hand the same to the County Attorney, so that suit may be brought against all persons so offending as prescribed in this Act. The County Attorney shall be allowed ten per cent. upon the whole amount collected by action, as prescribed by this Act, for any fine or penalty incurred under any of its provisions.

Sheriff of counties to hand lists of defaulters in payment of exemption tax to county attorneys.

Allowance to county attorney for suing.

§ 34. Each County Assessor shall, at the same time, in each year, when he prepares a roll containing the names of all the taxable inhabitants in his county, make out a separate and distinct list of all persons subject to military duty, and who are not exempt by law, and who are not members of any volunteer or independent company; and on or before the first Monday in August of each year, shall transmit a copy of said list, certified to be correct by him, to the Adjutant General of the State; and shall deposit the original list in the office of the Clerk of the County.

County assessors to make a distinct list of persons subject to military duty.

Copy of list to be sent to adjutant general.

§ 35. Each County Assessor shall also, on or before the third Monday of July in each year, furnish to the County Treasurer a copy of the above described list, certified by him to be correct, and shall place opposite to the name of each person on said list, the amount required by law from such person, as an exemption from the performance of military duty.

Certified copy of such lists, with amount for which each person is liable, to be furnished to county treasurer.

§ 36. Each County Assessor shall be entitled to ten per cent. on the whole amount collected by the County Treasurer under the provisions of this Act, as his entire compensation for the duties required of him by this Act.

Compensation to county assessors.

County treasurers to be collectors of militia exemption fund.

§ 37. The County Treasurer shall be collector of the militia exemption fund; and all persons subject to military duty, and not exempt by law, are hereby required to pay the amount fixed by law for exemption, to the Treasurer of the County in which they reside, on or before the first day of August in each year.

County treasurers to report annually to comptroller as specified.

§ 38. It shall be the duty of each County Treasurer, on or before the first day of September in each year, to report to the Comptroller of State: 1. The total amount of money received by him from all persons in his County, for exemption from the performance of military duty: 2. The amount due to him, which shall be ten per cent. on the whole amount collected, for the collection: 3. The amount due to the County Assessor for enrolment of all persons subject to military duty in the county, and for performance of all other duties enjoined by this Act: 4. The amount then on hand, after deducting the amount due to himself and the County Assessor, and to state that the same remains in his hands, subject to the order of the Comptroller.

County treasurers to pay military fund to paymaster general.

§ 39. As soon as the County Treasurer shall receive an order from the Comptroller of State to pay over the amount of the military fund to the Paymaster General, it shall be his duty immediately to make payment according to such order.

Application of military fund.

§ 40. The military fund shall be applied solely to the military organization within this State; to the payment of the salaries of such military officers as are allowed salaries by law; to the building of a suitable arsenal; to the encouragement of volunteer or independent companies; and to such other military purposes as may be prescribed by law.

Comptroller to direct county treasurers to pay moneys to paymaster general.

§ 41. Whenever the Comptroller of State is informed by the County Treasurer of any county that he has funds on hand belonging to the military fund, it shall be the duty of the Comptroller immediately to direct the County Treasurer to pay over such amount to the Paymaster General, at the same time in the year when he is required by law to make payment to the Treasurer of the State on account of the general fund; and whenever any money is paid into the Treasury, on account of the military fund, it shall be the duty of the Paymaster General to give to the person so paying a receipt on which shall be endorsed, "For the military fund."

Paymaster general to give receipt for moneys paid to him.

Comptroller to keep a separate set of books for entries specified.

§ 42. The Comptroller of State is hereby required to keep a separate and distinct set of books, in which shall be entered: 1. The amount returned to him by the County Treasurer of each county as due to the State, on account of payments made to him from all persons in his county for exemption from military duty: 2. The amounts returned from each County Treasurer, as collected by him on account of fines or penalties imposed by this Act: 3. The gross amount of all these sums; and, 4. An abstract of the order transmitted to each County Treasurer, relative to the funds stated to be on hand; and, 5. The amount of all warrants issued by him to be paid by the Paymaster General from the military fund. Said books shall be styled, "Records concerning the military fund."

Warrants to paymaster general for payment of salaries to military officers, &c.

§ 43. It shall be the duty of the Comptroller to issue his warrant, directed to the Paymaster General, for the payment of such salaries as may be allowed by law to military officers by this Act, and for such incidental expenses and amounts of money as he may be directed to issue, by orders approved by the Governor for the purposes of carrying this Act into effect. The warrants, as directed to be issued by this section, shall be endorsed by the Comptroller, "From the military fund."

Comptroller to report annually to governor as specified.

§ 44. On or before the fifteenth day of December in each year, the Comptroller shall report to the Governor, to be laid before the Legislature: 1. The amount reported to him by the County Treasurer of each county, as collected for the military fund: 2. The gross amount reported to him throughout the State: 3. The amount of the military fund ordered to be paid out by warrant issued by him, and for what purpose.

State treasurer paymaster general. Military fund to be kept separate. Separate set of books for military fund.

§ 45. The Treasurer of State shall be *ex officio* Paymaster General.

§ 46. It shall be his duty to keep the military fund separate from all other funds.

§ 47. It shall be his duty to keep a distinct set of books, in which shall be entered the amount received on account of the military fund from each county in the State, and the time when paid, and an account of all payments made from the military fund, and to whom paid.

§ 48. It shall be the duty of the Paymaster General to pay from the military fund all such warrants as are drawn upon that fund by the Comptroller, when endorsed, as provided in this Act. Payments from military fund.

§ 49. It shall be the duty of the Paymaster General to report to the Governor, on the fifteenth day of December in each year, to be laid before the Legislature at the commencement of each session : 1. A statement of the whole amount of the military fund received into the treasury during the year : 2. The amount of said fund which remained in the treasury at the time of the last preceding annual report : 3. The amount paid out from the military fund during the year, specifying the amount of each payment, by whose order paid, and for what purpose paid : 4. The amount of money remaining on hand and belonging to the military fund at the time of the report. Paymaster general to report to governor annually as specified.

§ 50. The Governor is hereby authorized to issue his order, directed to the Comptroller of State, for the purpose of paying such incidental expenses as he is satisfied are justly incurred under the provisions of this Act, and the "Act concerning Volunteer or Independent Companies;" on which order the Governor shall endorse "From the military fund," and on such order the Comptroller shall issue his warrant according to the provisions of this Act. Incidental expenses—how ordered to be paid.

§ 51. In case of war, insurrection, or rebellion, or resistance of the execution of the laws of this State, or upon the call or requisition of the United States upon the Governor of this State for troops, or upon the call or requisition of any officer of the army of the United States commanding a military division or district, the Commander-in-chief is authorized to call for such portion of the enrolled militia of this State, by an order directed to all or any of the Sheriffs of the different counties in this State, as he in his discretion may deem necessary; and also to call upon any or all of the volunteer or independent companies of this State, by an order directed to the commanding officer of each of such companies as he may desire to call into the service, mentioning in such order the time and place of rendezvous, and naming the officer or person to whom each of such Sheriffs or each of such commanding officers shall report. Militia and volunteers may be ordered out, in case of war, insurrection, &c.

§ 52. The order mentioned in the last preceding section, whether directed to any Sheriff or the commanding officer of any volunteer company, shall state whether the military called into the service, or the volunteer companies called into service, are to appear armed and accoutred, or whether arms and accoutrements will be furnished at the place of rendezvous mentioned in the order. Order to state whether to appear armed, &c.

§ 53. Whenever any Sheriff shall receive such order from the Commander-in-chief, he shall post up within the limits of each town in the county a public notice, requiring all the enrolled militia of the county to assemble at such day of the month, and hour of the day, and place, as he may direct, stating therein the substance of the order received by him from the Commander-in-chief; and said notices shall be posted up by the Sheriff as soon as possible after the reception of the Governor's order, and in the most public place, and shall be posted up in each town at least five days before the time mentioned in said notice for the assemblage of said enrolled militia. Sheriff to give notice of order.

§ 54. Every person subject to military duty not exempt by law, and who is not enrolled as a member of some volunteer or independent company in said county, who is then residing in the county, and whose name is listed by the County Assessor as required by law, shall appear, and is hereby required to appear, at the time and place named by the Sheriff in the before mentioned notice, and for the purposes specified in said notice; and in case the militia are required to appear armed and accoutred, it shall be the duty of every person subject to military duty as aforesaid, to appear at the time and place mentioned, armed with a good rifle or musket, and sufficient accoutrements, and with at least one pound of powder and four pounds of lead, with three good flints, or one hundred percussion caps. Manner in which order is to be obeyed.

§ 55. In case any person subject to military duty, and not exempt by law, whose name is listed among the enrolled militia, and who is residing in the county where his name is enrolled, shall neglect or refuse to appear at the time and place named, as required by the last preceding section, he shall be subject to a fine not exceeding two hundred dollars, to be recovered by an action in the name of the people of this State against the person so neglecting or refusing to appear, before any Justice of the Penalty for neglecting to obey order.

Peace of the County in which he resides, and the Sheriff is hereby required to give information to the County Attorney of the names of all such delinquents, who is hereby required to institute the action as aforesaid.

Sheriff to raise from militia, number of men mentioned in order.

§ 56. The Sheriff of any County upon which a call has been made by the Commander-in-Chief, and who has given notice as herein directed to the enrolled militia of his proper County, shall appear at the time and place mentioned in said notice for the purpose of raising from the enrolled militia such number of men as may be required by the order of the Commander-in-Chief.

When sufficient men volunteer to fill requisition of order, sheriff to proceed with them to place indicated by order.

§ 57. At the time and place mentioned in the notice above mentioned, the Sheriff shall call the enrolled militia then and there assembled to order, shall state to them the reasons why they are so called together, and read the order directed to him from the Commander-in-Chief; he shall then ask for volunteers sufficient in number to fill the requisition or order from the Commander-in-Chief, and provided a sufficient number of men fit for military duty to fill said requisition or order, offer themselves for service, he shall make a list of the names of all such volunteers, shall take the charge and direction of them, and shall proceed with them to the place and at the time directed by the Commander-in-Chief in his order, and shall report himself with his force to the person to whom he is directed to report.

Where sufficient men do not volunteer, sheriff to draw to make number required.

§ 58. In case no person volunteers, or in case a sufficient number of persons, subject to military duty, to fill the requisition of the Commander-in-Chief shall not volunteer, the Sheriff shall proceed to draw, in a fair and impartial manner, from the remaining persons present and subject to military duty, a sufficient number to fill up the said requisition; shall then take the charge and direction of all such persons, and shall proceed with them to the place and at the time indicated by the Commander-in-Chief in his order, and shall report himself with his force to the person to whom he is directed to report.

Penalty for refusing to obey sheriff.

§ 59. Any person, when drafted according to the provisions of the last section, who shall refuse to obey the order of the Sheriff to proceed to the place of rendezvous, shall be subject to a fine not exceeding one thousand dollars, to be recovered by an action brought by the County Attorney before any Court of competent jurisdiction, upon information given to him by the Sheriff.

Militia and volunteers so called into service to be organized into companies, battalions, regiments, and brigades.

§ 60. After the militia or volunteers, so called into service, have been reported at the place of rendezvous to the officer authorized by the Governor to take charge of such force, he shall organize said militia into companies, battalions, and regiments and brigades. Each company shall choose its own commissioned and non-commissioned officers, which shall be the same as authorized by law in the army of the United States; each separate battalion, which shall consist of four, five, or six companies, shall have the power to elect one Major, who shall command the battalion, and who may appoint one Adjutant from the number of subaltern officers. Each regiment shall have the right to elect one Colonel, one Lieutenant Colonel, and one Major, from its own number; and any Brigade, when called into service, shall be commanded by one of the Major Generals, or Brigadier Generals, elected under the provisions of this Act. And all other necessary military officers that are provided for by the existing military laws of the United States, may be elected as aforesaid, and if not so elected, may be appointed by the Commander-in-Chief.

Chap. 77.

AN ACT to create Port Wardens for the cities of San Francisco and Sacramento, and other Ports of California.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Number of port wardens, and mode of appointment.

§ 1. There shall be two Port Wardens for the port and harbor of San Francisco, and one for Sacramento City, and for each and every other port of entry within this State, who shall be appointed by the Governor,

and shall hold office for the term of two years, and until their successors shall be appointed and qualified. Before entering upon the duties of their office they shall take oath before some person authorized by law to administer oaths for the faithful performance of their duties. *Provided*, that nothing shall be construed in this Act to give authority to Port Wardens to sell or dispose of any property that may have been surveyed by them without the consent of the owners or agents of the same.

Proviso.

§ 2. It shall be the duty of the Port Wardens, or either of them, when required, to survey or cause to be surveyed any and all vessels, whether for loss of sails, rigging, spars, or other damage caused by stress of weather at sea or otherwise, and to survey the hatches and the stowage of the cargo under deck.

To survey all vessels damaged by stress of weather.

§ 3. It shall also be the duty of the Port Wardens to survey any and all vessels arriving in distress, to survey the cargo in part or in whole laden on board such vessel, to inspect any goods or merchandise whether for account of underwriters or others.

To survey all vessels arriving in distress.

§ 4. In case sales shall be made at auction under their direction, they shall give at least three days' notice of the same by publication in a newspaper published at the place where said survey is made, describing the articles to be sold and by what vessel imported; should there be no paper published at the place where a sale may be had, written notice of such sale shall be posted up in the vicinity.

Sales by auction under direction of port wardens.

§ 5. The Port Wardens shall furnish a certificate of the result of all surveys held, which shall be recorded in a book to be kept by them for the purpose; said certificate shall contain a full statement of the facts, whether the goods or merchandise are damaged or not; if damaged, the cause of such damage as nearly as may be, as also the degree or per centum of the injury sustained. A like report shall be made upon survey of vessels.

Certificates of results of all surveys to be recorded, and form of certificate.

§ 6. For each and every survey the Port Wardens shall be entitled to the sum of fifteen dollars, which shall be paid by the owners, master, or consignee. Foreign vessels not admitted by treaty on terms of equality with American bottoms, shall pay fifty per cent. advance on the above rate.

Fees for survey.

§ 7. When upon examination by the Wardens, separate certificates are required by different consignees, the Wardens shall be entitled to fees in each case, but no extra charge shall be allowed for certificates in duplicates.

Fees for separate certificates.

Chap. 78.

AN ACT to provide for the inspection of Steamboats.

Passed April 10, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. There shall be appointed by the Governor two Inspectors of Steamboats, who shall hold their office for the term of one year, and until their successors are appointed and qualified. Before entering on the duties of their office, they shall take the oath of office, and give bond to the State in the sum of fifty thousand dollars, with security to the satisfaction of the County Judge of San Francisco county, conditioned for the faithful performance of their duty. The bond shall be made in conformity with the provisions of the "Act concerning the official bonds of Officers." The bond shall be recorded in the office of the Recorder of the county of San Francisco.

Inspectors to be appointed; their term of office, &c.

§ 2. No person shall be appointed to the office of Inspector who shall not be a practical engineer and engine builder, and who does not possess a general knowledge of the framing and construction of steamboats. Before making any appointment, the Governor shall require satisfactory testimonials of the applicant that he has the necessary qualifications.

Qualification for inspector.

§ 3. The Inspectors shall have power to appoint any number of deputies, for whose conduct they

Inspectors may appoint deputies.

shall be responsible, and who may discharge all the duties of the Inspectors, and may sign certificates in their name.

One inspector to reside at San Francisco Steamboats to be inspected before being used.

§ 4. One of the Inspectors shall reside and keep his office at the City of San Francisco. Whenever any steamboat is to be employed in navigating the waters of this State in whole or in part, it shall be the duty of the owner or agent of such boat, before the same can be so employed, to request of the Inspectors, either in person or by deputy, to go on board such steamboat, and make a thorough and minute examination of her hull, boilers, and machinery. If he find them to be strong, and in good condition and repair, he shall make out a certificate of such inspection, and deliver it to the owner, master, or agent or consignee of the boat.

Steamboats to be inspected twice a year.

Penalty for using steamboat without a certificate of inspection.

§ 5. Every such steamboat shall be so inspected twice in each year, and shall be required at all times to have exposed to view on board, in some conspicuous place, a certificate of inspection made within the next preceding six months. For each day that any such steamboat may be without such certificate, a fine shall be incurred of ten times the amount to be paid for the inspection, which fine shall be a lien upon the steamboat, and shall be sued for and recovered by the Inspectors, in the name of the State, in the same manner as other claims are authorized to be prosecuted against vessels and boats, and proceedings to recover such fine may be commenced at any time within six months after it is incurred: *Provided*, however, that no fine shall be incurred when the want of such certificate has been occasioned by the neglect or refusal of the Inspectors to make inspection, when requested so to do.

No penalty if want of certificate occasioned by inspector's neglect Inspectors liable for accidents to steamboats, unless, &c.

§ 6. If any accident occur to any steamboat having a certificate of inspection, as required by the provisions of this Act, and any one be injured by such accident, either in person or property, the Inspectors shall be liable therefor on their official bond, unless they prove that an actual and careful investigation was made by themselves or one of their deputies at the time mentioned in the certificate, or prove that such accident did not occur in consequence of any defect existing at the date of the certificate; but nothing contained in this section shall create any liability on the part of the Inspectors to the owner or master of such steamboat, nor shall discharge the owner or master from any liability, civil or criminal.

Fees for inspection.

§ 7. The Inspectors shall be entitled to demand and receive from each steamboat inspected, according to their tonnage, the following sum: one hundred tons or less, one hundred dollars; between one hundred and two hundred tons, one hundred and fifty dollars; between two hundred and four hundred tons, two hundred and twenty-five dollars; between four hundred and one thousand tons, three hundred and fifty dollars; over one thousand tons, five hundred dollars.

Entries of vessels inspected to be made.

Copies of entries to be furnished comptroller. Fines to be paid to treasury.

§ 8. The Inspectors shall enter in a book to be provided for the purpose, the name of each steamboat inspected, her tonnage, the time of the inspection, and the amount received in each case. They shall furnish every three months to the Comptroller, a copy of all the entries made during the preceding quarter, and shall pay all fines, collected under the provisions of this Act, into the State Treasury.

Chap. 79.

AN ACT to provide for the holding of a Special Term of the District Court of the Fourth Judicial District.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

District court to hold a special term.

There shall be held a Special Term of the District Court for the Fourth Judicial District, to commence on Monday, the fifteenth day of April, A.D. 1850.

Chap. 80.

AN ACT to provide for the permanent location of the Seats of Justice of the several Counties.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

- § 1. Whenever the inhabitants of any county desire to remove the seat of Justice of the county from the place where it is fixed, by the "Act subdividing the State into Counties, and establishing the seats of justice therein," they may present a petition to the County Judge of their county, praying such removal, and that an election shall be held to determine to what place such removal shall be made. Removal of seat of justice, and election of future site.
- § 2. If the County Judge be satisfied that the petition is signed by one third of the number of voters voting at the April election, it shall be his duty to order an election, naming the day on which it shall be held, specifying its object, and the manner in which the votes are to be given. County judge may order election.
- § 3. Notice of not less than thirty days shall be given of the election, by publication in some newspaper, if there be one published in the county, and by posting up notices thereof in at least five public places in the county. The election shall be held and conducted, and the returns made in all respects in the manner prescribed by law, in regard to elections for county officers. Notice of election to be published. Election—how held.
- § 4. In voting on the question, each elector may vote for any place in the county which he may prefer as the seat of justice, the place to be plainly designated in his ballot. How electors may vote.
- § 5. When the returns shall have been received and compared, and the result ascertained by the County Judge, if a majority of all the votes cast shall have been given in favor of any particular place, it shall be his duty to give notice of the result, by publication in some newspaper, if there be one printed in the county; if not, then by causing notices thereof to be posted up in not less than five public places in the county. Result of election to be published.
- § 6. In such notice he shall declare the place selected to be the seat of justice of the county, from and after some day to be named therein, which day shall be the earliest at which offices can be procured at the new seat of justice for the use of the several county officers, and for the security of their records, and shall in no case be more than ninety days after the day of election. Form of notice.
- § 7. After the day named in the notice, the place chosen shall be the seat of justice of the county. When seat of justice considered changed.
- § 8. Whenever any election has been held, as provided for in the preceding sections of this Act, the statement made up by the County Judge showing the result thereof, shall be deposited in the office of the Court of Sessions, and whenever he shall give the notice prescribed by the fifth section of this Act, he shall transmit a certified copy thereof to the Secretary of State. Statement of result of election to be deposited in court of sessions.
- § 9. When an election has been held, and a majority of all the votes cast has been given for some other place than that fixed as the seat of justice of the county by the "Act subdividing the State into Counties, and establishing the seats of justice therein," no second election for the removal of the seat of justice shall be held within one year thereafter. Where a majority of votes is not for the change.
- § 10. When the seat of justice of any county has been once removed, it may be again removed from time to time, in the manner prescribed by this Act; but no election shall be ordered to effect any such subsequent removal, unless the petition praying an election be signed by a majority of all the electors of the county, nor unless at such election, when ordered, two thirds of all the votes cast shall be given in favor of some other place as the seat of justice of the county, nor shall two elections, to effect such removal, be held within any three years. Subsequent removals of seat of justice.

Chap. 81.

AN ACT concerning Roads and Highways.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

What roads are highways.

§ 1. Every road within this State shall be deemed a public highway, which is so declared by an order entered on the minutes of the Court of Sessions of the County over which the road passes, and it shall be the duty of the Court of Sessions of each County, at the earliest time at which it can be done, to declare, by an entry on the minutes, what roads within the County are public highways. Any road may be discontinued as a public highway by an entry to that effect in the minutes of the Court.

Poll tax for road purposes may be levied.

§ 2. The Court of Sessions of each and every County of this State, shall have power to levy a poll tax for road purposes, on all able-bodied men in their Counties between the ages of eighteen and forty-five years, not exceeding five days' labor in each year.

Supervisors of roads to be appointed.

§ 3. The Court of Sessions of each County in this State shall appoint, at the first term held during the present year, and thereafter at the first term held in each year, as many Supervisors of Roads as they may deem necessary for the County, and shall agree upon, and enter on the records of their Court, a certain number of days that each able-bodied man, between the ages of eighteen and fifty years, shall be subject to labor upon the public roads in his District during the year; *Provided*, that no more than five days' work upon said highways shall be required of any one person, and the Clerk shall append the number of days fixed upon the notice of each Supervisor appointed in this County.

Amount of labor to which each person subject.

§ 4. The Courts of Sessions of the several Counties in this State shall have general supervision and control over the public roads and highways in their respective Counties.

Roads and highways under control of the courts of sessions.

On petition for a county road, persons to be appointed to report thereon.

§ 5. The Court of Sessions of each County shall, on presentation of petition to said Court, praying for a County road to be laid out in the County, and designating the points therein, appoint two proper persons of their County, together with the County Surveyor of their County, to view out the road so petitioned for; and it shall be the duty of those so appointed, to proceed as soon as they can well do so, to the place designated in the petition, and lay out said road on the nearest and best way between the points designated in the petition or order of the Court, and report on its utility, and said report shall be recorded by the County Clerk in the records of said Court; and if such Court shall be of opinion that such road is necessary, it shall make an order to that effect, and declare the same to be a public highway.

Road may be declared a public highway.

Notice to owners of land.

§ 6. When such appointment has been made, notice thereof shall be given as publicly as possible, to the parties owning the land through which the road is to run, if such parties reside within the County; and, if objection by the owners is made to the location, such road shall not be opened until the objections shall be heard by said Court, who shall determine in regard to the same.

Road not to be opened till objections (if any) are adjudicated upon. Counties to be divided into road districts.

§ 7. It shall be the duty of the Court of Sessions, as soon as practicable, to lay out and divide the county into such road districts as may be deemed proper, defining the boundaries of the several Districts. The division so made may be altered from time to time, as circumstances may in the opinion of the court require.

Persons appointed supervisors to be notified of their appointment.

§ 8. It shall be the duty of the Clerk of the Court of Sessions of each County, to make out and deliver to the Sheriff, written notices to all the persons who have been appointed supervisors as aforesaid, within ten days after such appointment shall have been made, informing such persons of said appointment, and describing the boundaries of their district, and the Sheriff shall deliver the said notices to the persons to whom they shall be directed respectively: and if the person to whom such notice is delivered, shall refuse

to accept the office of supervisor, the Sheriff shall return said notice, noting such refusal on the back thereof.

§ 9. When any person shall refuse to accept the appointment of supervisor, he shall be fined in the sum of twenty dollars, and in all cases where the office of supervisor is vacated, the Court of Sessions shall fill the vacancy at its first session thereafter.

Penalty for refusing to accept appointment.

§ 10. If the supervisor shall accept such appointment it shall be his duty, within fifteen days thereafter, to return to the Clerk of the Court of Sessions, a list of all persons residing in his road district, liable to be taxed for road purposes: *Provided*, that said supervisor shall not be required to make such return unless the Court of Sessions shall levy a tax for road purposes: and said supervisor shall be exempt from military tax, during the time of his holding said office.

Supervisors to return names of parties liable to be taxed.

Supervisors exempt from military tax.

§ 11. It shall be the duty of the supervisor to cause all the public roads within his district to be kept clear from obstruction and in good repair, causing banks to be graded and bridges and causeways to be made where the same may be necessary, and to keep the same in repair; and to cause to be erected and kept in repair, posts and guide boards, with inscriptions thereon, in letters and figures, giving the direction and distance to the most noted places to which said road may lead.

Supervisors to keep roads in repair, and erect guide posts.

§ 12. When any public road shall be obstructed, or bridge or causeway shall be destroyed or out of repair, it shall be the duty of the supervisor to cause such bridge or causeway to be rebuilt or repaired, and such obstruction to be removed, and for that purpose he shall call out the persons required to labor on public roads in his district, or the necessary number; but if the persons, or any of them, so called out by him, shall have performed the number of days' work required by law, or if the labor due from such persons shall not be sufficient, he shall proceed to hire as many laborers or teams as may be necessary to remove such obstruction, or repair such damage: *Provided*, the cost of the same shall not exceed fifty dollars: but if the cost of the labor shall exceed that sum, he shall report the same to the Court of Sessions, whose duty it shall be to provide for the removal of such obstructions, or repairing of such bridge or causeway, either by ordering the supervisor to hire laborers and teams for that purpose, or by making a contract with some suitable person or persons, as they may deem best; and all moneys necessary to carry the provisions of this section into effect, shall be paid out of the County Treasury.

Supervisors may call upon persons liable to labor on roads.

May hire laborers, &c.

When repairs to be done by order of sessions.

§ 13. It shall be the duty of the supervisor of each district, to call on every person liable to work on roads, when any road in his district needs work or repairs, to perform the number of days' work due for the year, giving such person at least three days' notice, and the time and place and the necessary tools for said road work. The supervisor can appoint any person liable to work in his district, to notify the persons of the time and place appointed, and such notice shall be legal and binding as the notice from the supervisor would be, and every person required to notify hands to work on the road, by a supervisor, shall be entitled to credit on his road tax, for the time he is so employed.

Persons liable—how notified that their labor is required.

§ 14. Each person shall be required to work diligently, and a reasonable number of hours in each day, and upon the failure or refusal of any person to attend or perform the work due on the road, after being notified as above, either by himself, or by a substitute equally able as himself, he shall be liable, and pay for each day, the usual price of such a day's labor; and if any such person shall wilfully neglect, or turbulently interrupt the other hands upon duty, the supervisor may discharge such person from the road, and he shall be liable for and pay for each day's labor that may be due from him, the usual charges for such labor.

Penalty for refusing to work personally or by substitute.

Penalty for interrupting persons at work.

§ 15. It shall be the duty of the supervisors to prosecute suits before Justices of the Peace, in their official capacity, against all persons for neglect or refusal to work, and for all labor or liability which may be due, or incurred under this Act, in their respective districts, and which may remain unpaid after due notice given; and such supervisors shall be competent witnesses in all such suits, and appeals may be taken from the judgments thereon, as in other cases.

Supervisors to prosecute for fines.

May be witnesses. Appeal.

§ 16. All fines and forfeitures incurred under the provisions of this Act, shall be applied to the improvement of public roads within the limits of such road districts, wherein such fines and penalties may have been incurred.

Application of fines, &c.

Supervisors to report annually.

§ 17. At the first term of the Court of Sessions, held in each year, each supervisor of the county shall make a report to said Court, showing the whole number of days' work done, the amount of money collected, the amount of money paid out, naming all delinquents; also, reporting the condition of the roads in his district.

Penalty on supervisors for neglect of duty.

§ 18. Any supervisor neglecting to perform any of the duties required of him by this Act, shall be liable to, and forfeit to the use of his county, any sum not less than ten nor more than two hundred dollars, and he shall also pay over to the county all moneys that he may have collected under this Act, not otherwise legally appropriated.

Cart roads—notice of petition for.

§ 19. Any person or persons wishing a cart road laid out for his or their convenience, from the dwelling or plantation of such persons to any public road, or from one public road to another, shall present a petition to the Court of Sessions, setting forth the reasons for desiring such road, describing the points from and to which said cart way is desired to pass, and the Court shall, after a sufficient sum of money shall have been deposited, proceed to view and mark out such cart road, and appoint three freeholders to view the same; *Provided*, that twenty days' notice shall be given of the intention to present such petition, to each person through whose land such cart road is desired to pass, and also by posting up notices in two public places in the neighborhood of such intended road; and the reviewers, when appointed, shall proceed to examine the route proposed, and also any other route they may deem proper, from and to the points named in the petition, and if they shall be of opinion that a cart road is necessary and proper from and to the points named in the petition, they shall lay out the same in such manner as to produce the least inconvenience to the parties through whose lands said road shall pass, and shall make a written report to the Court, describing the route and the number of lots of land through which the same shall pass, and naming the owners thereof, if known; which report shall be examined by the Court, and if, on hearing the objections, if any, it shall be of the opinion that the road is necessary, an order shall be made, establishing the same: *Provided*, that said road shall not be made to pass through any orchard, garden, vineyard, or any valuable improvement.

Not to pass through orchards.

Court may order compensation to parties over whose land road may run.

§ 20. If any person shall make lawful objection to said road passing through his lands, and shall make it appear before any Court of competent jurisdiction, the said cart road shall not be opened through said lands, until damages are paid by the person or persons applying for said cart way, which damages shall be assessed by three householders of the county, appointed by the Court of Sessions; and on the payment of such damages, so assessed, the person so applying for such cart road shall have the right of opening said right of way.

Chap. 82.

AN ACT to prevent the importation of Convicts into this State.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

No person to bring into the state any felon or convict, &c.

§ 1. No captain or master of any vessel, or any other person or persons, shall knowingly or willingly import, bring, or send, or cause or procure to be imported, brought, or sent, or be aiding or assisting therein, into this State, by land or water, any felon, convict, or person under sentence of death or transportation, or any other legal disability incurred by a criminal prosecution, except for treason, or who shall be delivered or sent to him from any prison or place of confinement in any place without this State.

Penalty for offending.

§ 2. Every person who shall offend against any of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail, for a term not less than three months, and shall forfeit and pay, moreover, the sum of one

thousand dollars for each of such convicts so imported, brought, or sent into this State; one half of which penalty shall go to him or her who shall sue or prosecute for the same, and the other half to the county in which such prosecution shall be had.

Application of penalty.

§ 3. This Act to take effect and be in force from and after thirty days' publication of the same in the "Pacific News."

Commencement of act.

Chap. 83.

AN ACT prescribing the mode of maintaining and defending possessory Actions on lands belonging to the United States.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Any person now occupying and settled upon, or who may hereafter occupy and settle upon, any of the public lands belonging to the United States, unoccupied, except upon lands containing mines of any of the precious metals, may commence and maintain any action for interference with, or injuries done to his possession of said land, against any person or persons so interfering with or injuring such land or such possession.

Occupation of land not over mines confers a title.

§ 2. On the trial of any such cause, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain any action as aforesaid, without being compelled to prove an actual inclosure: *Provided*, that such "claim" shall not exceed in any case one hundred and sixty acres of land.

Over what extent of surface right to extend.

§ 3. Every such claim, to entitle the holder to maintain any action as aforesaid, shall be marked out, so that the boundaries thereof may be readily traced, and the extent of such "claim" easily known, and no person shall be entitled to maintain any such action for possession of, or injury to, any claim, unless he occupy the same, or shall have made improvements thereon to the value of one hundred dollars.

Every such claim to be marked out.

§ 4. A neglect to occupy or cultivate such "claim," for the period of three months, shall be considered such an abandonment as to preclude the claimant from maintaining any action as hereinbefore mentioned.

Actual occupation or improvements must be made.

Right—how lost.

§ 5. Any person or persons claiming the right of possession to land under this Act shall have the right to defend said possession and the claim thereto, and all the rights and privileges given them by this Act.

Who entitled to benefit of act.

Chap. 84.

AN ACT to regulate proceedings in the County Courts, in cases of appeal from the Courts of Justices of the Peace.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Whenever the transcript and papers of a cause brought by appeal from the Justices' Courts, are delivered to the County Clerk, he shall endorse thereon the time of filing, and shall enter the cause in a docket, stating the names of the parties, plaintiff and defendant, in the same manner in which they are stated in the Justice's Court, and which party is appellant, and which appellee. All causes shall be called for trial in the order in which they stand on the docket.

Papers to be endorsed and cause entered on docket.

Order of calling causes.

- At what term to stand for trial. § 2. Whenever an appeal shall have been filed five days before the first day of any term of the County Court, such appeal shall stand for trial at such term.
- Papers not filed five days before term. § 3. Should the transcript and papers in such appeal not be filed in the clerk's office five days before the first day of the then next term, the clerk shall file such transcript and papers, but shall not docket the cause for that term, but for the term next thereafter, unless the parties agree to try the cause at such first term.
- Trials of appeals in county courts anew. § 4. All appeals shall be tried in the County Court anew, before a jury summoned in like manner as in the Justices' Court, if either party demand a jury before entering upon the trial. If the parties fail to make such demand, they shall be considered as expressly waiving a jury, and the cause shall be tried by the Court.
- Waiver of jury.
- Trials in county courts. § 5. All trials before the County Court shall be in all respects governed by the laws regulating proceedings in the Courts of Justices of the Peace in civil cases, so far as the same can be applied, and are not contrary to the provisions of this Act.
- Change of venue. § 6. Whenever a change of venue is obtained, the cause shall be transferred to the nearest County Court of an adjoining County, free from all objections which are allowed by law for a change of venue.
- Certain testimony to be filed with appeal. § 7. All testimony taken in writing, while the cause was before the Justice's Court, shall be filed with the appeal, and may be read in evidence on the trial in the County Court, subject to all legal exceptions.
- Objections to appeal bond. § 8. All objections to the appeal bond on account of informality or insufficiency, shall be made before the calling of the cause for trial; nor shall any appeal be dismissed on account of such informality or insufficiency, if the appellant, after being required by the Court so to do, shall within a reasonable time, to be named by the Court, file a good and sufficient bond, with surety to the acceptance of the Court.
- New bond may be filed.
- Insufficiency of transcript not to vitiate appeal. § 9. No appeal shall be dismissed on account of the informality or insufficiency of the transcript returned by the Justice. When such transcript is defective, or when papers belonging to the cause have not been delivered by the Justice, the Court may, in its discretion, order the Justice to certify his acts more fully, or to send up such papers.
- Cause of action may be amended. § 10. The County Court may permit the plaintiff to amend his cause of action, or to file at any time before the cause is called for trial, an additional cause or causes of action, of the same nature as the original; and also, the defendant may be permitted to amend his defence, or to make one or more statements of his defence, where none has been filed, or to file one or more additional statements of defence: the costs of such amendments to be at the discretion of the Court.
- Amended defence.
- Appellant not appearing, appeal to be dismissed. § 11. If any appellant shall fail to appear and prosecute his appeal in the County Court, the Court may, on motion of the appellee, dismiss the appeal at the costs of the appellant, or may render judgment, with damages, as prescribed in section thirteen.
- Costs to be allowed prevailing party. Exceptions. § 12. Costs shall be allowed to the prevailing party in judgments rendered on appeal in all cases of trial, with the following exceptions and limitations: 1st. If the defendant against whom judgment is rendered before the Justice appeal, and judgment thereon be rendered in his favor, or the amount recovered before the Justice be reduced ten dollars or more, costs shall be awarded to the appellant. 2d. If a defendant, in whose favor a judgment is rendered before the Justice for any balance due him from the plaintiff, appeal, and he shall not recover at least ten dollars more than the amount recovered before the Justice, costs shall be awarded to the appellee. 3d. If the plaintiff in whose favor judgment has been rendered before the Justice appeal, and he shall not recover at least ten dollars more than the amount recovered before the Justice, costs shall be awarded to the appellee.
- Damages in addition to costs when allowed. § 13. If the party against whom judgment is rendered before the Justice of the Peace for a sum of money appeal, and the judgment of the County Court be against such party for the same or a greater sum, such judgment shall be rendered, with ten per cent. damages and costs, and shall be rendered against the sureties on the appeal bond, as well as against such party.
- Clerk to keep a minute book. § 14. The clerk shall keep a bound book as a minute book, in which he shall enter a brief statement

of the orders and acts of the Court in each cause, and set forth in full the verdict, if there be a jury, and the judgment of the Court. The minutes of each day's proceedings shall be read over on the morning of the succeeding day, and, if necessary, corrected under the direction of the Court. At the close of each term the minutes shall be signed by the Judge.

Judge to sign minutes.

§ 15. Whenever Judgment shall be rendered in the County Court in cases of appeals from Courts of Justices of the Peace, it shall have the same force and effect, and be enforced in the same manner as judgments rendered in the District Courts; and the costs incurred in the Justices' Courts shall be added to the judgment in the County Courts; and when collected, shall be by the County Clerk paid over to the person entitled thereto.

Judgment of county court on appeal.

§ 16. If any Justice of the Peace neglect or refuse to file, as required by law, the transcripts and papers in any cause decided by him, and from which an appeal has been taken, the County Court may, on the application of any person interested, supported by affidavit, require such Justice to appear and show cause why he should not be compelled to file such transcript and papers. If he fail to appear, or, if appearing, he fail to show good cause, the Court may order him forthwith to file the same, and may compel obedience by attachment, or may punish a refusal as a contempt; and such Justice and his sureties shall also be liable to the party appealing, for all damages occasioned by such neglect or refusal.

Justice refusing to file transcript, &c., may be summoned to show cause for refusal.

Chap. 85.

AN ACT concerning Offices.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

ARTICLE I.

OF THE NUMBER OF OFFICERS.

There shall be elected or appointed, as hereinafter declared, the following officers, to wit: 1. A Governor and Lieutenant Governor: 2. Three Justices of the Supreme Court: 3. One District Judge and one District Attorney for each Judicial District into which the State may be divided by law: 4. Sixteen Senators, and thirty-six Members of Assembly: 5. A Secretary of State, Treasurer, Comptroller, Attorney General, Surveyor General, State Printer, and State Translator: 6. A Clerk of the Supreme Court: 7. A Superintendent of Public Instruction: 8. For each County one County Judge, one County Attorney, one County Clerk, one Sheriff, one Coroner, one Recorder, one Assessor, one Treasurer, and one County Surveyor: 9. For each Township two Justices of the Peace, or a greater number, in the discretion of the Court of Sessions, and one Constable.

Enumeration of officers to be elected.

ARTICLE II.

ELECTIONS AND TERM OF OFFICERS, EXCEPT TOWNSHIP OFFICERS.

§ 1. The Governor, Lieutenant Governor, Justices of the Supreme Court, Treasurer, Comptroller, Attorney General, Surveyor General, Clerk of the Supreme Court, and Superintendent of Public Instruction, shall all be elected by the qualified electors of this state. District Judges, District Attorneys, Senators, Members of Assembly, County Judges, County Attorneys, County Clerks, Coroners, Recorders, Assessors, County Treasurers, and County Surveyors, shall be elected by the qualified electors of their respective districts or counties; Justices of the Peace and Constables shall be elected by the qualified electors of their respective townships.

Officers to be elected by electors of state.

By electors of districts or counties.

By electors of townships.

- Governor and Lieutenant Governor.** § 2. The Governor and Lieutenant Governor shall be chosen at the General Election of the year one thousand eight hundred and fifty-one, and every second year thereafter, and shall hold their offices for the term of two years from the time of their instalment, and until their successors shall be qualified.
- Secretary of state.** § 3. The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office for the term of two years, and until his successor is qualified.
- Comptroller, treasurer, attorney, and surveyor general.** § 4. The Comptroller, Treasurer, Attorney General, and Surveyor General, shall be chosen at the same time as the Governor and Lieutenant Governor, and shall hold their respective offices for the term of two years, and until their successors shall be qualified.
- State printer.** § 5. The State Printer shall be elected by the joint vote of the two Houses of the Legislature, and shall hold his office for the term of two years, and until his successor is elected and qualified.
- State translator.** § 6. The State Translator shall be elected by joint ballot of the Legislature, and shall hold his office for one year, and until his successor is elected and qualified.
- Supreme court justices.** § 7. One Justice of the Supreme Court shall be chosen by the qualified electors of State at the general election of the year one thousand eight hundred and fifty-one, and of every second year thereafter, and shall hold his office for the term of six years from the first day of January next after his election.
- Supreme court clerk.** § 8. A Clerk of the Supreme Court shall be chosen by the qualified electors of the State at the first election to be held for County officers, and shall hold his office until the first day of January next, and until his successor is elected and qualified. At the general election of the present year, and of every second year thereafter, the Clerk of the Supreme Court shall be chosen by the qualified electors of the State, and shall hold his office for the term of two years from the first day of January next thereafter, and until his successor is qualified.
- Superintendent of public instruction.** § 9. The Superintendent of Public Instruction shall be chosen by the qualified electors of the State, at the general election of the present year and of every third year thereafter, and shall hold his office for the term of three years.
- District Judges.** § 10. District Judges shall be chosen by the qualified electors of their respective Districts, at the general election of the year one thousand eight hundred and fifty-two, and shall hold their offices for the term of six years from the first day of January next after their election.
- Members of assembly.** § 11. The Members of the Assembly shall be chosen by the qualified electors of their respective Districts, at the general election of each year, and shall hold office for the term of one year.
- Senators.** § 12. Senators shall be elected by the qualified electors of their respective Districts, for two years, at the same time as members of the Assembly are chosen.
- District attorneys.** § 13. District Attorneys shall be chosen by the qualified electors of their respective Districts, at the election to be held for County Officers during the present year, and shall hold office until their successors are qualified. At the general election of the present year, and of every second year thereafter, District Attorneys shall be chosen by the qualified electors of their respective Districts, and shall hold office for the term of two years, and until their successors are qualified.
- County judges.** § 14. County Judges shall be elected by the qualified electors of their respective Counties, at the election of the present year for County Officers, and on the same day of every fourth year thereafter, and shall hold office for the term of four years.
- County clerks, sheriffs, coroners, county assessors, attorneys, treasurers, and surveyors.** § 15. County Clerks, Sheriffs, Coroners, County Assessors, County Attorneys, County Treasurers, and County Surveyors, shall be chosen by the qualified electors of their respective Counties, at the election of the present year for County Officers, and on the same day every second year thereafter, and shall hold office for the term of two years, and until their successors are qualified.

ARTICLE III.

OF THE NUMBER OF TOWNSHIP OFFICERS AND THEIR TERM OF OFFICE.

- Counties to be divided into townships, &c.** § 16. The County Judge of each County, chosen at the first election, shall, within five days after he is qualified, divide his County into a convenient number of Townships, not exceeding six, and shall cause such division to be made public, by having written notices thereof posted up in several of the

most public places in the County. At the same time he shall order an election to be held in each of such Townships by the qualified electors thereof, for two Justices of the Peace and one Constable, such election to be held at such places and at such time as he may designate, the time not to exceed thirty days. The persons chosen at such election shall hold office until their successors are qualified.

Elections of justices of the peace.

§ 17. After the first election Justices of the Peace and Constables shall be chosen by the qualified electors of their respective Townships, on the same day as Sheriffs are chosen, and shall hold office for the term of two years, and until their successors are qualified.

Justices of the peace and constables.

§ 18. When, in the opinion of the Court of Sessions, it may be necessary, such Court may order a number not exceeding two additional Justices of the Peace, to be elected by the electors of the proper Township, to reside at the County Seat, and one additional Justice of the Peace, to be elected in like manner, to reside in any other town in said County.

Additional justices may be elected.

§ 19. When any Justice of the Peace, by the formation of a new Township, shall be brought within the limits thereof, he shall be one of the Justices of the Peace allowed to such new Township, and shall continue in office until the expiration of the term for which he was elected.

Justice of the peace within the limits of a new township.

§ 20. If, by annexing a part of one Township to another, there should be more than the proper number of Justices within the limits of the Township, to which such addition shall have been made, any Justice of the Peace, brought within such Township, shall, notwithstanding, hold and exercise his office therein, until the expiration of his term of office; but no successor shall be elected to fill any vacancy in said office, which may be occasioned by the expiration of his said term, or otherwise; and whenever any Township, in consequence of a part of it being taken to form a new Township, or to be annexed to any other Township, shall be deprived of its proper number of Justices of the Peace, the vacancy thus produced shall be supplied as in other cases.

Justice brought within the limits of a new township.

No successor to be elected.

Vacancies in office of justice occasioned by dividing townships.

§ 21. When any Constable, by the formation of a new township, shall be brought within the limits thereof, he shall continue to act as Constable to such new township, and shall continue in office until the expiration of the term for which he was elected.

Constable brought within limit of new township.

ARTICLE IV.

OF COMMISSIONS AND CERTIFICATES OF ELECTION.

§ 22. All commissions of officers shall be in the name and by the authority of the People of the State of California, and shall be sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Commissions to be in name of the people.

§ 23. All Officers, except the Lieutenant Governor, chosen by the electors of the State, and all officers, except members of the Legislature, chosen by the electors of the district, and the State Printer and State Translator, and all officers appointed by the Governor, shall be commissioned by the Governor.

Officers commissioned by governor.

§ 24. Members of the Legislature, and all county and township officers elected by the people, shall receive certificates of election from the officer or officers to whom returns of election are made.

Certificate of election.

§ 25. Any officer elected or appointed to fill any vacancy shall be commissioned or receive a certificate of election or appointment to such office.

Commission or certificate to certain officers.

ARTICLE V.

OF THE OATH OF OFFICE.

§ 26. Every Officer chosen or appointed to any office of trust or profit under the authority of this State, before he enters on the duties of his office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of—— according to the best of my ability."

Certain officers to take oath of office.

Form of oath.

§ 27. Said oath, except in cases specified in the next two sections, shall be endorsed on the commission or certificate of election of such officer, and signed by him, and certified by the officer before whom such oath or affirmation shall have been taken.

Oath to be endorsed on commission, &c., except, &c.

Oath of members of legislature.

§ 28. Members of the Legislature shall take their prescribed oaths before they assume their seats as such members, and an entry thereof shall be made on the journal of the proper House.

Oath of governor and lieutenant governor.

§ 29. The Governor and Lieutenant Governor shall respectively take said oath in the presence of both Houses of the Legislature, met in Convention for that purpose, and an entry thereof shall be made on the journals of said Houses.

Oaths—before whom taken.

§ 30. The oath shall be taken, and except in the cases prescribed in the two next preceding sections, may be subscribed before any Judge of the Supreme or District Court, or Clerk thereof, County Judge, County Clerk, Notary Public, or Justice of the Peace, unless otherwise directed by law.

Oaths—when to be taken.

§ 31. It shall be the duty of every officer whose oath of office is required to be endorsed on his commission or certificate of election, to take and subscribe said oath within ten days after the reception of his said commission or certificate, or within ten days after the commencement of his term of office, if his commission or certificate shall have been received by him.

Deputies to take oaths as principals.

§ 32. Whenever any officer is authorized or required by law to appoint a Deputy, such Deputy, before he shall proceed to act, shall take the same oath as his principal.

ARTICLE VI.

OF OFFICES BECOMING VACANT BY RESIGNATION OR OTHERWISE, AND GIVING NOTICE THEREOF.

In what events offices to become vacant.

§ 33. Every office shall become vacant upon the happening of either of the following events, at any time before the expiration of the term of such office; 1. The death or resignation of the incumbent; 2. His removal from office; 3. His refusal or neglect to take the oath of office, as prescribed in the twenty-seventh section of this Act, or when bond is required by law, his refusal or neglect to give such bond within the same time in which he is required to take the oath of office; 4. His ceasing to be a resident of the State, district, county, township, or town, in which the duties of his office are to be exercised, or for which he shall have been elected; 5. The decision of a competent tribunal declaring the election or appointment void, or his office vacant; 6. A failure to elect at the proper election, and there is no provision for the incumbent to continue in office until a successor is chosen and qualified.

Resignations by governor and lieutenant governor
By members of legislature.

§ 34. The Governor and Lieutenant Governor shall transmit their resignations to the Legislature, if in session, or if not, then to the Secretary of State.

By officers commissioned by governor.
By county judges and officers.

§ 35. Members of the Legislature, when they resign their seats, shall deliver their resignation to the presiding officer of the body to which they belong.

§ 36. All officers commissioned by the Governor shall deliver their resignation to him.

§ 37. The County Judges, when they resign their offices, shall tender their resignation to the Justices of the Court of Sessions, and all other county officers shall resign their offices to the County Judge.

County clerks to certify certain vacancies.

§ 38. Whenever a vacancy occurs in any office specified as above (except in cases of resignation made to the Governor), in which it is the duty of the Governor to issue a writ of election or make an appointment to fill such vacancy, it shall be the duty of the County Clerk of the county where such officer exercised the duties of his office, if confined to a single county, and if not thus confined, then of the County Clerk where such officer last resided previous to the happening of such vacancy, to certify such vacancy, and how it occurred, to the Governor.

Vacancy in office of member of legislature to be certified to governor.

§ 39. But when a vacancy shall happen in the office of a member of the Legislature, during the session thereof, such vacancy shall be notified to the Governor by the presiding officer of the House in which such vacancy shall have occurred.

Removal from office by impeachment.

§ 40. Whenever any officer shall be removed from office on impeachment and conviction, as declared in the Constitution of this State, it shall be the duty of the Secretary of the Senate to transmit a certified copy thereof to the officer, court, or person, as the case may be, whose duty it shall be to order an election, or to make an appointment to supply the vacancy caused by the removal of such officer from office.

ARTICLE VII.

OF SUPPLYING VACANCIES IN OFFICE.

§ 41. In case of the impeachment of the Governor, or his removal from office, death, or inability to discharge the powers and duties of the office, resignation, or absence from the State, the power and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the State.

Vacancy in office of governor—how supplied.

§ 42. If during the vacancy in the office of Governor the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy shall be filled, or the disability shall cease.

Vacancies in offices of governor and lieutenant governor at one time.

§ 43. Whenever the government is administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for that occasion.

Election of president of senate in certain events.

§ 44. Vacancies that may happen in offices, the appointment of which is invested in the Governor and Senate, or in the Legislature, shall be filled by the Governor during the recess of the Legislature, by granting commissions that shall expire at the end of the next session.

Certain vacancies during recess of legislature.

§ 45. It shall be the duty of the Governor to lay before the Legislature, at the earliest day practicable, a statement of all appointments made by him, since the preceding session, to fill vacancies.

Report of all vacancies so supplied to legislature.

§ 46. When any vacancy shall occur in the office of Justice of the Supreme Court, or District Judge, or Superintendent of Public Instruction, the Governor shall fill the same, by granting a commission, which shall expire at the next general election by the people, at which election such officers shall be chosen for the balance of the unexpired term.

Vacancies in office of supreme court or district judge, or superintendent of public instruction.

§ 47. When any vacancy shall happen in the office of District Attorney, the District Court shall appoint some one to fill the vacancy, until the next general election of the people.

In office of district attorney.

§ 48. Whenever any vacancy shall happen in the office of Senator or Member of the Assembly, a special election shall be ordered by the Governor to fill such vacancy.

In office of senator or member of assembly.

§ 49. Whenever a vacancy shall occur in the office of Attorney General, Surveyor General, Treasurer, Comptroller, the Governor shall order a special election to be held to fill such vacancy; and until such election is held, and the person is qualified, the Governor shall fill such office by appointment: *Provided*, that when any vacancy shall occur in any of said offices, six months before the close of the term of such office, the person appointed by the Governor shall hold office for the unexpired term.

In office of attorney general, surveyor general, treasurer, or comptroller.

§ 50. When a vacancy shall occur in the office of the Clerk of the Supreme Court, the same shall be filled by such Court until the next general election.

Vacancies six months before term of office expires.

§ 51. When a vacancy shall occur in the office of County Clerk, the County Judge shall immediately order an election to fill such vacancy, and shall have power to appoint some person to perform the duties of Clerk, until the person chosen at such election shall be qualified.

Vacancy in office of clerk of supreme court.

§ 52. When any vacancy shall happen in the office of County Judge, the Justices of the Court of Sessions shall immediately order an election to be held within their county to fill such vacancy.

In office of county clerk.

§ 53. When any vacancy shall occur in any other county office or any township office, the County Judge shall order an election as soon as possible, to fill such vacancy.

In office of county judge.

§ 54. Whenever any election is ordered to fill a vacancy, or any person may be appointed to fill a vacancy, the person so chosen or appointed shall hold office for the balance of the term for which his predecessor was chosen or appointed.

In other county or township offices.

Term of office of persons elected to fill vacancies.

Chap. 86.

AN ACT to organize the Court of Sessions.

Passed April 11, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Court of sessions
in each county.
Court—how
composed.

§ 1. There shall be in each County in this State, a Court of Record, to be styled the "Court of Sessions of ——— County," according to the name of the County in which it is held, to be composed of the County Judge, who shall be the presiding Judge thereof, and two Justices of the Peace, of the County, as Associate Justices.

Associate
justices—how
chosen.

§ 2. The Associate Justices of the Court of Sessions shall be chosen by the Justices of the Peace of each County. So soon as Justices of the Peace are chosen at any election, and qualified, the County Judge shall convene them at the County seat, at some day to be fixed by him, at which time and place they shall attend, and elect two of their number as Associate Justices of the Court of Sessions for their County. A majority of the Justices of the Peace of the County shall form a quorum for the purpose of this election, and a majority of those present shall have power to elect. They shall deliver to the persons chosen, a certificate of election, and such persons shall hold office until their successors in the office of Justice of the Peace are chosen and qualified.

Majority to form
a quorum.

Certificates of
election to per-
sons elected.

Vacancies in
office of associate
justice—how
supplied.

§ 3. Whenever any vacancy shall occur in the office of Associate Justice of the Court of Sessions, it shall be the duty of the County Judge to convene the Justices of the Peace of the County, and an election shall be held by them to fill such vacancy, in like manner as is provided in the second section of this Act.

Quorum of court.

§ 4. The County Judge, or the two Associate Justices, shall form a quorum of said Court for the transaction of business.

Jurisdiction of
court.

§ 5. The Court of Sessions shall have jurisdiction throughout the County over all cases of assault, assault and battery, breach of the peace, riot, affray, and petit larceny, and over all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or both such fine and imprisonment.

Further jurisdic-
tion of court.

§ 6. The Courts of Sessions shall also have power and jurisdiction in their respective Counties :—1st. To make such orders respecting the property of the County as they may deem expedient, in conformity with any law of this State, and to take care of, and preserve such property. 2d. To examine, settle, and allow all accounts chargeable against such County, and to direct the raising of such sums, by taxation on property, real and personal, in such County, not to exceed, however, the one half of the tax levied by the State on such property, as may be necessary to defray all expenses and charges against such County. 3d. To examine and audit the accounts of all officers having the care, management, collection, and disbursement of any money belonging to the County, or appropriated by law, or otherwise, for its use and benefit. 4th. To have the control and management of public roads, turnpikes, ferries, canals, roads, and bridges, within the County, where the law does not prohibit such jurisdiction; and to make such orders as may be necessary and requisite to carry such control and management into effect. 5th. To divide the County into townships, and to create new townships, and change the divisions of the same, as the convenience of the County may require. 6th. To establish and change election precincts. 7th. To control and manage the property, real and personal, belonging to the County, and to purchase and receive by donation, any property, real and personal, for the use and benefit of the County: *Provided*, however, that the Court of Sessions shall not have power to purchase any real or personal property, except such as may be absolutely necessary for the use of the County. 8th. To sell, and cause to be conveyed, any real estate, goods, or chattels belonging to their County, appropriating the proceeds of such sale to the use of the same. 9th. To cause to be erected and furnished, a Court House, Jail, and

such other public buildings as may be necessary, and the same to be kept in repair. 10th. To do and perform all such other acts and things as may be requisite and necessary to the full discharge of the powers and jurisdiction conferred on such Court, and which may be enjoined on it by law.

§ 7. The Court of Sessions shall have power to issue all writs and processes known to the law, and necessary in the exercise of the jurisdiction conferred upon it, and the like power to punish contempts and disobedience of its orders or processes, as is conferred upon the County Court.

Court may issue all writs and processes known to the law.

§ 8. Such court for the transaction of county business, shall cause to be recorded in a book to be kept for that purpose, 1st. A minute of all proceedings touching such matters as may come before it. 2d. Regular entries of all their resolutions, orders, decisions, judgments, and decrees, touching any business properly cognisable before such court.

Minute of county business to be recorded.

§ 9. All accounts, vouchers, papers, petitions, and documents of whatsoever nature, touching the business or property of the County, and all records of such court, sitting for the transaction of county business, shall be appropriately arranged under their several heads, and preserved by the County Clerk, and filed in his office, separate and apart from the records, papers, and proceedings of such court as a court of criminal jurisdiction.

County clerk to preserve records, &c.

§ 10. There shall be a term of the Court of Sessions held at the county seat of each county, commencing on the second Monday of the months of February, April, June, August, October, and December of each year, except the counties of San Francisco and Sacramento, in which a term of said court shall be held, commencing on the second Monday of each month of the year, for the trial of all causes cognisable before it of a criminal nature; and quarterly terms of said court shall be held at the county seat of each county, on the third Monday of the months of February, May, August, and November of each year, for the determination of all matters connected with county business.

Terms of the court.

§ 11. If at any regular term of said Court a quorum shall not be present, then any Judge who may be present, may adjourn the Court from day to day five days; and at the expiration of said time, may adjourn the same until the next regular term of said court; and should not any Judge be present, it shall be the duty of the Sheriff to adjourn said court from day to day for five days; and if at that time a quorum of said court shall not attend, then to adjourn the same until the next regular term of said court.

Quorum not present, court may adjourn.

§ 12. Should it be necessary to hold a special term of the Court of Sessions for the transaction of county business, such term may be held at any time upon ten days' previous notice given by the County Judge; said notice to be posted upon the door of the Clerk's office of said Court; and when a newspaper is printed in any county then the said notice shall be published therein.

Special terms may be held.

§ 13. The County Clerk shall be Clerk of the Court of Sessions, and the Sheriff shall, either in person or by deputy, attend upon each term of the court, and execute all writs and processes issued from said court.

County clerks to be clerks of court of sessions.

§ 14. Said court shall procure a seal for the authentication of all writs, certificates, and processes, (subpoenas excepted) issued from said court; but until such seal can be obtained the clerk of said court may use his private seal.

Court to have and use a seal.

Chap. 87.

AN ACT to provide for the Lien of Mechanics and others.

Passed April 12, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. All master builders, mechanics, lumber merchants, and all other persons performing labor or furnishing materials for the construction or repair of any building or wharf, shall have a lien, separately

Persons furnishing labor or materials for building to have lien for value thereof.

or jointly, upon the building or buildings, or wharf, which they may have constructed or repaired, or for which they may have furnished materials of any description, to the extent of the labor done or materials furnished, or for both.

Owner liable to sub-contractors, journeymen, and laborers.

§ 2. Any such contractor, journeyman, or laborer, who may be employed in the construction or repairing of any building or wharf, or in furnishing any materials for the same, may give to the owner or owners of the building or buildings, or wharf, on which he may have worked, or for the construction of which he may have furnished materials, notice in writing, particularly setting forth the amount of his claim, and the service rendered, for which his employer is indebted to him, and that he holds said owner or owners responsible for the same; and the owner is hereby made liable for the amount so claimed, if indebted to the employer to the amount; if not, then to the amount due from him to said employer at the time such notice was served.

Contractor to endorse copy of such contractor's or workman's claim.

§ 3. When any such contractor, journeyman, or laborer, shall have given the notice prescribed in the preceding section, he shall present to his employer a copy of such notice for his endorsement. If such employer endorse thereon that the claim is correct, the owner or other person liable shall pay the same, if indebted to the employer in the amount; if not, then the amount due from him to said employer at the time the notice was served. If he fail or refuse so to pay, such sub-contractor, journeyman, or laborer shall, within thirty days after the service of the notice, commence an action in the proper Court to enforce his lien. If, by the terms of the contract between the owner and the contractor, the money be payable at some future day, such sub-contractor, journeyman, or laborer, may file the copy of the notice, with the endorsement thereon, in the Recorder's office of the county in which the building or wharf is situated; and shall have thirty days after the money becomes due in which to commence his action. If he fail to commence his action as prescribed in this section, his lien shall be lost.

Owner failing to pay may be sued.

Proceedings where money payable by owner to contractor at a future day.

Lien—how lost.

Suing employer for refusing to endorse claim.

Suing owner on judgment obtained against employer.

Notice of claim to be filed in recorder's office.

Owner's liability to sub-contractor, &c., may be set off.

Building and lot subject to lien.

Claim of lien under sec. 1 to be filed, or lien lost.

Recorder to file and record notices.

Continuance in force of lien after claim due.

Continuance in force of lien after building completed.

§ 4. If the employer fail or refuse to make the endorsement required by the preceding section, such sub-contractor, journeyman, or laborer, shall lose his lien for the amount claimed, unless he shall, within thirty days after the service of the notice, commence an action in the proper Court against his employer to establish the amount of the claim. If he obtain judgment against his employer, he shall lose his lien for the amount thereof, unless, within thirty days thereafter, he shall commence an action against the owner for the amount established by the judgment, if the money be then due from the owner to the contractor; if not, then he shall file in the Recorder's office of the county in which the building or wharf is situated, a notice of said claim and judgment; and shall commence his action against the owner within thirty days after the money is due from the owner to the contractor.

§ 5. The owner or other person made liable, as aforesaid, for the amount admitted to be due, or established by judgment, may set off the same in any action brought against him by the contractor or person otherwise entitled to recover the same, under the contract.

§ 6. The land upon which any building shall be erected, together with the space around the same, not exceeding five hundred square feet, clear of the building, shall also be subject to the above lien, if the said land shall have been at the time of the erecting of the building the property of the person or persons, corporation or association, contracting for the erection or repair of the same.

§ 7. Any person wishing to avail himself of the provisions of the first section of this Act, whether his claim be due or not, shall file in the Recorder's office of the county in which the building or wharf is situated, at any time before the expiration of sixty days after the completion of the building or repairs, notice of his intention to hold a lien upon the property declared by this Act liable to such lien, for the amount due, or to become due to him, specifically setting forth the amount claimed; upon his failure to do so, the lien shall be lost. The Recorder shall file and record such notice, and all other notices given under the third and fourth sections of this Act, in a book provided for the purpose.

§ 8. No such lien shall bind any building or wharf for a longer time than one year after the work is done, or the materials have been furnished, unless suit be brought in a proper court to enforce the same within that time, or if a credit be given, within one year from the expiration of the credit; but no lien shall be continued in force for a longer term than two years from the time the work is completed, or the materials furnished, by any agreement to give credit.

§ 9. The lien for work or materials, given by this Act, shall be preferred to every other lien, or incumbrance, which attached upon the property subsequent to the time at which the work was commenced or the materials were furnished.

Liens to have precedence.

§ 10. Any person who has received satisfaction for his debt, for which a claim has been filed, or action brought, shall, at the request of any person interested in the property on which the same was a lien, or in having the lien removed, on the payment of costs, within ten days after such request is made, enter satisfaction of the claim in the office where such claim is filed, or such action brought.

Satisfaction of lien to be entered.

§ 11. Any person failing or refusing to enter satisfaction, when required so to do, by the preceding section, shall forfeit and pay to the party or parties aggrieved, the sum of fifty dollars for each day during which he shall so fail or refuse; to be recovered in the same manner as other debts are recovered.

Penalty for refusing to enter satisfaction.

§ 12. Nothing in this Act shall be construed to take away, or affect in any manner, any action which any such contractor, journeyman, or laborer, would otherwise have against his employer, or which any contractor, or person furnishing materials, would have against the owner of property on which work is performed, or for which materials are furnished.

Rights of action not affected by this act.

§ 13. Any mechanic or artisan who shall make, alter, or repair any article of personal property, at the request of the owner, or legal possessor of such property, shall have a lien on such property so made, altered, or repaired, for his just and reasonable charges, for his work done and materials furnished; and may hold and retain the possession of the same, until such just and reasonable charges shall be paid; and if not paid for within the space of two months after the work shall have been done, such mechanic or artisan may proceed to sell the property by him so made, altered, or repaired, at public auction, by giving three weeks' public notice of such sale, by advertisement, in some newspaper published in the county in which the work may be done, or if there be no such newspaper, then by posting up notices of such sale, in three of the most public places in the town where such work was done; and the proceeds of said sale shall be applied, first, to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Lien for labor on personal property.

Lien not satisfied, property may be sold.

Proceeds of sale—how applied.

§ 14. Nothing contained in this Act shall be deemed to apply to, or affect, any lien heretofore acquired.

Pre-existing liens not affected.

Chap. 88.

AN ACT requiring Alcaldes and Judges of the Courts of First Instance to account for moneys received and expended by them.

Passed April 12, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Every Alcalde and Judge of the Court of First Instance, throughout the State of California, who has been, since the date of the treaty of Guadalupe Hidalgo, or is now exercising the duties of either of those offices, shall be, and are hereby required, within thirty days after receiving a copy or notice of this Act, to present to the District Attorney of the District in which he shall have resided when performing his official duties, a full and true account, verified by the oath of the Alcalde or Judge of First Instance so presenting the same, of all fines, forfeitures, unclaimed money or other property of deceased persons, unclaimed witnesses' and jurors' fees, and all other moneys paid to or collected by him as fees, Court costs or charges, and all other moneys or property received or taken possession of by him in the exercise of his official power.

Alcaldes and judges of the court of first instance to render account of all moneys received.

§ 2. The said Alcaldes and Judges of First Instance shall also present to the District Attorneys, as aforesaid, a like full and true account, verified by oath in like manner, stating what dispositions or

Also an account of all moneys disbursed.

payments of said property or money have been made; and if the same or any part thereof shall have been appropriated by the said Alcaldes or Judges of First Instance as fees or salaries to themselves, or have been paid away as salaries or fees to officers of their respective Courts, or to other persons, then what amount has been so appropriated or paid, and to whom, with the particular amounts so appropriated or paid; and also whether the fees or salaries charged, or received, or paid by the said Alcaldes or Judges of First Instance, whether to themselves or to the officers of their courts, or to other persons, have been uniform, or whether they have been altered during the official term of the said Alcaldes and Judges of First Instance; and, if the latter, then to what extent, and by what authority they have been so altered.

District Attorneys to enforce the delivery of such accounts.

§ 3. The District Attorneys in the several Districts shall be, and are hereby required to compel, in their respective Districts, the rendering of the account referred to hereinbefore, and to demand from the said Alcaldes and Judges of First Instance, who may have exercised their official duties in any part of their respective districts; or if, having removed from such district, then, within whatsoever district within this State, to which such Alcalde or Judge of First Instance may have removed prior to the passage of this Act, the payment and surrender of such money or property, if any, as may have been, without satisfactory evidence of legal right, collected or detained by them, or either of them, and to enforce the said payment and surrender, with all the requirements of this Act, by process of law, if necessary.

Notice of this act to be given to Alcaldes, &c.

§ 4. It shall be the duty of each District Attorney in this State, to give immediate and due notice to the Alcaldes and Judges of First Instance herein referred to, of the passage of this Act, and of the requirements thereof.

Money illegally appropriated by Alcaldes, &c., to be paid over to district attorneys.

§ 5. If it shall appear to any District Attorney making the demand as hereinbefore provided, that any Alcalde or Judge of First Instance has, during the time for which he shall have exercised his official duties, appropriated to his own use, as fees, emoluments, pay, or salary, from the funds received in his official capacity, any sum or sums not allowed by or exceeding the fees or pay prescribed to Alcaldes and Judges of First Instance, by the tariff of fees established by the Superior Tribunal of the Territory of California, and published in eighteen hundred and forty-nine; then such sum or sums not allowed by the said tariff of fees, and the said excess so appropriated or detained, whether by an Alcalde or Judge of First Instance, shall be paid over to the said District Attorney.

Penalty for refusing to pay over money.

§ 6. Should any Alcalde or Judge of First Instance refuse or neglect to comply with the requirements of the said District Attorney, made under and by virtue of this Act, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of one hundred dollars for each and every day that he shall refuse or delay to comply with the said requirements, after the expiration of the time allowed by this Act, which fine shall be sued for and recovered by said District Attorney, in the name of the people of this State.

Recovery of penalty.

Moneys illegally collected to be refunded.

Where no claimant money to be paid into treasury.

Treasurer may pay claimant

§ 7. All moneys received by the District Attorneys under this Act, and which shall appear to have been illegally collected or detained from any person or persons, shall be refunded to said person or persons, or their proper representatives or assigns, on demand and proof of legal claim thereto; and such balance as shall not be so claimed and paid away, shall be paid into the treasury of this State, by the said District Attorneys, within thirty days after the receipt of the same; and the Treasurer shall be authorized to pay the said money to any legal claimant thereto.

Chap. 89.

AN ACT concerning Marks and Brands.

Passed April 12, 1850.

Owners of cattle, &c., to keep a mark and brand.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Every person, being the owner of horses, mules, cattle, sheep, goats, or hogs, shall have and

keep a mark and brand different from the marks and brands of his neighbors, and the brand, as far as practicable, or to the knowledge of such owner, shall be different from any other brand in the State, and the mark different from any other in the county.

§ 2. Every such owner shall deliver to the Recorder of his county a full description of his ear-mark, and present to him his branding iron, and said Recorder shall record the same in a book to be kept by him for that purpose, giving the form of the iron in the record, and a full description of the ear-mark: *Provided*, that if said Recorder shall be satisfied that the mark or brand tendered to him for record is similar to another mark or brand in the county, he shall require of such person to change the same, until it may be different from any other mark or brand in his county, or that the brand, as far as his knowledge extends, is different from any other in the State.

Branding irons and description of ear-marks to be delivered to recorders.

Recorders may order marks or brands to be changed.

§ 3. Every person shall mark or brand his horses and mules over eighteen months old, and cattle over twelve months old, on the hip or hind parts, and mark his sheep, goats, and hogs, over six months old.

Cattle, &c., to be branded.

§ 4. No person shall use more than one mark or brand, and no minor living with his parents, nor apprentice, or servant, be allowed to use any brand other than that of his parent or master.

One household to use but one brand.

§ 5. If any person shall use any mark or brand other than the one recorded by him, except by the consent of the owner of such other brand, or shall use more than one mark or brand, or suffer his ward, child, apprentice, or servant, to use any other than his own brand, or the brand of the stock they run with, he shall be liable to forfeit and lose to any person suing therefor, the stock so marked or branded with any other than his proper mark or brand recorded by him: *Provided*, that this section shall not extend to any stock which may descend to any ward, child, apprentice, or servant, by the gift or devise of any person other than the guardian, parent, or master of such ward, child, apprentice, or servant, but the brand or mark of such minors, apprentices, or servants, shall be recorded as other marks and brands.

Penalty for using brand other than that recorded.

Exceptions.

Brands of minors and servants to be recorded.

§ 6. Any person that shall kill any head of neat cattle, sheep, goat, or hog, that is not marked or branded, and that may be running at large without a proper owner, shall go before some Justice of the Peace of the county where such stock may be killed, within five days after killing such stock, and make affidavit of all the necessary facts in relation to such killing, which shall be filed and recorded by such Justice in his estray book. The proper owner of such stock so killed shall be entitled to recover from such person the value of the same, upon sufficient proof thereof being made within six months from the date of the filing of such affidavit.

Persons killing cattle, &c., running at large, to make affidavit thereof before justice.

Owner may recover value of animal killed.

§ 7. If any person shall have knowledge of any person with the intent to defraud, or willingly mismarking or misbranding any stock not his own, or killing any stock running at large with a proper owner, and not being marked or branded, and such person not making the affidavit required in the preceding section, such person having such knowledge shall within ten days thereafter give information to some Justice of the Peace of the proper county of the same, and upon failure so to do, shall forfeit and pay any sum not less than ten nor more than one hundred dollars to any person suing for the same.

Penalty for not informing against certain offenders.

§ 8. It shall be the duty of every Recorder in this State, to transmit to the Recorders of two of the adjoining counties, a transcript of all the brands recorded in his office, which shall be filed by such Recorders in their offices, and reference thereto shall be made in every case of application for the record of brands under this Act.

Transcript of brands to be transmitted to recorders of adjoining counties.

§ 9. Every person knowingly and wilfully neglecting or refusing to comply with the provisions of this Act, for which no penalty is affixed by law, shall forfeit and pay, for every such neglect or refusal, any sum not less than ten nor more than one hundred dollars, to be recovered before any Justice of the Peace of the county where such neglect or refusal may occur, by any person suing therefor, together with all damages that may occur by such neglect or refusal.

Penalty for not complying with act.

Chap. 90.

AN ACT concerning the office of Reporter.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Reporter of su-
preme court to
be appointed.

§ 1. The Justices of the Supreme Court shall, as soon as practicable, appoint some competent person to act as Reporter of the said Court, who shall hold office until removed by the said Justices for cause shown.

Duty of reporters.

§ 2. It shall be the duty of the said Reporter to report in an exact and accurate manner upon sheets regularly numbered in order :

First. The names of the parties to each and every action, civil or criminal, which may be brought before said Court for its decision.

Second. A brief statement of the cause of action and of the proceedings in the case, and a brief statement of the points made by counsel in each case, and of the authorities cited, subject to the supervision of the Justices, who are required to see that no matters shall be introduced in such statement more than are necessary to a clear understanding of the action.

Third. The opinions of the Justices at length, provided written opinions are furnished ; if not, an abstract of the opinion of each of the Justices who may deliver an opinion in the case, subject to their supervision and correction.

Reports to be
published.

§ 3. The Reporter shall cause the reports to be published as soon as practicable in well bound octavo volumes : each volume to contain the reports of one year.

State to purchase
150 copies of
each volume of
reports.

§ 4. The State of California hereby agrees with said reporter to purchase of him one hundred and fifty volumes of each volume of reports so published at the price of sixteen dollars per volume, to be distributed according to law.

Any qualified re-
porter may avail
himself of offer.
by executing a
bond as specified.

§ 5. Any Reporter, duly appointed, may avail himself of the offers herein made by executing to the Governor, for the use of the State of California, a bond with two sufficient sureties to be approved by him, in the penal sum of two thousand dollars, conditioned that he will within a reasonable time after reports sufficient in quantity to form a volume, according to the law, have been collected, and from time to time, according to law, cause said reports to be published and bound according to law, and that he will deliver to the Secretary of State of the State of California, for the use of said State, the number of volumes contracted for by law at the price specified by law. On the delivery of said volumes to the Secretary of State the Reporter shall be paid out of any money in the State Treasury not otherwise appropriated ; and the certificate of the Secretary of State shall be sufficient authority for the Comptroller to audit the account.

Secretary of
state to notify
judges of receipt
of reports and de-
liver copies on
request.

§ 6. It shall be the duty of the Secretary of State, as soon as volumes of the reports are delivered to him according to law, to inform each of the Justices of the Supreme Court and each of the Judges of the District and County Courts, that such volumes have been received by him, and that they are ready for distribution ; and it shall be his duty to deliver to each one of said Justices and Judges, upon their application, one volume of all numbered volumes, as he may receive them, which the said Justices and Judges shall hand over to their successors in office.

Volumes of re-
ports presump-
tive evidence of
contents.

§ 7. Each volume of such reports, and no other report or reports, shall be presumptive evidence of all matters and things therein contained in all Courts of Law within this State.

Chap. 91.

AN ACT concerning the County Officers for the County of Santa Clara.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The Judge of the third Judicial district of this State, is hereby authorized to do all acts in relation to the bonds and qualifying of the county officers of the county of Santa Clara, which are directed by law to be done by the County Judge; *Provided*, that the said Judge shall not exercise any such authority after the election and qualification of the County Judge.

Judges of third judicial district authorized to qualify county officers for Santa Clara. Authority when to cease. Extent of act.

§ 2. The provisions of this Act shall extend only to the county officers of the county of Santa Clara, elected on Monday the first day of April in the present year.

Chap. 92.

AN ACT to organize the County Courts.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. There shall be in each county of the State, a Court of Record, to be styled the "County Court of _____ County," according to the name of the county in which it may be held.

County court in each county.

§ 2. The County Judge of each County shall be the Judge of said Court, and shall annually hold, at the county seat of his county, four terms thereof, for the trial of appeals from Justices of the Peace, and such special cases as may be pending therein, which terms shall severally commence on the third Monday of the months of January, April, July, and October, and may continue until all business before the court is disposed of. For the transacting of Probate business, he shall hold a term of the court on the first Monday of each month in the year, which may continue not more than one week.

Judges of courts, and terms thereof.

Term for probate business.

§ 3. In addition to the regular term of the County Court, the Judge may, when in his opinion necessary, hold special terms of the court for the transaction of Probate business: *Provided*, that five days' previous notice be given of such term, by publication in some newspaper, or by notices posted up in at least three public places within the county.

Special terms.

§ 4. If the Judge fail to attend on the first or any subsequent day of any term, the Sheriff shall adjourn the court from day to day for five days, and then, the Judge still failing to attend, he shall adjourn the court to the next regular term.

Judge failing to attend, court may be adjourned.

§ 5. The County Court, at its quarterly terms, shall have jurisdiction in all cases of appeals from the judgments of Justices of the Peace within their county.

Jurisdiction at quarterly terms.

§ 6. The County Judge shall have power to issue, or direct the issuance from his Court, writs of *Habeas Corpus*. He shall also be a conservator of the peace throughout his county, and as such may exercise all the powers conferred upon Justices of the Peace as conservators of the peace.

County judge may issue writs of habeas corpus, and exercise powers of Justices of the Peace. Power of judge during term for probate business.

§ 7. The County Judge, during the terms required to be held for the transaction of probate business, shall have power: First, to open and receive the proof of last wills and testaments, and to admit them to probate. Second, to grant letters testamentary of administration and guardianship, and to revoke the same for causes shown, according to law. Third, to compel executors, administrators, and guardians, to render an account when required, or at the periods fixed by law. Fourth, to order the sale of property of estates, or belonging to minors. Fifth, to order the payment of debts due by estates. Sixth, to order and regulate all partitions. Seventh, to compel the attendance of witnesses; to issue commissions for

taking testimony; to appoint appraisers or arbitrators; to compel parties or other individuals to produce title deeds, papers, or other objects which may be in their possession, belonging to any estate, or to any minor; to exercise all such other powers, not enumerated in this section, as may be necessary in the exercise of the powers of a Probate Judge.

Power of judge out of term.

§ 8. The County Judge shall have power, out of term time, to appoint appraisers; to receive inventories and accounts to be filed in his court; to suspend the powers of executors, administrators, or guardians, in the cases allowed by law; to grant special letters of administration or guardianship; to approve claims and bonds; and to direct the issuance from his court of all writs and processes necessary in the exercise of his powers as a Judge of Probate.

Writs of Injunction, mandamus, attachment, &c., may issue.

§ 9. The County Judge shall have power to issue or direct the issuance from his Court of all writs of Injunction, Mandamus, Attachment, and all other writs and processes known to the law, and necessary to the exercise of the jurisdiction conferred upon the County Court by this Act.

Power to punish for contempt.

§ 10. The County Court shall have power to punish any contempt and enforce obedience to its orders and decrees, in like manner as the District Courts might do; but no punishment for contempt shall exceed a fine of two hundred dollars, or imprisonment for more than two days.

Judge not to sit when interested or related.

§ 11. The County Judge shall not sit in any cause or matter wherein he may be interested, or may be related to any of the parties within the fourth degree of consanguinity or affinity. If a County Judge be disqualified, from any of the causes above enumerated, to try or determine any cause or matter, the same shall be transferred to the nearest County Court of an adjoining County, free from all the objections allowed by law as a cause for a change of venue.

Cause to be transferred.

Clerk of the court.

§ 12. The County Clerk shall be Clerk of said Court; and the Sheriff shall attend upon all the terms thereof, in person, or by deputy, and execute all process directed to him from said Court.

Power to administer oaths.

§ 13. The County Judge and County Clerk shall have power to administer oaths and affirmations, in matters connected with the business of the County Court.

Court to have a seal.

§ 14. The County Court shall have a seal, to be devised by the County Judge, and having inscribed around the margin, the words, "County Court of _____ County," according to the name of such county, a description of which shall be filed and recorded in said Court. All process from said Court shall be directed to the Sheriff of the county, signed by the clerk, and, with the exception of subpoenas, be authenticated with the seal of the Court: *Provided*, that, until a seal is obtained, the Clerk may use his private seal.

Process to be signed by clerk, and directed to sheriff.

Chap. 93.

AN ACT concerning the Transfer of certain Records, Conveyances, and Papers.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Certain books of record, &c., to be transferred to recorder.

§ 1. All such books of record of deeds, mortgages, powers of attorney, and other instruments properly belonging in the office of the Recorder, as are required to be transferred to each County Clerk by the thirty-ninth section of an Act, approved February 28, 1850, entitled "An Act to supersede certain Courts, and to regulate appeals therefrom to the Supreme Court," shall be transferred by such County Clerk to the Recorder of his County, within ten days after the same shall have come into his possession.

Recorder to preserve such books.

§ 2. Each County Recorder shall keep and preserve as part of his records, the records, mortgages, powers of attorney, and instruments so transferred.

Chap. 94.

AN ACT to amend "*An Act to organize the Supreme Court of California.*"

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The eighth section of the Act entitled an "Act to organize the Supreme Court of California," which is in the following words, viz. "There shall be held at the City of San Francisco, on the first Monday of March next, a special term of the Supreme Court. And thereafter there shall be held two regular terms at the seat of government in each year severally, to commence on the first Monday of June and December, and to continue until the eighth Saturday thereafter inclusive, unless all causes and proceedings ready for hearing be sooner heard. The terms may, however, be continued until the first day of the next succeeding term, if the Court deem such continuance necessary; and the said Court shall have power at any time during the term to adjourn for any number of days not exceeding ten," is hereby amended, so that the same shall read as follows, viz. There shall be held at the City of San Francisco on the first Monday of March next, a special term of the Supreme Court, and the first two regular terms thereafter shall be held at the said City of San Francisco, severally to commence on the first Monday of June and December, and to continue until the eighth Saturday thereafter inclusive; unless all causes and proceedings ready for hearing be sooner heard. The terms may, however, be continued until the first day of the succeeding term, if the Court shall deem such continuance necessary, and the said Court shall have power at any time during the term to adjourn for any number of days not exceeding ten: *Provided*, that, after the above named terms, the Court shall hold its sessions at the seat of government.

Sec. 8 of chap. 15 unamended.

Chap. 95.

AN ACT adopting the *Common Law*.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

The Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the Courts of this State.

Common law of England to rule decisions of courts.

Chap. 96.

AN ACT to regulate *Descents and Distributions*.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. When any person, having title to any estate not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her

Estates of Intestates—how distributed.

debts, in the following manner: 1. If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife, and child, or issue of such child. If there be a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child, by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation. 2. If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife, and to the intestate's father. If he or she shall leave no issue, or husband or wife, the estate shall go to his or her father. 3. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister, by right of representation: *Provided*, that if he or she shall leave a mother also, she shall take an equal share with the brothers and sisters. 4. If the intestate shall leave no issue, nor husband nor wife, nor father, and no brother or sister living at his or her death, the estate shall go to his or her mother, to the exclusion of the issue, if any, of deceased brothers or sisters. 5. If the intestate shall leave a surviving husband or wife, and no issue, and no father, mother, brother, or sister, the whole estate shall go to the surviving husband or wife. 6. If the intestate shall leave no issue, nor husband, nor wife, and no father, mother, brother, nor sister, the estate shall go to the 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 claimed through the nearest ancestors shall be preferred to those claiming through an ancestor more remote: *Provided*, however, 7. If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die, under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation. 8. If, at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally, otherwise they shall take according to the right of representation. 9. If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the State, for the support of common schools.

Illegitimate child may be heir in certain events.

§ 2. Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them, intestate, and without issue, the others shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the said children, as provided hereinbefore, in like manner as if all had been legitimate. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

Estate of illegitimate child dying intestate without issue—how distributed.

§ 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease; to her heirs at law.

- § 4. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance. Degrees of kindred—how computed.
- § 5. Any estate, 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 as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child, or other lineal descendant, towards his share of the estate of the intestate. Advancement in lifetime of intestate to be considered in distributing his estate.
- § 6. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased. Where advancement exceeds the share of party to whom advanced, he is to be excluded from further portion.
- § 7. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such, by the child or other descendant. What gifts to be deemed advancements.
- § 8. If the value of the estate so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value, in the division and distribution of the estate: otherwise, it shall be intimated according to its value when given, as nearly as the same can be ascertained. Value of advancements—how estimated.
- § 9. If any child, or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly, by the representatives of the heirs so advanced, in the like manner as if the advancement had been made directly to them. Effect of advancement where party so advanced dies before intestate, leaving issue.
- § 10. The provisions of this Act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate. Inheritance by husband and wife from each other.
- § 11. Inheritance or succession "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents. Where inheritance by right of representation takes place.

Chap. 97.

AN ACT for the better regulation of the Mines, and the government of Foreign Miners.

Passed April 13, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

- § 1. No person who is not a native or natural born citizen of the United States, or who may not have become a citizen under the treaty of Guadalupe Hidalgo (all native California Indians excepted), shall be permitted to mine in any part of this State, without having first obtained a license so to do according to the provisions of this Act. Certain persons not to mine without a license.
- § 2. The Governor shall appoint a Collector of Licenses to foreign miners for each of the mining counties, and for the county of San Francisco, who, before entering upon the duties of his office, shall take the oath required by the Constitution, and shall give his bond to the State with at least two good and sufficient sureties, conditioned for the faithful performance of his official duties, which bond shall be approved by the Governor, and filed in the office of the Secretary of State. Collector of licenses to be appointed.
- § 3. Each Collector of Licenses to foreign miners shall be commissioned by the Governor. Collector to be commissioned.
- § 4. It shall be the duty of the Comptroller to cause to be printed or engraved a sufficient number of licenses, which shall be numbered consecutively, and shall be in form following, to wit : Licenses to be printed or engraved.

Form of license. "Number —. (Date.) A. B., a citizen of —, age — years, complexion —, is hereby licensed to work in the mines of California for the period of thirty days."

License to be countersigned. The Comptroller shall countersign each of such licenses, and shall transfer them to the Treasurer, keeping an account of the number so transferred.

Licenses to be delivered to collector—his liability therefor. § 5. The Treasurer shall sign and deliver to each Collector of Licenses to foreign miners so many of the licenses mentioned in the preceding section as he shall deem proper, and shall take his receipt for the same and charge him therewith. Such collector and his sureties shall be liable upon his bond for the number so furnished him, either for their return or the amount for which they may be sold; and the moneys collected, as herein provided, shall be paid into the treasury as prescribed in this Act.

Amount to be paid for license. § 6. Every person required by the first section of this Act to obtain a license to mine, shall apply to the Collector of Licenses to foreign miners, and take out a license to mine, for which he shall pay the sum of twenty dollars per month; and such foreigners may from time to time take out a new license, at the same rate per month, until the Governor shall issue his proclamation announcing the passage of a law by Congress, regulating the mines of precious metals in this State.

Persons requiring to be licensed and not taking out license, to be stopped from mining. § 7. If any such foreigner or foreigners shall refuse or neglect to take out such license by the second Monday of May next, it shall be the duty of the Collector of Licenses to foreign miners of the county in which such foreigner or foreigners shall be, to furnish his or their names to the Sheriff of the county, or to any Deputy Sheriff, whose duty it shall be to summon a posse of American citizens, and, if necessary, forcibly prevent him or them from continuing such mining operations.

Continuing to mine after being stopped a misdemeanor. § 8. Should such foreigner or foreigners, after having been stopped by a Sheriff or Deputy Sheriff from mining in one place, seek a new location and continue such mining operations, it shall be deemed a misdemeanor, for which such offender or offenders shall be arrested as for a misdemeanor, and he or they shall be imprisoned for a term not exceeding three months, and fined not more than one thousand dollars.

Licensed foreigner may work mines anywhere. § 9. Any foreigner who may obtain a license in conformity with the provisions of this Act, shall be allowed to work the mines anywhere in this State, under the same regulations as citizens of the United States.

Register of persons taking out licenses to be kept. § 10. It shall be the duty of each Collector of Licenses to foreign miners to keep a full and complete register of the names and description of all foreigners taking out licenses, and a synopsis of all such licenses to be returned to the Treasurer.

Licenses to be endorsed and not to be transferable. Collector's compensation. § 11. Each license, when sold, shall be endorsed by the Collector selling or issuing the same, and shall be in no case transferable; and the Collector may retain, out of the money received for each license, the sum of three dollars, which shall be the full amount of his compensation.

Collectors to settle accounts every two months. § 12. Each Collector of Licenses to foreign miners shall, once in every two months, and oftener, if called upon by the Treasurer, proceed to the seat of government, settle with the Treasurer, pay over to that officer all moneys collected from foreigners not before paid over, and account with him for the unsold licenses remaining in his hands.

Collector failing to perform his duty. § 13. If any Collector shall neglect or refuse to perform his duty as herein provided, it shall be the duty of the Comptroller, upon receiving a notice thereof from the Treasurer, to give information thereof to the District Attorney in whose district said officer may have been appointed, who shall bring an action against such Collector and his sureties upon his bond, before any court of competent jurisdiction; and upon recovery had thereon, the said District Attorney shall receive for his services ten per cent. upon the amount collected, the balance to be paid by him into the Treasury in the manner provided by law for like payments.

Collectors—when to stop the issuing of licenses. § 14. It shall be the duty of the Governor, so soon as he shall have been officially informed of the passage of a law by the United States Congress, assuming the control of the mines of the State, to issue his proclamation, requiring all Collectors of Licenses to foreign miners to stop the issuing of licenses.

Act to be printed and distributed, and published in newspapers. § 15. It shall be the duty of the Secretary of State, immediately after the passage of this Act, to have two thousand copies each, in English and Spanish, printed and sent to the mining districts for circulation

among the miners, and also to have the same published for thirty days in the Pacific News at San Francisco, and in some newspaper at Sacramento City and at Stockton.

Chap. 98.

AN ACT to incorporate the City of San Francisco.

Passed April 15, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

ARTICLE I.

OF BOUNDARIES, GENERAL POWERS, AND FORMATION OF WARDS.

§ 1. The boundaries of the City of San Francisco shall be as follows: The southern boundary shall be a line two miles distant, in a southerly direction, from the centre of Portsmouth Square, and which line shall be parallel to the street known as Clay street. The western boundary shall be a line one mile and a half distant, in a westerly direction, from the centre of Portsmouth Square, and which line shall be parallel to the street known as Kearney street. The northern and eastern boundaries shall be the same as those of the county of San Francisco: but nothing in this section shall be construed to divest or in any manner prejudice any right or privilege to which the City of San Francisco may be entitled beyond the limits above described.

Boundaries of city.

§ 2. The inhabitants of the City of San Francisco, within the limits above described, shall be, and they are hereby constituted, a body politic and corporate in fact and in law, by the name and style of "The City of San Francisco;" and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended in all courts of law and in all actions whatsoever; may grant, purchase, hold, and receive property, real and personal, within said city; may lease, sell, and dispose of the same for the benefit of the City; may purchase, hold, and receive property, real and personal, beyond the limits of the city, to be used for burial purposes, also for the establishment of a hospital for the reception of persons affected with contagious or other diseases, also for a workhouse or house of correction, also for the erection of waterworks to supply the city with water, and may sell, lease, or dispose of the same for the benefit of the city; and they shall have and use a common seal, and may alter or break the same, and make a new seal at pleasure.

Incorporation and style of city corporate powers, &c.

§ 3. The City of San Francisco shall be divided into eight wards, which shall not be altered, increased, or diminished in number except by action of the Legislature, so that each ward shall contain, as near as may be, the same number of white male inhabitants. The first Council elected under this Charter shall divide the city into wards, and fix the boundaries thereof, in accordance with this section.

City to be divided into eight wards.

ARTICLE II.

OF THE GOVERNMENT OF THE CITY, AND THE ELECTION AND DUTIES OF OFFICERS.

§ 1. For the government of the City there shall be elected a Mayor, Recorder, and a Board of Aldermen, and a Board of Assistant Aldermen, which two Boards shall be styled the "Common Council;" and each Board shall consist of one member from each ward. There shall also be elected by the city a Treasurer, Comptroller, Street Commissioner, Collector of City Taxes, City Marshal, and City Attorney, and by each ward two Assessors. No person shall be eligible to any of said offices, nor to any other office which may be established by ordinance, nor shall any person be entitled to vote for the same, who shall not be a qualified elector according to the Constitution and laws of this State, and

Officers.

Who qualified as officers
Who qualified to vote for officers.

who shall not have resided in the city and in the ward or district for which he shall be elected or offer to vote, for thirty days next preceeding the election.

Proceedings of boards of aldermen and assistants, and their powers.

§ 2. The two Boards, elected under this Act, shall assemble within five days after their election, and be qualified, and each Board shall appoint, from its own body, a presiding officer, and choose its own Clerk and other Officers. In case of the absence of the President, they may elect a President *pro tem.* who shall have all the powers and perform all the duties of President; they shall by ordinance fix the times and places for holding their stated meetings, and may be convened by the Mayor at any time; a majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as they may previously by ordinance have prescribed; they shall judge of the qualifications, elections, and returns of their own members, and the other officers elected under this Act; they may determine contested elections; they may determine rules for their own proceedings, punish any member, or other person, for disorderly conduct in their presence; and, with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause. They shall keep a journal of their proceedings, and, at the desire of any member, shall cause the yeas and nays to be taken and entered, on any question; and their proceedings shall be public.

To keep a journal, and proceedings to be public.

Vacancies—how filled.

§ 3. All vacancies that may occur shall be filled by election in such manner as shall be prescribed by ordinance.

General election for corporate officers.

§ 4. The general election for all the Officers of the Corporation, required to be elected by this Act or any ordinance of the City, shall be held on the Fourth Monday of April in each year.

Elections for city officers to be by ballot.

§ 5. At all elections for City Officers the voters shall vote by ballot, and only in the Wards where they respectively reside.

Common council to order elections and give notice of time and place, &c. Conduct of elections.

§ 6. It shall be the duty of the Common Council to order all elections; to designate the places of holding the same; to give at least ten days' notice thereof; and to appoint Inspectors of Election at each place of voting. The elections shall be conducted according to the provisions of the "Act to regulate Elections." If any Inspector shall fail to attend, the electors present may appoint another in his stead. The returns of all elections shall be made to the Common Council, who shall publicly examine and declare the result thereof, and give certificates of election to the persons chosen: *Provided*, that the first election to be held under this charter shall take place at such time and place as the County Clerk elect may direct, a notice of ten days being first given by him. Immediately upon the passage of this Act, the Governor shall cause a certified copy thereof to be transmitted to the said County Clerk elect of the County of San Francisco, who shall thereupon, without delay, give the said required notice of ten days, and shall designate the places of holding said election, and appoint Inspectors. The returns of such election shall be made to said County Clerk elect, who shall declare the result, and give certificates of election to the persons chosen to the several offices. At the first election eight Aldermen, and eight Assistant Aldermen, and eight Assessors only, shall be chosen by the City at large, and the qualifications required by Section One of this Article, as to residence in any Ward or District, shall not be deemed to apply. The officers chosen shall hold office until the Fourth Monday of April next, and until their successors are elected and qualified.

Election returns to common council, and their duty. First election under charter.

Who to be declared duly elected.

§ 7. The persons who shall have received a plurality of votes shall be declared duly elected, and the inspectors of election may also give certificates of election until the Common Council shall have examined the returns and declared the result according to the preceding sections.

Elections—where not to be held.

§ 8. No election shall be held in any grog-shop or other place where intoxicating liquors are vended.

Time of continuance of elections.

§ 9. All elections for City Officers shall continue but one day, and during that day from sunrise till sunset; the polls shall not be closed under any pretence whatsoever.

Mayor, at least once a year, to make general statement to common council of condition of city.

§ 10. It shall be the duty of the Mayor to communicate to the Common Council at least once in each year, and oftener if he shall deem it expedient, a general statement of the situation and condition of the City in relation to its government, finances, and improvements, to recommend to the Common Council

the adoption of all such measures connected with the police, security, the public health, cleanliness, and ornament of the City, and the improvement of the government and finances as he shall deem expedient ; to be vigilant and active in causing the laws and ordinances of the City government to be duly executed and enforced ; to exercise a constant supervision and control over the conduct and acts of all subordinate officers ; to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the Common Council, who shall act upon the same ; and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filled as is hereinafter mentioned ; and the Mayor shall generally perform all such duties as may be prescribed to him by the charter and City ordinances, and the laws of this State and the United States.

Other duties of mayor.

§ 11. The Recorder, as to the offences committed within the City, shall have the like jurisdiction as is or may be conferred upon Justices of the Peace, and shall have the same power as a Justice of the Peace to examine and commit persons brought before him and charged with the commission of offences within the limits of the City ; to take recognisances to appear and keep the peace ; and to issue all such writs and processes as a Justice of the Peace may lawfully do, subject to all the rules governing Justices of the Peace.

Jurisdiction of recorder over offences committed within the city.

§ 12. The Recorder shall also have jurisdiction over all violations of the City ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison persons found guilty of any violation thereof.

Further jurisdiction of recorder.

§ 13. It shall be the duty of the City Marshal, in addition to the duties prescribed to him by the Common Council, to execute and return all processes issued by the Recorder, or directed to him by any legal authority, and to attend upon the Recorder's Court regularly ; he may appoint one or more deputies, who shall possess the same power and authority as the Marshal ; he shall arrest all persons guilty of a breach of the peace and of violation of the City ordinances, and bring them before the Recorder for trial ; and he shall possess superintending control over the City Police.

Duties of city marshal.

§ 14. It shall be the duty of the Assessors, in addition to the duties that may be prescribed to them by the Common Council, to make out within such time as the Common Council shall order, a correct list of all the property taxable by law within the limits of the said City, with the valuation thereof ; which list, certified by them, shall be returned to the Common Council. The mode of making out said list and of ascertaining the value of property, and of collecting all taxes, shall be the same as that prescribed by the law for assessing and collecting the State tax.

Duties of assessors.

§ 15. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the city may be legally interested ; to give his advice or opinion in writing, whenever required by the Mayor or Common Council ; and to do and perform all such things touching his office as by the Common Council may be required of him.

Duties of city attorney.

§ 16. It shall be the duty of the Treasurer to receive all moneys that shall come to said city, either by taxation or otherwise, and to pay the same out, under such restrictions and regulations as the Common Council shall by ordinance direct, and to do and perform all such other acts as shall be prescribed to him by the Common Council. He shall, on the first day of January, April, July, and October of each year, make out and present to the Mayor, a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor shall cause to be published in the manner to be prescribed by ordinance.

Duties of treasurer.

§ 17. All city officers, before entering upon the duties of their office, shall take the oath of office ; the Marshal, Attorney, Assessor, and Treasurer, shall also give bond, with sureties, to be approved by the Mayor, payable to the Corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office ; and the like bond may be required of any officer whose office may be created by ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

City officers to take oath of office, and certain to give bond.

When office to be deemed vacant.

§ 18. If any person elected to any city office shall remove from the city, absent himself therefrom for more than thirty days, without leave from the Common Council, or shall fail to qualify within ten days after the day of election, his office shall be deemed vacant.

When officers to qualify.

§ 19. The Mayor, Recorder, Board of Aldermen, and Board of Assistant Aldermen, shall be qualified within three days after their election, and shall enter upon the discharge of their duties. All other officers elected under this Act shall qualify within ten days after the day of election; all officers required to be elected under this Act shall hold their offices for one year, or until their successors are duly qualified.

Common council to define duties of certain officers

§ 20. It shall be the duty of the Common Council to define the duties of the Comptroller, Street Commissioner, Collectors, and all other officers whose duties are not herein defined.

ARTICLE III.

OF THE POWERS OF THE COMMON COUNCIL.

Powers of mayor and common council within the city.

§ 1. The Mayor and Common Council shall have power within the city :

1. To make by-laws and ordinances not repugnant to the Constitution and laws of the United States or of this State.
2. To levy and collect taxes not exceeding one per cent. per annum, upon all property made taxable by law for State purposes.
3. To borrow money and pledge the faith of the city therefor, provided the aggregate amount of the debts of the city shall never exceed three times its annual estimated revenues.
4. To make regulations to prevent the introduction of contagious and other diseases into the city.
5. To establish hospitals, and make regulations for the government of the same, and to secure the general health of the inhabitants.
6. To prevent and remove nuisances.
7. To erect waterworks either within or beyond the limits of the corporation, and provide the city with water.
8. To provide for licensing any and all business not prohibited by law.
9. To provide for the erection of all public buildings for the use of the city.
10. To establish, erect, and keep in repair bridges, culverts, and all other useful improvements, and regulate the use of the same.
11. To provide for lighting the streets, and erecting lamps thereon.
12. To license, tax, and regulate auctioneers, grocers, merchants, retailers, and taverns, to be proportioned to the amount of business done by each person, and to license, tax, regulate, and suppress ordinaries, hawkers, pedlars, brokers, pawnbrokers, and money changers.
13. To license and regulate porters, and fix the rates of portorage.
14. To license, tax, and regulate hackney carriages, wagons, carts, drays, and omnibuses, and fix the rates to be charged for the carriage of persons, and the wagonage, cartage, and drayage of property.
15. To license, tax, regulate, and restrain bar-rooms, theatrical and other exhibitions, shows, and amusements.
16. To license, tax, restrain, prohibit, and suppress billiard tables, tippling houses, gaming, and gambling houses, and to suppress bawdy houses.
17. To erect market houses, establish markets and market places, and to provide for the government and regulation thereof.
18. To provide for the prevention and extinguishment of fires, and to organize and establish fire companies.
19. To regulate and prevent the carrying on of manufactures dangerous in causing or producing fires; to appoint fire wardens and property guards, and to compel any person or persons present to aid in extinguishing such fires or in the preservation of property exposed to danger in time of fire, and by ordinance to prescribe such other powers and duties as may be necessary on such occasions.

20. To regulate the weight, quality, and price of bread to be sold within the city.

21. To provide for the appointment of all necessary officers, servants, and agents of the corporation, not otherwise provided for.

22. To establish and fix the salaries of the Mayor and all other City Officers, fix a tariff of fees for the officers entitled to such, designating the fee which shall be allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the Common Council.

23. To establish and regulate a police.

24. To impose fines, forfeitures, and penalties, for the breach of any ordinance.

25. To erect a workhouse or house of correction, and provide for the regulation and government thereof.

26. To remove all obstructions from the side walks, and to provide for the construction, repair, and cleaning of the same and of the gutters.

27. To establish, support, and regulate night watch and patrols.

28. To erect, repair, and regulate public wharves and docks; to regulate the erection and repair of private wharves, and to fix the rates of wharfage thereat.

29. To appropriate money for any item of city expenditure, and to provide for the payment of the debts and expenses of the city.

30. To open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve, clean, and keep in repair streets and alleys; but no private property shall be taken without just compensation, as hereinafter provided for.

31. To regulate the storage of gunpowder, tar, pitch, resin, and all other combustible materials; and the use of candles and lights in shops, stables, and other places; to prevent or remove any fire-place, stove, chimney, oven, boiler, or other apparatus which may be dangerous in causing or promoting fires.

32. To regulate and prescribe the manner of building partition walls and fences.

33. To impose and appropriate fines, forfeitures, and penalties for the breach of any ordinance, and to provide for the punishment of breaches of the city ordinances; but no fine shall be imposed of more than five hundred dollars, and no offender shall be imprisoned for a longer term than ten days.

34. To prevent and restrain any riot, rout, noise, disturbance, or disorderly assemblage in any street, house, or place in the city.

§ 2. Every ordinance which shall have been passed by the Common Council, shall, before it becomes effective, be presented to the Mayor for his approbation; if he approves, he shall sign it; if not, he shall return it with his objections in writing to the Common Council, who shall cause the same to be entered on its Journals, and shall proceed to reconsider the same; if after such reconsideration, two thirds of all the Members of each Board of the Common Council elect, shall agree to pass the same, it shall become an ordinance. In all such cases, the vote shall be taken by yeas and nays, and the names of the Members voting for and against the same shall be entered on the Journal. If any ordinance shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become effective as if the Mayor had signed it.

Ordinances to be approved by mayor.

When ordinance may pass without being approved by mayor.

§ 3. All accounts and demands against the city shall be audited, and paid in manner to be provided by the Common Council. The certificate shall be drawn upon the Treasurer of the city, and shall specify the fund out of which the same is payable. The Treasurer shall pay the same out of any money in his hands belonging to said fund.

Common council to provide for payment of demands on city.

§ 4. The style of the city ordinances shall be as follows: "The People of the City of San Francisco do ordain as follows." The President of the Board of Aldermen shall exercise the duties and receive the compensation of Mayor, whenever, and so long as, from any cause, said office of Mayor shall be vacant, or the Mayor be absent from the City.

Style of city ordinances. Vacancies in office of mayor—how supplied.

ARTICLE IV.

OF LAYING OUT, CHANGING, AND IMPROVING STREETS.

Private property may be taken for streets.

§ 1. Whenever it becomes necessary for the Corporation to take private property for the purpose of laying out or altering streets or alleys, and the Common Council cannot agree with the owner as to the price to be paid, the Council may direct proceedings to be taken to ascertain the value of such property.

Petition for commission to ascertain value of property. Notice to owner of such petition.

§ 2. To determine such value, a petition, in the name of the Corporation, shall be presented to the County Court at a regular term, particularly describing the property, and praying the appointment of Commissioners to ascertain its value. If the owner is a resident of the County, he shall have personal notice of the application, and of the time at which it will be presented. If he be a non-resident of the county, the notice shall be given by publication for at least one month in some daily newspaper printed in the county, and a copy of such notice shall be sent to him, if his place of residence can be ascertained.

Court to be satisfied that due notice has been given.

§ 3. The Court, before hearing the application, shall have satisfactory evidence that notice, as required in the preceding section, has been given. When the owner is a non-resident of the county, the Court may adjourn the application for such time as may be reasonable, and may direct further notice to be given.

Five commissioners to report on value.

§ 4. When satisfied that sufficient notice has been given, the Court shall, by entry in its minutes, appoint five disinterested persons as Commissioners, to ascertain the compensation, specifying in the entry the time and place for the first meeting of the Commissioners.

Commissioners to determine amount to be paid for property and costs, &c., and give certificate thereof.

§ 5. The Commissioners shall be sworn to discharge their duties faithfully and impartially. They shall view the premises, and ascertain and certify the compensation proper to be paid to the owner for the property to be taken, and may, in their discretion, assess a reasonable sum, to be paid to the owner for costs and expenses. They, or a majority of them, shall make, subscribe, and file with the County Clerk, a certificate of their assessments. The Court, upon such certificate, and due proof that the amount determined has been paid to the party interested or into Court, shall cause an entry to be made in its minutes, describing the property, setting forth the ascertainment of compensation and the payment as aforesaid.

On proof of payment by commissioners, their certificate to be entered on minutes of court.

Such entry to vest title in the corporation. Certified copy of entry to be recorded.

§ 6. Upon such entry being made, the Corporation shall be entitled to use and occupy the property, as fully as if conveyed to it by the owner. A certified copy of this entry shall be recorded in the Recorder's office of the county, in the like manner and with the like effect as if it were a deed of conveyance from the owner.

Common council desiring to alter any street, to give notice to owners of property.

§ 7. Whenever it is desired by the Common Council to pave, grade, light, water, or otherwise alter or improve any street or lane, they shall first give a notice of ten days thereof to all the owners of the land opposite which the making of the said alteration or improvement shall be contemplated. And such notice shall be given to said owners in person, if they can be found; but if they cannot be found, then by posting the same upon a conspicuous part of the said land of such person, and by publishing the said notice in some daily paper for ten successive days. If one third of all the owners of said land opposite which the alteration or improvement shall be contemplated shall, within the period of notice above required, make to the Common Council in writing a protest against said alteration or improvement, the same shall not be made, nor again be proposed for thirty days; and should such protest not be made as above, the Common Council may make such contemplated alteration or improvement, and one third of all the expense of the same shall be paid out of the city treasury, and the remaining two thirds shall be paid in equal proportions by the land on both sides of the street or lane, and opposite to which such alteration or improvement shall be made; and whenever three fourths of all the persons owning land in any street or lane, or any section thereof, shall apply to the Common

One third of owners objecting, alteration not to be made.

Owners not objecting, alterations to be made.

Expense of alteration.

Three fourths of owners requiring alterations.

Council for any alteration or improvement, the same shall be made by the Common Council on the terms above mentioned: *Provided*, there shall be funds in the city treasury not otherwise appropriated.

ARTICLE V.

MISCELLANEOUS PROVISIONS.

§ 1. Upon the passage of all bills appropriating money, imposing taxes, increasing, lessening, or abolishing licenses, or for borrowing money, the yeas and nays shall be entered on the Journals.

On passage of certain bills, yeas and nays to be entered in Journal.

§ 2. A majority of all the members elected shall be necessary to pass a tax bill, bills appropriating for any purpose the sum of five hundred dollars or upwards, and bills in anywise increasing or diminishing the city revenue.

Certain bills can only be passed by a majority of all the members.

§ 3. The Mayor may call special sessions of the Common Council at any time by proclamation. And he shall state to them, when assembled, the cause for which they have been convened.

Special sessions of common council.

§ 4. When two or more persons have an equal and the highest number of votes for the office of Mayor, the Common Council shall decide the election by joint ballot.

Election of mayor where two or more have equal number of votes.

§ 5. All resolutions and ordinances calling for the appropriation of any sum of money exceeding fifteen thousand dollars, shall lie over for the space of ten days, and be published for one week in at least one public daily paper.

Certain resolutions and ordinances to lie for ten days and be advertised.

§ 6. No member of the City Council shall, during the period for which he is elected, be interested in any contract, the expenses of which are to be paid out of the public treasury.

Members of council not to be interested in contracts.

§ 7. The Legislature may at any time alter, amend, or repeal this charter.

Charter may be amended.

§ 8. The city shall not at any time become a subscriber for any stock in any corporation.

City not to subscribe for stock.

§ 9. The fiscal year of the city shall terminate on the first day of June in each year.

Fiscal year.

§ 10. The City Council shall cause to be published, within one month after the end of each fiscal year, a full, complete, and detailed statement of all moneys received and expended by the corporation during the preceding fiscal year, and on what account received and expended, classifying each receipt and expenditure under its appropriate head.

City council to publish annually an account of receipts and payments.

§ 11. All the powers and functions of Prefect, Sub-Prefect, Alcaldes, Second Alcaldes, the Ayuntamiento, and all other officers whatsoever, heretofore exercising authority in the Municipal Government of the Pueblo of Yerba Buena, or San Francisco, or city of San Francisco, shall cease and determine from and after the day on which the officers prescribed by this Act shall be duly elected and qualified.

Power of existing municipal officers to cease.

Chap. 99.

AN ACT concerning Crimes and Punishments.

Passed April 16, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

FIRST DIVISION.

PERSONS CAPABLE OF COMMITTING CRIMES.

§ 1. In every crime or public offence there must be an union or joint operation of act and intention, or criminal negligence.

Essence of a crime.

§ 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

Intent—how manifested.

§ 3. A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years: or before that age, if such person knew the distinction between good and evil.

Who considered of sound mind.

Infant under
fourteen.
Idiots.

§ 4. An infant under the age of fourteen years shall not be found guilty of any crime.

§ 5. An idiot shall not be found guilty or punished for any crime with which he or she may be charged.

Counselling in-
fant or idiot to
commit any
offence.

§ 6. Any person counselling, advising, or encouraging an infant under the age of fourteen years, a lunatic or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal, and if found guilty shall suffer the same punishment that would have been inflicted on such person counselling, advising, or encouraging, as aforesaid, had he or she committed the offence directly, without the intervention of such idiot, lunatic, or infant.

Married woman
acting under
coercion of hus-
band.

§ 7. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death; *Provided*, it appear from all the facts and circumstances of the case that violent threats, command, or coercion, were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would have otherwise been inflicted on the wife if she had been found guilty.

Drunkenness not
to excuse crime,
except, &c.

§ 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offence, in which case the person or persons so causing said drunkenness for such malignant purpose shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they had been possessed of sound reason and discretion.

Act done by mis-
fortune or acci-
dent.

§ 9. All acts committed by misfortune or accident shall not be deemed criminal when it satisfactorily appears that there was no evil design or intention or culpable negligence.

Crimes com-
mitted under
duress.

§ 10. A person committing a crime not punishable with death, under threats or menaces which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe and did believe that his or her life was in danger, shall not be found guilty, and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces the commission of the offence, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offence.

SECOND DIVISION.

ACCESSORIES IN CRIMES.

Accessory de-
fined.

§ 11. An accessory is he or she who stands by and aids, abets, or assists; or who not being present aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

Accessory after
fact defined.

§ 12. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

Punishment.

THIRD DIVISION.

WHO MAY BE A WITNESS IN CRIMINAL CASES.

Party injured
may be witness.

§ 13. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury as in other cases.

Blacks, mulat-
toes, and In-
dians, when not
to be witnesses.
Mulatto and
Indian defined.

§ 14. No black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part or more of Negro blood shall be deemed a mulatto, and every person who shall have one half of Indian blood shall be deemed an Indian.

§ 15. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury. Affirmation.

FOURTH DIVISION.

CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

§ 16. Crimes against the Government and People shall consist in treason and misprision of treason, and can be committed only by persons owing allegiance to the State. Crimes against government, &c.

§ 17. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court. The punishment of treason shall be death. When the overt act of treason shall be committed without the limits of this State, the person charged therewith may be arrested, tried, and punished in any County of this State within the limits of which he may be found, and the offence may be charged to have been committed in the County where he may be arrested. Treason against state.

§ 18. Misprision of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the crime. Any person being found guilty thereof shall be punished by confinement in the State Prison for any term not exceeding five years. Misprision of treason.

FIFTH DIVISION.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

§ 19. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned. Murder defined.

§ 20. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Express malice defined.

§ 21. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person convicted of the crime of murder shall be death. Malice—when to be implied.

§ 22. Manslaughter is the unlawful killing of a human being without malice expressed or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection. Manslaughter defined.

§ 23. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. Voluntary manslaughter.

§ 24. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder. Manslaughter—when to be punished as murder.

§ 25. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do; in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner; *Provided*, that where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder. Involuntary manslaughter defined.

§ 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the State prison for a term not exceeding three years, and fined not exceeding five thousand dollars. Punishment for manslaughter.

Death of party injured after a year and a day. Computation of time.

§ 27. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Place of trial.

§ 28. If the injury be inflicted in one County and the party die within another County or without the State, the accused shall be tried in the County where the act was done, or the cause of death administered. If the party killing shall be in one County, and the party killed be in another County at the time the cause of death shall be administered, the accused may be tried in either County.

Justifiable homicide defined.

§ 29. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

What not a sufficient justification.

§ 30. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in self-defence—when justifiable.

§ 31. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

When officer or private person justified in killing assailant.

§ 32. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance he or she be killed, the officer or private person so killing shall be justified: *Provided*, that such officer or private person previous to such killing shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Justifiable homicide further defined.

§ 33. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable homicide by misadventure defined.

§ 34. Excusable homicide by misadventure is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

Further definition.

§ 35. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

When accused to be acquitted.

§ 36. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Mitigating circumstances to be proved by accused.

§ 37. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution

sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

§ 38. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not; every such mother being convicted thereof shall suffer imprisonment in the County Jail for a term not exceeding one year: *Provided*, however, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Woman concealing death of bastard child.

Not to prevent indictment for murder.

§ 39. The distinction between petit treason and murder is abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and, if convicted, punished accordingly.

Distinction between petit treason and murder abolished.

§ 40. If any person shall, by previous appointment or agreement, fight a duel, and in so doing shall kill his antagonist or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counsellors, being thereof duly convicted, shall be punished by imprisonment in the State Prison for any term not exceeding five years nor less than one year.

Punishment for duelling where death ensues.

§ 41. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be punished by imprisonment in the State Prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

Challenging to fight a duel.

§ 42. If any person shall willingly and knowingly carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid as a second, or aid or give countenance thereto, such person being duly convicted thereof, shall be punished by imprisonment in the State Prison for any term not exceeding three years nor less than one year, and be fined in any sum not exceeding one thousand dollars.

Delivering a challenge or being present at a duel.

§ 43. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the County Jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars.

Posting for not fighting a duel.

§ 44. If any persons shall, without deadly weapons, upon previous concert and agreement, upon any wager, or for money or any other reward, fight one with another, upon conviction thereof, they or either or any of them, and all persons present aiding and abetting, shall be punished by imprisonment in the State Prison for a term not exceeding two years. Should death ensue to any person in such fight, the person or persons causing such death shall be punished by imprisonment in the State Prison for a term not more than ten nor less than three years.

Fighting for reward without deadly weapons.

Where death ensues.

§ 45. Every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than ten years, and which may extend to life. And every person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: *Provided*, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

Administering poison with intent to kill.

With intent to produce abortion.

Physicians not affected.

§ 46. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and

Mayhem defined.

of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction shall be punished by imprisonment in the State Prison for a term not less than one year, nor more than five years.

Rape defined.

§ 47. Rape is the carnal knowledge of a female, forcibly and against her will. Every person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape, and shall be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life.

Punishment for crime against nature.

§ 48. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life.

Assault defined.

§ 49. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Assault with intent to commit murder, rape, mayhem, robbery, or larceny. Assault with deadly weapon.

§ 50. An assault, with an intent to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender to imprisonment in the State Prison for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the State Prison not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

Assault and battery defined.

§ 51. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the County Jail not exceeding one year.

False imprisonment defined.

§ 52. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the County Jail for a term not exceeding one year.

Kidnapping defined.

§ 53. Kidnapping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country, and sending or taking him or her unto another.

What offences to be deemed kidnapping.

§ 54. Every person who shall forcibly steal, take, or arrest, any man, woman, or child, whether white, black, or colored, or any Indian in this State, and carry him or her into another County, State, or Territory, or who shall forcibly take or arrest any person or persons whatsoever with a design to take him or her out of this State, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the State Prison for any term not less than one nor more than ten years for each person kidnapped or attempted to be kidnapped.

Other offences to be deemed kidnapping.

§ 55. Every person who shall hire, persuade, entice, decoy, or seduce by false promises, misrepresentations, and the like, any Negro, mulatto, or colored person, to go out of this State, or to be taken or removed therefrom, for the purpose and with the intent to sell such Negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another without the free will and consent of such Negro, mulatto, or colored person, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof shall be punished as in the next preceding section specified.

SIXTH DIVISION.**OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.****Offence of arson**

§ 56. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail, or

other public building, or any ship, vessel, boat, or other water craft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this State, such person so offending shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the State prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

§ 57. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section with intent to burn or destroy the same, upon conviction thereof, shall be punished by imprisonment in the State prison for any term not exceeding two years.

Wilfully firing buildings, &c.

§ 58. Every person who shall in the night time forcibly break and enter, or without force (the doors and windows being open) enter into any dwelling house, or any other house whatever, or tent, or vessel, or other water craft, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by imprisonment in the State prison for a term not less than one nor more than ten years.

Offence of burglary.

SEVENTH DIVISION.

OFFENCES AGAINST PROPERTY.

§ 59. Robbery is the felonious and violent taking of money, goods, or other valuable thing from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the State prison for a term not less than one year, nor more than ten years.

Robbery.

§ 60. Every person who shall feloniously steal, take, and carry, lead, or drive away the personal goods or property of another, of the value of fifty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the State prison for any term not less than one year, nor more than ten years.

Grand larceny.

§ 61. Every person who shall feloniously steal, take, and carry, lead, or drive away, the personal goods or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punished by imprisonment in the county jail not more than six months, or by fine not more than five hundred dollars, or by both such fine and imprisonment.

Petit larceny.

§ 62. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, or certificates, or warrants for or concerning money, goods, or property due or to become due, or to be delivered; and any deed or writing containing a conveyance of land, or any valuable contract in force, or any receipt, release, or defeasance, or any other instrument whatever, shall be considered as personal goods of which larceny may be committed.

Bonds and certain other writings to be considered personal property.

§ 63. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be imprisoned in the State prison for a term not exceeding five years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished as well before as after the trial of the principal. No person convicted of the offence specified in this section shall be condemned to imprisonment in the State prison, unless the value of the thing bought or received shall amount to fifty dollars, but the same shall be punished as provided in cases of petit larceny.

Receiving stolen goods.

§ 64. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he may find the property.

Stolen property to be restored to owner.

§ 65. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat, or pig, not

Defacing brands on cattle.

his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the State prison for a term not less than one year, nor more than five years.

Embezzlement
by public officer.

§ 66. Every servant, officer, or person employed in any public department, station, or office of the government of this State, or of any county of this State, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record, or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said State, county, or Corporate body, shall, on conviction thereof, be punished by imprisonment in the State prison for a term not less than one year, nor more than ten years.

Officer intrusted
with state
moneys, &c., re-
fusing to pay
over same.

§ 67. If any officer or person who now is, or hereafter may be intrusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues, belonging to this State, to the school fund of this State, to the school fund of any county or township, to any county in this State, to any canal, turnpike, or railroad fund of this State, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other water course bordering on or within this State, or to any other fund now being or hereafter to be established by law, for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect or shall receive, or shall receive for safe keeping, belonging to this State, to any county of this State, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders, ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by imprisonment in the State prison for a term not less than one year, nor more than ten years: *Provided*, that no person shall be imprisoned in the State prison, under this section, unless the money not paid over shall amount to one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall for ever thereafter be disqualified from holding any office of honor, trust, or profit in this State.

Willfully destroy-
ing deeds, &c.

§ 68. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this State, or of the United States, or of any State or Territory for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other power, or any day book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the State Prison for a term not less than one year nor more than five years.

Willfully remov-
ing monuments.

§ 69. Every person who shall wilfully or maliciously remove any monuments of stone, wood, or other durable material, erected for the purpose of designating the corner or any other point in the boundary of any lot or tracts of land, or any post or stake fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument made for the purpose of designating any point, course, or line, in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the County Jail not less than one month, nor more than one year.

§ 70. If any clerk, apprentice, or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or property, shall be intrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the said money, goods, chattels, or property, or any part thereof, with the intent to steal the same and defraud his master or employer thereof, contrary to the trust or confidence in him reposed by his said master or employer, or being in the service of his said master or employer shall embezzle the said moneys, goods, chattels, or property, or any part thereof, or otherwise shall convert the same to his own use with like purpose to steal the same, every such person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, or converted.

Embezzlement
by clerks,
apprentices, or
servants.

§ 71. If any bailee of any money, goods, or property shall convert the same to his own use with intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof shall be punished accordingly.

Bailee of money
or goods convert-
ing same with
intent to steal.

§ 72. If any lodger shall take away with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and on conviction shall be punished accordingly.

Lodgers remov-
ing furniture, &c.

EIGHTH DIVISION.

FORGERY AND COUNTERFEITING.

§ 73. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any comptroller's warrant for the payment of money at the Treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage and defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this State or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this State or not: every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years.

Certain offences
specified deemed
forgeries.

§ 74. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this State, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year, nor more than fourteen years.

Counterfeiting.

Having counterfeit money in possession.

§ 75. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this State, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than one year, nor more than fourteen years.

Having forged notes or bills in possession.

76. Every person who shall have in his possession or shall receive from any other person any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this State or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or blank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in the state or elsewhere, shall, on conviction thereof, be punished by imprisonment in the State Prison for a term not less than one, nor more than fourteen years.

Making, passing, or having possession of fictitious bills, notes, or checks.

§ 77. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this State or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, or copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and on conviction thereof shall be punished by imprisonment in the State prison for a term not less than one, nor more than fourteen years.

Making or having possession of dies, plates, &c., for counterfeiting.

§ 78. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this State, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the State prison for a term not less than one, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, shall be destroyed.

Proof of incorporation of banks, &c., on trials for forgery.

§ 79. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession, with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

May prove forgery by experts.

§ 80. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Counterfeiting seal of state or of any court or officer entitled to use a seal.

§ 81. Every person who shall fraudulently forge or counterfeit the seal of this State, or the seal of any Court or public officer by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the State prison for a term not less than one, nor more than fourteen years.

NINTH DIVISION.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

§ 82. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof shall be punished by imprisonment in the State Prison for any term not less than one nor more than fourteen years.

Perjury and subornation of perjury.

§ 83. Every person who, by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death.

Procuring execution of innocent person by perjury.

§ 84. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any Judge or Justice of the Peace acting within this State, or to corrupt, induce, or influence such Judge or Justice of the Peace to be more favorable to one side than to the other in any suit, matter, or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or other thing, to obtain, procure, or influence any member of the Legislature, or to incline, induce, or influence any such member of the Legislature to be more favorable to one side than to the other on any question, election, matter, or thing pending or to be brought before the Legislature or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the Judge, Justice of the Peace, or Member of the Legislature who shall accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by imprisonment in the State Prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this State.

Bribery of judge, justice of the peace, or member of legislature.

§ 85. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment of any money, present, or reward, or any other thing, to any Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, Member of the Legislature, or other officer, ministerial or judicial (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office or to execute any of the powers in him vested or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, with the intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction thereof shall be punished by imprisonment in the State Prison for a term not less than one year nor more than ten years, and shall be disqualified to hold any office of honor, trust, or profit in this State.

Bribery of certain officers to influence their powers of appointment.

§ 86. Every person who shall offer or attempt to bribe any Member of the Legislature, Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, or other ministerial or judicial officer, in any of the cases mentioned in the two preceding sections, and every Member of the Legislature, Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two

Bribery of officers in certain cases specified.

preceding sections, shall, on conviction, be fined in a sum not exceeding five thousand dollars, and shall be disqualified to hold any office of honor, trust, or profit in this State.

Stealing, altering, or defacing records, &c.

§ 87. If any Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Recorder, or other public officer, or any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognisance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever of or belonging to any public office within this State, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than one nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Inhumanity, &c., to prisoners by sheriff or jailor.

§ 88. Every Sheriff or Jailor who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

Officers on expiration of term of office refusing to deliver records, &c., to successor.

§ 89. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the State Prison for a term not less than one year nor more than ten years. The provisions of this section shall apply to any person or persons who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

Falsely personating another, and doing certain acts in such assumed character.

§ 90. Every person who shall falsely represent or personate another, and in such assumed character shall marry another; become bail or surety for any party in any proceeding civil or criminal, before any Court or Officer authorized to take such bail or surety; or confess any judgment; or acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded; or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable, in any event to the payment of any debt, damages, costs, or sums of money, or his rights or interests may in any manner be affected, shall, upon conviction, be punished by imprisonment in the County Jail not exceeding two years, or by fine not exceeding five thousand dollars.

Falsely personating another, and receiving money intended for him.

§ 91. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner, and to the same extent as for feloniously stealing the money or property so received.

Obstructing officers in serving process.

§ 92. If any person shall knowingly and wilfully obstruct, resist, or oppose any Sheriff, Deputy Sheriff, Coroner, Constable, Marshal, Policeman, or other officer of this State, or other person duly authorized, in serving, or attempting to serve, any lawful process or order of any Court, Judge, or Justice of the Peace, or any other legal process whatsoever, or shall assault or beat any such officer or person duly authorized in serving, or executing, or attempting to serve or execute any order or process as aforesaid, or for having served, or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the County Jail for a term not exceeding five years: *Provided*, any officer or person whatsoever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Rescuing persons convicted of crime.

§ 93. If any person or persons shall set at liberty, or rescue, any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year, nor more

than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the State Prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

§ 94. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable in the State Prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the County Jail not exceeding one year; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

Rescuing persons charged with crime.

§ 95. If any Sheriff, Deputy Sheriff, or Jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the State Prison for a term not exceeding ten years, and fined in a sum not exceeding ten thousand dollars.

Sheriff, deputy sheriff, jailor, voluntarily suffering convict to escape.

§ 96. If any person shall carry to any convict imprisoned or in custody, or into any County Jail or other place where such convict may be confined, any tool, weapon, or other aid with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, and imprisonment in the State Prison not exceeding five years.

Carrying convict instrument to aid his escape.

§ 97. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Rescue of person in custody on civil process.

§ 98. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offence against this State, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made), shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the county jail not exceeding five years.

Aiding prisoner to escape.

§ 99. If any sheriff, coroner, jailor, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for any time not exceeding five years: *Provided*, that, if such prisoner be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by imprisonment in the State Prison, for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offence before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five thousand dollars.

Sheriff or other officer voluntarily suffering prisoner to escape.

§ 100. If any Sheriff, Coroner, Keeper of a Jail, Constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, such Sheriff, Coroner, Jailor, Constable, or other officer so offending, shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail not exceeding five years.

Sheriff or other officer refusing to receive or arrest party charged with crime.

§ 101. Every person having a knowledge of the actual commission of any offence punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution

Taking reward to compromise offence.

Not to apply to certain offences.

therefor, or to withhold any evidence thereof, shall, upon conviction, be fined in any sum not exceeding five hundred dollars, or imprisoned in the County Jail not more than six months: *Provided*, that this section shall not apply to those offences which may lawfully be compromised by leave of court.

Conspiring to commit offence, or indict another for any offence, &c.

§ 102. If two or more persons shall conspire either to commit any offence; or falsely and maliciously to indict another for any offence; or to procure another to be charged or arrested for any such offence; or falsely to move or maintain any suit; or to cheat or defraud any person of any property by any means which, if executed, would amount to a cheat; or to obtain money or property by false pretences; or to cheat or defraud any person of any property by any means which are in themselves criminal; or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the County Jail not more than one year, or by a fine not exceeding one thousand dollars.

Conspiracies not punishable criminally. Agreement not a conspiracy; except, &c.

§ 103. No conspiracies, other than those enumerated in the last section, are punishable criminally.

§ 104. No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof by one or more of the parties to such agreement.

Unlawfully officiating in office of another.

§ 105. If any person shall take upon himself to exercise or officiate in any office or place of another, in this State, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars.

Embracery.

§ 106. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer who shall procure any juror to take money, property, or gain, or shall corruptly influence any juror by persuasion, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the County Jail not exceeding five years; and any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like imprisonment and be for ever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

Judges, Justices, &c., corruptly receiving other than legal fees as a condition to performance of duty.

§ 107. If any Judge, Justice of the Peace, Sheriff, Coroner, Constable, Clerk, or other officer of this State, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to do or execute his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction shall be fined in any sum not exceeding two hundred dollars.

Justice or constable purchasing judgment on docket of such justice.

§ 108. If any Justice of the Peace or Constable of the same township shall, directly or indirectly, purchase any judgment or part thereof on the docket of such Justice, or any docket in his possession, he shall, upon conviction thereof, be fined for each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

Taking reward for granting authority to discharge duties of office.

§ 109. Every person holding or exercising any office under the laws or Constitution of this State, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office and be disabled from holding such office; and every person who shall give, or make any agreement to give, any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not exceeding five thousand dollars.

Sending threatening letter.

§ 110. If any person shall knowingly send or deliver any letter or writing threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failures, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house or other property, or to accuse another of a crime or

misdemeanor, or expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the County Jail not exceeding six months.

§ 111. Every person who shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it shall be addressed; and every person who shall maliciously publish the whole or any part of such letter without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding one thousand dollars.

Opening or reading sealed letter addressed to another, or publishing same without authority.

TENTH DIVISION.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

§ 112. If any person, at late and unusual hours of the night time, shall maliciously and wilfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not more than two months.

Disturbing the peace in the night time.

§ 113. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a Judge, Justice of the Peace, Sheriff, Coroner, Constable, or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not more than six months.

Assembling to disturb the peace, &c., and not dispersing on request.

§ 114. If two or more persons shall by agreement fight in a public place, to the terror of the citizens of this State, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

What shall be deemed an affray.

§ 115. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and upon conviction thereof shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

What shall be deemed an unlawful assembly.

§ 116. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and on conviction shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months.

What shall be deemed a rout.

§ 117. Every person who shall wilfully disquiet or disturb any congregation or assembly of people met for religious worship, by making a noise, or by rude or indecent behavior or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Disturbing assemblies for religious worship.

§ 118. Every person who shall erect or keep a booth, tent, stall, or other contrivance, for the purpose of selling or otherwise disposing of any wine or spirituous or fermented liquors, or any drink of which wine, spirituous, or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars.

Keeping any building for sale of liquor within one mile of any camp meeting, &c.

§ 119. If any Judge, Justice of the Peace, Sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined in a sum not exceeding one thousand dollars.

Justices, &c., not using due exertions to prevent duel.

Libel defined,
and punishment
therefor.

Truth of libel
may be given in
evidence.

§ 120. A libel is a malicious defamation, expressed either by printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule: every person, whether the writer or the publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

ELEVENTH DIVISION.

OFFENCES AGAINST PUBLIC MORALITY, HEALTH, AND POLICE.

Bigamy defined,
and punishment
therefor pre-
scribed.

To what cases
not to apply.

Knowingly mar-
rying a married
person.

Incestuous
marriage or
adultery.

Obstructing or
injuring public
highway or
navigable
stream.

Selling unwhole-
some provisions.

§ 121. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this State, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, and be imprisoned in the County Jail not more than two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when such second marriage shall have taken place without this State, cohabitation in this State, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been, by lawful authority, declared void.

§ 122. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not less than one thousand dollars, or imprisoned in the County Jail not more than two years.

§ 123. Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the State Prison not exceeding ten years.

§ 124. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town, or village, or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, city, town, village, or neighborhood thereabouts: every person so offending shall, upon conviction, be fined not exceeding one thousand dollars; and every such nuisance may, by order of the Court before whom the conviction may take place, or of the District Court, be removed and abated by the Sheriff of the County.

§ 125. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the County Jail not more than six months.

§ 126. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this State, or any proclamation, advertisement, or notification, set up at any place in this State by authority of any law of the United States or of this State, or by order of any Court, such person, on conviction, shall be fined not more than one hundred dollars nor less than twenty dollars, or be imprisoned in the County Jail not more than one month: *Provided*, that this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up shall have expired.

Defacing or tearing down any proclamation, &c.

§ 127. If any person shall be found having upon him or her any picklock, crow, key, bitt, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the County Jail not more than two years; and if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars or imprisoned in the County Jail not more than three months.

Having possession of any instrument with intent to commit a burglary, &c.

§ 128. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus* or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any Sheriff, Deputy Sheriff, Coroner, Constable, Judge, or Justice of the Peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars.

Refusing to join the *posse comitatus*, &c.

TWELFTH DIVISION.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

§ 129. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same or any of them as true and done, had or made in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Fraudulent conveyances to hinder or defraud creditors.

§ 130. If any person, by false representations of his own wealth or mercantile correspondence and connexions, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons obtain credit and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars and imprisoned in the County Jail not more than six months.

Obtaining credit or defrauding by false representations.

§ 131. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person

Obtaining money or goods, &c., by false pretences.

so offending shall be deemed a cheat, and on conviction, shall be fined not exceeding one thousand dollars and imprisoned in the County Jail not more than one year, and be sentenced to restore the property so fraudulently obtained, if it can be done.

Fraudulent selling the same piece of land more than once.

§ 132. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the State Prison not less than one nor more than ten years.

Selling by or using false weights or measures.

§ 133. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weights or measures, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and on conviction shall be fined not exceeding two hundred dollars and imprisoned in the County Jail not more than three months.

Removing property to defraud or delay creditors.

§ 134. If any debtor shall fraudulently remove his property or effects out of this State, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the County Jail for any term not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Concealing or disposing of property to defraud judgment creditor.

§ 135. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or shall with such intent remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

THIRTEENTH DIVISION.

FRAUDULENT AND MALICIOUS MISCHIEF.

Wilfully administering poison to cattle

§ 136. Every person who shall wilfully administer any poison to any cattle, or maliciously expose any poisonous substance with the intent that the same shall be taken or swallowed by any cattle, shall, upon conviction, be punished by imprisonment in the county jail not exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Maliciously killing or wounding cattle.

§ 137. Every person who shall maliciously kill, maim, or wound any horse, ox, or other cattle, or any sheep, belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months.

Maliciously destroying doors, windows, or inclosures or trees.

§ 138. Every person who shall wilfully, unlawfully, and maliciously break, destroy, or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom, or from any gate, fence, or inclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate, post, railing, or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars or imprisoned in the county jail not exceeding three months.

Maliciously injuring or destroying any pile or raft of wood, or cutting same, or any boat, &c., adrift.

§ 139. Every person who shall wilfully and maliciously burn, injure, or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding six months.

§ 140. Every person who shall wilfully and maliciously cut down, break, injure, or destroy any bridge or mill-dam, or other dam erected to create hydraulic power, or any embankment necessary to support such dam, or shall wilfully and maliciously make or cause to be made any aperture in such dam or embankment, with intent to destroy or injure the same, shall, on conviction thereof, be fined in any sum not more than five hundred dollars, or imprisoned in the County Jail not more than six months.

Maliciously injuring or destroying any bridge, or mill-dam, or embankment, &c.

§ 141. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the State Prison for any term not exceeding five years.

Wilfully injuring any jail, &c.

§ 142. If any person or persons shall wilfully and intentionally, or negligently and carelessly set on fire or cause to be set on fire any wood, prairies, or other grounds in this State, every person so offending shall, on conviction, be fined in any sum not less than twenty dollars, nor more than five hundred dollars: *Provided*, that this section shall not extend to any person who shall set on fire or cause to be set on fire any woods or prairies adjoining his or her own farm, plantation, or inclosure, for the necessary preservation thereof from accident by fire, by giving to his or her neighbors notice of such intention.

Wilfully setting fire to any wood, &c.

Not to apply to certain cases

FOURTEENTH DIVISION.

GENERAL PROVISIONS.

§ 143. Every offence or act which by law is declared to be a misdemeanor, and for which no punishment is especially prescribed, shall be punished by imprisonment in the County Jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both fine and imprisonment.

Punishment of misdemeanor.

§ 144. Until a State Prison is provided, the County Jail of each county shall be deemed the State Prison.

State prison.

§ 145. A sentence of imprisonment in the State Prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority, and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

Effect of sentence of imprisonment in state prison.

§ 146. Where the term "person" is used in this Act to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this State, or any other State or Territory, government or county, which may lawfully own any property within this State, and all public and private corporations as well as individuals.

Meaning of the term "person"

§ 147. The provisions of this Act shall extend to females.

Act to extend to females.

§ 148. When any intent to injure, defraud, or cheat, is required by law to be shown in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud, or cheat the United States, this State, or any other State, Territory, or county, or the government or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

What constitutes intent to injure, defraud, or cheat.

Chap. 100.

AN ACT relating to Bills of Exchange and Promissory Notes.

Passed April 16, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person or to his order, or to the order of any other person, or unto the bearer, any sum of money

Written promises to pay money to be negotiable like bills of exchange.

	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.
Notes signed by agents	§ 2. Every such note signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect and be negotiable as above provided.
Person defined.	§ 3. The word "person," in the two last preceding sections, shall be construed to extend to every corporation capable by law of making contracts.
Actions by payees and endorsees.	§ 4. The payees and endorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.
Notes payable to maker or to order of a fictitious person	§ 5. Such notes, made payable to 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 the bearer.
Acceptance must be in writing	§ 6. No person within this State shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.
Acceptance on a separate paper.	§ 7. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.
Unconditional promise to accept.	§ 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.
What to be deemed a refusal to accept.	§ 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.
Sections 6, 7, 8, and 9, not to apply to certain cases.	§ 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.
Destroying bill to be deemed an acceptance.	§ 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.
Rate of damages on protesting bill	§ 12. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this State, shall be as follows: 1st, If such bill shall have been drawn upon any person or persons in any of the United States, east of the Rocky Mountains, fifteen dollars upon the hundred upon the principal sum specified in such bill; 2d, If such bill shall have been drawn upon any person or persons in any port or place in Europe, or in any foreign country, twenty dollars upon the hundred upon the principal sum specified in such bill.
Such damages to be in lieu of interest, &c.	§ 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded.
Damages—how to be determined.	§ 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rate of exchange existing between this State, and the place on which such bill shall have been drawn at the time of the demand of payment, or of notice of non-payment.
Ditto.	§ 15. If the contents of such bill be expressed in the money of account, or currency of any foreign

country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of the demand of payment.

§ 16. Where a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance, as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

Damages on protest for non-acceptance.

§ 17. The damages allowed by this Act shall be recovered only by the holder of a bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

Damages to be recovered only by holder.

§ 18. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given, by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resides at the time of drawing, making, or endorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or negotiable instrument, shall, in addition thereto, specify thereon the post-office to which he may require the notice to be addressed.

Notice of dishonor.

§ 19. Nothing in this Act shall apply to bills of exchange, promissory notes, or other negotiable instruments, made or drawn before this Act takes effect.

Bills and notes heretofore made.

Chap. 101.

AN ACT concerning Conveyances.

Passed April 16, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed 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 hereinafter directed.

Conveyances may be by deed.

§ 2. 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.

Conveyance of real estate of married women.

§ 3. Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged, or proved and certified, in the manner hereinafter provided.

Conveyances of real estate to be acknowledged.

§ 4. The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: 1st. If acknowledged or proved within this State, by some Judge or Clerk of a Court having a seal, or some Notary Public, or Justice of the Peace of the proper county: 2d. If acknowledged or proved without this State, and within the United States, by some Judge, or Clerk of any Court of the United States, or of any State or Territory having a seal, or by any Commissioner appointed by the government of this State for that purpose: 3d. If acknowledged or proved without the United States, by some Judge or Clerk of any court of any State, Kingdom, or Empire, having a seal, or by any Notary Public therein, or by any Minister, Commissioner, or Consul of the United States appointed to reside therein.

Proof or acknowledgment of conveyances—by whom to be taken.

§ 5. Every officer that shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance; such certificate shall be: 1st. When granted by any Judge or Clerk, under the hand of such Judge or Clerk, and the seal of the court: 2d. When granted by an officer who has a seal of office, under the hand and official seal of such officer.

Certificate of acknowledgment to be endorsed.

Person acknowledging deed must be personally known to officer, or his identity proved.

§ 6. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Certificate—what to state.

§ 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such, by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

Form of certificate.

§ 8. Such certificate shall be substantially in the following form, to wit: "State of California, County of _____, on this _____ day of _____, A. D. _____, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be) in and for the said county, A. B., known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned."

Form of certificate, if grantor unknown to officer.

§ 9. When the grantor is unknown to the court or officer taking the acknowledgment, the certificate may be in the following form, to wit: "State of California, County of _____, on this _____ day of _____, A. D. _____ personally appeared before me, a Notary Public (or Judge, or officer, as the case may be) in and for the said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned."

Proof of execution of deed

§ 10. The proof of the execution of any conveyance whereby any real estate is conveyed or may be affected, shall be, 1st, by the testimony of a subscribing witness, or 2d, when all the subscribing witnesses are dead, or cannot be had by evidence of the handwriting of the party, and of at least one subscribing witness, given by a credible witness to each signature.

Proof by subscribing witness.

§ 11. No proof by a subscribing witness shall be taken, unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

No certificate to be granted until proof of execution.

§ 12. No certificate of such proof shall be granted, unless such subscribing witness shall prove the person whose name is subscribed thereto as a party, is the person described in, and who executed the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

Certificate of proof—what to set forth.

§ 13. The certificate of such proof shall set forth the following matters: 1st. The fact that such subscribing witness was personally known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. 2d. The proof given by such witness of the execution of such conveyance, and of the facts, that the person whose name is subscribed to such conveyance as a party thereto is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Proof by evidence of handwriting.

§ 14. No proof by evidence of the handwriting of the party and of a subscribing witness shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

Certificate which may be granted on such proof.

§ 15. No certificate of any such proof shall be granted, unless a competent and credible witness shall state on oath, or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

§ 16. Upon the application of any grantee in any conveyance required by this Act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer and testify touching the execution thereof.

Officer authorized to take acknowledgment may subpoena witness to testify as to execution.

§ 17. Every person who being served with a subpoena shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the Judge of some Court of record, there to remain without bail until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him.

Penalty for refusing to obey subpoena or to testify.

When not bound to obey subpoena.

§ 18. A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this Act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the Recorder of any county in this State.

Certificate of acknowledgment, &c., to entitle deed to be recorded.

§ 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and her husband, and certified in the manner hereinafter provided, by the proper officer taking the acknowledgment.

Married woman may convey real estate.

§ 20. No covenant expressed or implied in any such conveyance shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs, all her rights and interest expressed to be conveyed in such conveyance.

What covenants to be binding on such married woman.

§ 21. Any officer authorized by this Act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Acknowledgment of married woman may be taken.

§ 22. No such acknowledgment shall be taken, unless such married woman shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness: nor, unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge on an examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same.

Acknowledgment not to be taken unless married woman personally known to officer, nor until she is informed of contents of deeds and examined apart from husband.

§ 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this Act shall be valid.

Form of certificate.

What certificates valid.

§ 24. Every conveyance whereby any real estate is conveyed, or may be affected, proved, or acknowledged, and certified in the manner prescribed in this Act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Conveyances to bind third parties must be recorded.

§ 25. Every such conveyance, certified and recorded in the manner prescribed in this Act, shall, from the time of filing the same with the Recorder for record, impart notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed to purchase with notice.

From time of recording notice to subsequent purchasers, &c.

Conveyances not recorded void against bona fide subsequent purchasers.

§ 26. Every conveyance of real estate within this State, hereafter made, which shall not be recorded as provided in this Act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Powers of attorney to sell real estate to be acknowledged in same manner as conveyances.

§ 27. Every power of attorney, or other instrument in writing containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

Power of attorney not to be revoked until revocation recorded.

§ 28. No such power of attorney or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Deed duly acknowledged may be read in evidence.

§ 29. Every conveyance or other instrument, conveying or affecting real estate, which shall be acknowledged or proved and certified, as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

Transcript of lost deed may be given in evidence.

§ 30. When any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the Court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the Recorder under the seal of his office, may be read in evidence without further proof.

Certificate of acknowledgment, &c., may be rebutted.

§ 31. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

When acknowledged deed must be established by proof.

§ 32. If the party contesting the proof of any such conveyance or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received in evidence until established by other competent proof.

Absolute conveyance by party not having legal estate.

§ 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Claimants out of possession may convey interest claimed.

§ 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

Term "real estate."

§ 35. The term "real estate," as used in this Act, shall be construed as co-extensive in meaning with lands, tenements, and hereditaments.

Term "conveyance."

§ 36. The term "conveyance," as used in this Act, shall be construed to embrace every instrument in writing by which any real estate or interest in real estate is created, aliened, mortgaged, or assigned, except wills, leases for a term not exceeding one year, executory contracts for the sale or purchase of lands, and powers of attorney.

Recorded mortgage—how discharged.

§ 37. 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, acknowledging the satisfaction of the mortgage, in the presence of the Recorder or his 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 of mortgage, or mortgages, certificate of payment.

§ 38. Any mortgage shall also be discharged upon the record thereof by the Recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee,

his personal representative or assignee, 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.

§ 39. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the Recorder upon the record thereof.

Certificates, &c., to be recorded at length.

§ 40. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect 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, and also for all actual damages occasioned by such neglect or refusal.

Penalty for refusing a certificate of discharge.

§ 41. All conveyances of real estate heretofore made, and acknowledged or proved to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this Act.

Conveyances heretofore made, &c., to be recorded, &c.

§ 42. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this Act, but shall depend for its validity or legality upon the laws then existing and in force.

Legality of execution of deeds, &c., heretofore made not affected.

Chap. 102.

AN ACT amendatory of "An Act prescribing the mode of Assessing and Collecting Public Revenue."

Passed April 17, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

The 67th section of "an Act prescribing the mode of Assessing and Collecting Public Revenue," approved March 30th, 1850, shall be and the same is hereby amended so as to read as follows :

Sec. 67 of chap. 53 amended.

"§ 67. The Court of Sessions for each County shall, at their first regular session, or at any time before the first Monday of August annually, assess the amount of taxes that shall be levied for county purposes, designating the number of cents on each one hundred dollars of taxable property, real or personal, levied for each specific object of County expenditures, also the poll tax for County purposes; and shall add thereto the amount levied by law on each one hundred dollars of property taxable, real and personal, and poll tax for State purposes, which shall be entered on the records of said Court; and the Clerk thereof shall forthwith make out certificates of the same, one of which he shall deliver to the County Auditor, and the other to the County Treasurer. All moneys collected for State purposes shall be paid to the State Treasurer by the County Treasurer, on or before the second Monday of January annually. The assessment of property, real and personal, for the present year, shall not commence until the second Monday of May."

Chap. 103.

AN ACT defining the rights of Husband and Wife.

Passed April 17, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Property of wife to be her separate property. Property of husband to be his separate property. After acquired, property to be common property, except, &c. Inventory of separate property of wife to be made, acknowledged, and recorded.

§ 1. All property, both real and personal, of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, shall be her separate property; and all property, both real and personal, owned by the husband before marriage, and that acquired by him afterwards, by gift, bequest, devise, or descent, shall be his separate property.

§ 2. All property acquired after the marriage by either husband or wife, except such as may be acquired by gift, bequest, devise, or descent, shall be common property.

§ 3. A full and complete inventory of the separate property of the wife shall be made out and signed by the wife, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of land, and recorded in the office of the Recorder of the county in which the parties reside.

Inventory to be recorded in counties where property lies. Filing inventory notice of wife's title, and her property not liable for debts of husband. Husband to have management of wife's property during coverture. Alienation of wife's estate can only be by deed.

§ 4. If there be included in the inventory any real estate lying in other counties, the inventory shall also be recorded in such counties.

§ 5. The filing of the inventory in the Recorder's office shall be notice of the title of the wife, and all property belonging to her, included in the inventory, shall be exempt from seizure or execution for the debts of her husband.

§ 6. The husband shall have the management and control of the separate property of the wife, during the continuance of the marriage; but no sale or other alienation of any part of such property can be made, nor any lien or incumbrance created thereon, unless by an instrument in writing, signed by the husband and wife, and acknowledged by her upon an examination separate and apart from her husband, before a Justice of the Supreme Court, Judge of the District Court, County Judge, or Notary Public, or if executed out of the State, then so acknowledged before some Judge of a Court of Record, or before a Commissioner, appointed under the authority of this State to take acknowledgment of deeds.

Sales of wife's property for benefit of husband.

§ 7. When any sale shall be made by the wife of any of her separate property, for the benefit of her husband, or when he shall have used the proceeds of such sale with her consent in writing, it shall be deemed a gift, and neither she nor those claiming under her shall have any right to recover the same.

Trustees may be appointed to manage property of wife. Trustees may be removed.

§ 8. If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste, her separate property, she, or any other person in her behalf, may apply to the District Court for the appointment of a trustee, to take charge of and manage her separate estate: such trustee may, for good cause shown, be from time to time removed by the Court, and another appointed in his place. Before entering upon the discharge of his trust, he shall execute a bond, with sufficient surety or sureties, to be approved by the Court, for the proper performance of his duties. In case of the appointment of a trustee for the wife, he shall account for and pay over to the husband and wife, or either of them, the income and profits of the wife's estate, in such manner and proportion as the Court may direct.

To give bond. To account.

Power of husband over common property. Income of separate property deemed common property. Courtesy and dower not allowed.

§ 9. The husband shall have the entire management and control of the common property, with the like absolute power of disposition as of his own separate estate. The rents and profits of the separate property of either husband or wife shall be deemed common property.

§ 10. No estate shall be allowed to the husband as tenant by courtesy upon the decease of his wife, nor any estate in dower be allowed to the wife upon the decease of her husband.

§ 11. Upon the dissolution of the community by the death of either husband or wife, one half of the common property shall go to the survivor, and the other half to the descendants of the deceased husband or wife, subject to the payment of the debts of the deceased. If there be no descendants of the deceased husband or wife, the whole shall go to the survivor, subject to such payment.

Distribution of common property in case of death.

§ 12. In case of the dissolution of the marriage, by the decree of any Court of competent jurisdiction, the common property shall be equally divided between the parties, and the Court granting the decree shall make such order for the division of the common property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require.

Division of common property in case of divorce.

§ 13. The separate property of the husband shall not be liable for the debts of the wife contracted before the marriage, but the separate property of the wife shall be and continue liable for all such debts.

Debts of wife contracted before marriage.

§ 14. In every marriage hereafter contracted in this State, the rights of husband and wife shall be governed by this Act, unless there is a marriage contract, containing stipulations contrary thereto.

Act to govern rights of husband and wife, unless otherwise stipulated.

§ 15. The rights of husband and wife, married in this State prior to the passage of this Act, or married out of this State, who shall reside and acquire property herein, shall also be determined by the provisions of this Act, with respect to such property as shall be hereafter acquired, unless so far as such provisions may be in conflict with the stipulations of any marriage contract.

Act to apply to after acquired property of persons already married.

MARRIAGE CONTRACTS.

§ 16. All marriage contracts shall be in writing, and executed and acknowledged or proved, in like manner as a conveyance of land is required to be executed and acknowledged or proved.

Marriage contracts to be in writing, &c.

§ 17. When a marriage contract shall be acknowledged or proved, it shall be recorded in the office of the Recorder of the County in which the parties reside, and also in the office of the Recorder of every County in which any real estate may be situated, which is conveyed or affected by such marriage contract.

Marriage contracts to be recorded.

§ 18. When any marriage contract is deposited in the Recorder's office for record, it shall, as to all property affected thereby, in the county where the same is deposited, impart full notice to all persons of the contents thereof.

Marriage contract recorded to be notice to third parties.

§ 19. No marriage contract shall be valid, or affect any property, except between the parties thereto, until it shall be deposited for record with the Recorder of the County where the parties reside, and if it relates to real estate in other counties, with the Recorder of the County wherein such property is situated.

Marriage contracts not to affect third party unless recorded.

§ 20. A minor, capable of contracting matrimony, may enter into a marriage contract, and the same shall be as valid as if he was of full age: *Provided*, it be assented to, in writing, by the person or persons whose consent is necessary to his marriage.

Minor may make a valid marriage contract.

§ 21. A marriage contract may be altered at any time before the celebration of the marriage, but not afterwards.

Altering marriage contract.

§ 22. The parties to any marriage contract shall enter into no agreement, the object of which shall be to alter the legal order of descent, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, nor derogate from the rights given by law to the husband, as to the head of the family, or to the surviving husband or wife, as the guardian of their children.

Marriage contract not to alter legal order of descent, nor derogate from legal rights of husband, or of survivor as guardian.

§ 23. No stipulation of any marriage contract shall be valid, which shall derogate from the rights given by law to the husband, over the persons of his wife and children, or which belong to the husband, as the head of the family, or to the surviving husband or wife, as the guardian of their children.

Stipulations derogating from certain rights of husband and wife invalid.

Chap. 104.

AN ACT concerning the Office of Surveyor General.

Passed April 17, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Surveyor general's office—where kept and office hours. Not to leave state. To be commissioned by governor, take oath of office, and give bond. To make survey.

§ 1. The Surveyor General shall keep an office at the Seat of Government, which office shall be open every day (Sundays excepted), from the hours of 10 o'clock A.M. to 4 o'clock P.M. He shall not leave the State, except in performance of his official duties, without permission of the Governor.

§ 2. He shall be commissioned by the Governor; but, before such commission shall issue, and before entering upon his duties, he shall take the oath of office, and execute a bond to the State in the penal sum of ten thousand dollars, conditioned for the faithful performance of all the duties of his office.

§ 3. He shall, when required by law, make an accurate and complete survey, by astronomical observations and linear surveys, of the boundaries of the State as declared by the Constitution, or as may be hereafter determined by the Congress of the United States and the People of this State.

Maps of state. What to be marked on map.

§ 4. He shall make an accurate map of the State.

§ 5. When required by law, he shall survey and, when necessary, designate by plainly visible marks, or monuments, and shall describe on the map of the State, the boundary lines of the several Counties and incorporated cities and towns in the State; and when a boundary line of the state or of any county intersects with or passes in the immediate vicinity of the coast, or of any lake, stream, range of hills or mountains, or other conspicuous object on the surface of the earth, he shall by the proper observations determine the place of such intersection, or the distance and bearing from the said boundary line of such point of said object as may be nearest to said boundary line, and will best serve as a distinguishing landmark. He shall also determine and describe on the map of the State the length and course of every important stream and lake, and of every important range of hills or mountains, and the greatest elevation or highest peak thereof, within the limits of any County. When called upon by the County authorities of any County, he shall run any boundary line, or portion of a line, between such County and an adjoining County.

To run boundary line between counties.

§ 6. The Surveyor General shall preserve in his office at the seat of government and deliver to his successor all books, maps, plans, drawings, levels, surveys, and field notes, in any way pertaining to his official duties, and shall deliver as aforesaid all instruments and other things belonging to his office.

To preserve books, &c., and to deliver same to successor.

§ 7. The Surveyor General is authorized to require the county surveyors to assist him within the limits of their respective counties, in the execution of any surveys called for by this Act; and the county surveyors when so employed shall receive from the State the same compensation which they are entitled to demand from individuals of their respective counties for the performance of the like services.

May require county surveyors to assist him. Compensation to county surveyors.

§ 8. The Surveyor General shall be chief engineer and commissioner of internal improvements, and is authorized from time to time, when necessary to the discharge of his duties, to employ a competent person to act as draughtsman, provided that the sum to be expended in this manner shall not exceed two thousand dollars for the current year one thousand eight hundred and fifty. The said sum is hereby appropriated to be paid out of any money in the treasury not otherwise appropriated. The expenditures of the Surveyor General herein provided for shall be verified by an account signed by the person employed, certified by the Surveyor General to be correct and necessary, and audited by the Comptroller before the same shall be paid by the Treasurer.

Chief engineer and commissioners of internal improvements may employ draughtsman.

§ 9. He shall deliver to the Governor annually, on or before the fifteenth day of December, his report, which shall contain,

To deliver annual report to governor on matters specified.

1st. An accurate statement of the progress he may have made in the execution of the surveys enjoined on him by law, and in the preparation of the map of the State.

2d. Plans and suggestions for the improvement of the internal navigation of the State, and for the

construction and improvement of roads, turnpikes, railroads, canals, and aqueducts; also, plans and suggestions for the planting, preservation, and increase of forests of timber trees, for the draining of marshes, prevention of overflows, and the irrigation of arable lands by means of reservoirs, canals, artesian wells, or otherwise.

3d. An estimate of the aggregate quantity of land belonging to the State, and the best information he may be able to obtain as to the characteristics of the same.

4th. An estimate of the aggregate quantity of all lands used for, or adapted to tillage and grazing within this state, and each county of the State, together with a description of the locations in which the same may be situated.

5th. An estimate of the aggregate number of horses, cattle, sheep, and swine, within the State, and each county of the State.

6th. An estimate of the aggregate quantity of wheat, rye, maize, potatoes, grapes, and other agricultural productions of the preceding year, together with his views as to the presence, cause, and remedy of any diseases, or other mischief preventing a full and proportionate return and increase of the same.

7th. An estimate of the aggregate quantity of all mineral lands within the State and each county of the State, and the quantity and value of each mineral produced during the preceding year, together with a description of the localities in which such minerals may be found.

8th. All facts which may be within his personal knowledge, or which he may learn from reliable sources, and which may, in his opinion, be calculated to promote the full development of the resources of the State.

§ 10. He shall address a circular letter to the County Surveyors and County Assessors, instructing them, and it is hereby made a part of their official duties, to use their utmost diligence in collecting information relative to each and every matter mentioned in the ninth section of this Act, and to transmit to him quarterly, at the Seat of Government, a report in writing, setting forth the result of their inquiries.

To obtain quarterly reports from county surveyors and assessors.

§ 11. He shall, with his Annual Report, transmit to the Governor all reports which he may have received from his Deputies, and other persons, as mentioned in the tenth section of this Act.

Reports so obtained to be transmitted to governor.

§ 12. The Surveyor General shall annually, on or before the first day of December, deliver to the Comptroller an estimate, with specifications, of the necessary expenditures of his office during the succeeding year.

To deliver annual estimate of expenses for ensuing year.

§ 13. He shall perform all such other and further duties as may be prescribed to him by law.

To perform duties required by law.

§ 14. In case of the death, sickness, absence from the State, removal from office, or impeachment of the Surveyor General, the Governor shall issue his proclamation, appointing the earliest practicable day for the election of a Surveyor General, to hold the office for the balance of the unexpired term; unless the death, sickness, absence from the State, removal from office, or impeachment of the Surveyor General, shall occur within six months of the close of the term for which he shall have been elected, in which case the Governor shall appoint some suitable person to act as Surveyor General until such absence or disability shall cease, or for the remainder of the said term; and the person so appointed shall take the same oath, and give the same bond, which is by law required of the Surveyor General.

Vacancy in office—how supplied.

Chap. 105.

AN ACT to fix the Terms of the Superior Court of the City of San Francisco.

Passed April 17, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

There shall be held twelve terms of the Superior Court of the City of San Francisco in each

Twelve terms annually.

year severally, commencing on the first Monday of each month. Each term may continue until the commencement of the next succeeding term.

Chap. 106.

AN ACT to prescribe the duties of Sheriffs.

Passed April 17, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Sheriff to take oath and give bond.

Penalty of bond in the several counties.

May appoint deputies. Appointment—how made. Deputy to take oath of office.

Bond from deputies.

Conservators of the peace. Duties of sheriff specified.]

To serve process, &c.

To serve all notices in progress of suits.

To make service and return promptly.

Returns out of county by mail.

§ 1. The Sheriff of each County of this State shall, before he enters on the discharge of the duties of his office, take the oath of office, and give bond to the State, in the form prescribed by the "Act concerning the official bonds of Officers," conditioned for the performance of the duties of his office, and for the payment to such persons and in the manner prescribed by law, of all moneys received by him by virtue of his office. The penalty of the bond to be given by the Sheriff of the several Counties shall be as follows: In the Counties of San Francisco and Sacramento, in the sum of one hundred thousand dollars. In the Counties of Calaveras, El Dorado, and Tuolumne, in the sum of fifty thousand dollars. In the Counties of Monterey, Santa Clara, Los Angeles, Yuba, Sutter, San Joaquin, and Mariposa, in the sum of twenty-five thousand dollars. In all other Counties in this State, the sum of fifteen thousand dollars.

§ 2. Each Sheriff may appoint as many deputies as he may think proper, who shall have the same power, in all respects, as their principal. The appointment shall be in writing, and signed by the Sheriff, and shall be filed in the office of the County Clerk; he may revoke the appointment of any deputy at will, by writing, filed in the same office. The deputy, before entering upon his duties, shall take the oath of office, which shall be endorsed on his appointment.

§ 3. The Sheriff may take from each of his deputies a bond, for the faithful performance of his duties, but he and his sureties shall be liable for all the official acts of his deputies.

§ 4. Sheriffs shall be Conservators of the Peace in their respective Counties.

§ 5. It shall be the duty of each Sheriff, within his County: 1. To arrest, without warrant, any person who shall commit or attempt to commit a public offence in his presence, or who has committed a felony, and to take him before the nearest magistrate for examination. 2. To prevent and suppress all affrays, breaches of the peace, riots, and insurrections, which may come to his knowledge. 3. To execute all writs, warrants, and processes of every kind, directed to him by proper authority. 4. To attend all Courts of Record, at their respective terms or sessions held in his County; and he shall perform all other acts and duties required of him by law.

§ 6. The Sheriff may serve any process or execute any legal order issued or made by a Justice of the Peace, and it shall be his duty to serve all such process, if he has voluntarily received it.

§ 7. It shall be the duty of the Sheriff to serve, within his County, all notices required in the progress of any suit or proceeding, and which may be delivered to him to be served.

§ 8. When any Sheriff shall have received any writ, process, or paper, which he is required or permitted to serve or execute, he shall serve or execute it with diligence, according to its direction, or to the law, and return it without delay to the proper court, officer, or person, endorsing upon it a certificate when it came into his hands, and in what manner he has served or executed it, if at all; if not, the reason of his failure.

§ 9. Whenever any writ, process, or paper, shall require to be returned to any court, officer, or person out of the County, the Sheriff may forward it by mail, and, on proof that it was mailed in season, properly directed, he shall not be liable for any damages or penalty for failing to return it.

§ 10. If he shall fail or refuse to return any writ, process, or paper, as required by law, he shall be liable to pay to the party at whose instance the writ or process has been issued, or for whom the process has been served, the sum of two hundred dollars to be recovered of him and his sureties by motion in the Court in which the action is pending, five days' notice thereof having been given, and shall moreover be liable on his bond for all damages sustained by his failure or refusal.

Penalty for not returning process, &c.

§ 11. If any Sheriff to whom any writ of execution shall have been delivered, shall neglect or refuse, after being required by the creditor or his attorney, to serve upon, or sell any property of the defendant which is liable to be levied upon and sold, he and his sureties on his official bond shall be liable to the creditor for the value of such property.

Refusing to sell property levied.

§ 12. If any Sheriff shall neglect or refuse to pay over on demand, to the person entitled, any money which may come into his hands by virtue of his office, the amount thereof with twenty-five per cent. damages, and interest at the rate of ten per cent. per month from the time of demand, may be recovered from him and the sureties on his official bond, by motion before the Court in which the action was brought, five days' notice having been first given.

Refusing to pay over moneys coming to his hands officially.

§ 13. For any official act, or any omission to perform any duty imposed on him by law, the Sheriff shall be liable on his bond to any person injured.

Liability on bond.

§ 14. Any Sheriff who shall be guilty of manifest and wilful negligence, or shall in the administration, or under color of his office, be guilty of any oppression or wrongful act, shall, upon conviction, be fined in any sum not exceeding ten thousand dollars, and may be removed from office.

Manifest and wilful negligence.

§ 15. No Sheriff or Deputy Sheriff shall be permitted to practise as an attorney or counsellor at law, in any action or proceeding in any Court whatever. For violating the provisions of this Section, he shall be deemed guilty of a misdemeanor.

Not to practise as attorney or counsellor.

Chap. 107.

AN ACT to provide for the complete organization of all the Counties in this State.

Passed April 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. When, from any cause, there has been no election held in any County for County officers, under the Act to provide for holding the first County election, such election may be ordered by the County Judge of any adjoining County at any time within six months after the passage of this Act.

County judge of adjoining county to order election for county officers in certain cases. County judge, or county clerk of county, or county judge of adjoining county, may order election of county officers.

§ 2. When an election has been held, but when from any cause there has been a failure in any County to elect any one or more County officers, the election of such officer or officers may be ordered by the county judge of the county, or if there be no county judge by the county clerk, or if there is neither a county judge nor clerk, by the county judge of any adjoining county.

§ 3. Elections ordered under the provisions of the two preceding sections shall be held and conducted, and certificates of election given, in the manner prescribed by the Act to provide for holding the first county election. The officers chosen shall, as to their term of office, be considered as having been chosen on the first Monday of the present month of April.

Conduct of elections ordered under preceding sections.

§ 4. When the time of holding the first election of officers in any city has been prescribed by the Act under which the city is incorporated, and from any cause there has been or shall be a failure to hold the election at the time prescribed; or if at any such election there has been, or shall be, a failure to elect any one or more of the officers required to be chosen, the County Judge of the county in which the city is included, or if there is no County Judge, the County Clerk, or if there is neither a County

County judge, or county clerk of county, or county judge of adjoining county, may order election for city officers in certain cases.

Judge nor Clerk, the County Judge of any adjoining county, shall order an election for any or all of said officers, as the case may require, on a day to be named by him. The election shall be conducted in all respects as if it had been held at the time fixed by the act of incorporation.

Bonds of officers elected at first county election.

§ 5. The bonds of all officers elected at the first county election may be in such form and penalty as may be prescribed by the County Judges of their respective counties, or by the District Judge; and when any bond has been or shall be given by any such officer to the satisfaction of either the County or District Judges, the same shall be deemed to have been given in compliance with all laws concerning the bond of such officer. *Provided*, that, upon receiving a copy of any Act prescribing the form of the bond to be given by any county officer, and fixing the amount of the penalty, if a bond has not been given by such officer in conformity with the law, the County Judge of such county shall require him to give such bond; if he fail or refuse to give the bond within twenty days after notice his office shall be deemed vacant. The District Judge shall in like manner require the District Attorney to give a bond in conformity with the law, when no such bond has already been given, and if he fails to comply within forty days after notice his office shall be deemed vacant.

Proviso.

Neglecting to qualify or give bond not a vacating of office. Proviso.

§ 6. No County officer, chosen at the election held on the first Monday of the present month, or who shall be chosen under the provisions of this Act, shall be deemed to have vacated his office, by neglect to qualify or give bond within the time prescribed by law, *Provided*, within ten days after he is notified by the County Judge, he shall appear and give bond. The District Attorney shall have twenty days in which to give his bond, after notice from the Judge of his District.

Bond of district attorney.

Bond and oath of county judge.

§ 7. Any person who has been, or shall be, under the provisions of this Act, chosen to the office of County Judge of any County, shall have twenty days, after the day of election, in which to take the oath of office.

Election for location of seat of justice.

§ 8. In each County in which no seat of justice is fixed by law, it shall be the duty of the County Judge to order an election to be held for the location of the seat of Justice, and he shall give at least thirty days' notice thereof, by publication in some newspaper printed in his County, if there be one, and by causing notices to be posted up in at least five public places in his County. He shall, in the order, designate the place of voting, and appoint inspectors. The election shall be conducted, and the returns made, and the result ascertained and declared, in the manner prescribed by the Act to regulate elections. The qualified electors only, of the County, shall vote upon the question, and the name of the place for which he votes shall be written or printed on the ballot; the place for which the highest number of votes is given, shall be the seat of Justice of the County, until changed in the manner prescribed by the Act to provide for the permanent location of the seats of Justice of the several Counties. The result of the election shall be made public by the County Judge, by publication and notice in the manner required for giving notice of the election.

Result of election to be published.

Chap. 108.

AN ACT to amend an Act organizing the District Courts of the State of California.

Passed April 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Part of section 5 of chapter 34 amended.

§ 1. That that part of the fifth section of the Act to organize the District Court of the State of California, approved March 16th, 1850, in the following words, to wit: "Ninth Judicial District, in the County of Butte on the first Mondays of the months of April, September, and January; in the County of Colusa on the first Mondays of the months of May, October, and February; in the County of Shasta on the first Mondays of the months of June, November, and March," be, and the same is hereby amended,

so that the several terms of the District Court, for the Counties therein mentioned, shall be held as follows, to wit: In the County of Butte on the first Mondays of the months of April, July, and October; in the County of Shasta on the third Mondays of the months of April, July, and October.

§ 2. That that part of the fifth section of said Act, in the following words, to wit: "Third Judicial District, in the County of Monterey on the first Mondays of the months of April, August, and December; in the County of Santa Cruz on the first Mondays of the months of May, September, and January; in the County of Santa Clara on the third Mondays of the months of May, September, and January; in the County of Contra Costa on the second Mondays of the months of July, November, and March," be, and the same is hereby amended, so that the several terms of the District Court for the Counties therein mentioned, shall be held as follows, to wit: in the County of Monterey on the first Mondays of the months of April, August, and December; in the County of Santa Cruz on the third Mondays of the months of April, August, and December; in the County of Santa Clara on the fourth Mondays of the months of April, August, and December; in the County of Contra Costa on the fourth Mondays of the months of May, September, and January.

Other part of section 5 of chapter 34 amended.

§ 3. Any portion of any Act inconsistent with the provisions of this Act, is hereby repealed.

§ 4. This Act shall take effect immediately.

Repeal of other acts. Commencement of act.

Chap. 109.

AN ACT amendatory of the Thirteenth Section of an Act entitled "An Act to incorporate the City of San José," approved March 27th, 1850.

Passed April 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

That the 13th section of an Act entitled "An Act to incorporate the city of San José," is hereby amended so as to read, "The Mayor shall also have jurisdiction over all violations of the city ordinances, and may according to the provisions of such ordinances hold to bail, fine, commit to prison, persons found guilty of any violation thereof; the President of the Common Council shall, in the absence or illness of the Mayor, do and perform all the duties conferred upon the Mayor by this section."

Section 13 of chapter 48 amended.

Chap. 110.

AN ACT to define the duties of County Clerk.

Passed April 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The County Clerk of each county in this State shall be *ex officio* Clerk of the District Court, Court of Sessions, and Probate Court of his County.

§ 2. Each County Clerk shall take the oath of office, and give bond to the State of California in the form prescribed by the "Act concerning the official bonds of Officers," conditioned for the faithful performance of the duties of his office. The penalty of the bond to be given by each County Clerk shall be as follows: In the Counties of San Francisco and Sacramento, thirty thousand dollars; in the Counties of Calaveras, El Dorado, and Tuolumne, twenty thousand dollars; in the Counties of Monterey, Santa Clara, Los Angeles, Yuba, Sutter, San Joaquin, and Mariposa, twelve thousand dollars. In each of the other counties of the State, six thousand dollars.

County clerk *ex officio* clerk of district and probate courts and courts of sessions. County clerk to take oath of office and give bonds.

County clerks may appoint deputies.

§ 3. Each County Clerk may appoint one or more deputies, who shall have the same power in all respects as their principal. The appointment shall be in writing and signed by the County Clerk, and shall be filed in the office of the Recorder of the County; he may revoke the appointment of any deputy at will by writing filed in the same office. Each deputy before entering on his duties shall take the oath of office, which shall be endorsed on his appointment.

Deputies to take oath of office.

County clerk may take bond from deputies, and is liable for their acts.

§ 4. The County Clerk may take from each of his deputies a bond with sureties for the faithful performance of his duties; but the Clerk and the sureties on his official bond shall be liable for all the official acts of each deputy.

Process issued by deputy clerk.

§ 5. All processes issued by any deputy clerk shall be issued in the name of the principal.

County clerk or deputy to attend each term of court.

§ 6. The County Clerk shall either by person or by deputy attend each term of the County Court, District Court, Probate Court, and Court of Sessions, held in his county.

County clerk's office to be kept at county seat.

§ 7. The County Clerk shall keep his office at the county seat of his county, and shall take charge of and safely keep or dispose of according to law all books, papers, and records, which may be filed or deposited in his office.

Duties of county clerk.

§ 8. He shall issue all writs and processes required to be issued from any Court of which he is clerk; he shall enter, under the directions of the court, all orders, judgments, and decrees proper to be entered; and shall keep in each of said Courts a docket in which shall be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding in said cause, with the date thereof, and a list of all the fees charged in the cause, and shall keep such other books of record as may be required by law or by the rules of the Court.

County clerk liable to party aggrieved for wrongful act. Wilfully failing to perform duties a misdemeanor.

§ 9. For any wrongful act or any omission to perform any duty imposed on him by law, the Clerk shall be liable on his bond to any person injured.

§ 10. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding two thousand dollars, and may be removed from office.

Clerks and deputies not to practise as attorney or counsel.

§ 11. No clerk or deputy clerk shall be permitted to practise as an attorney or counsellor at law in any action or proceeding in any court whatever: for violating the provisions of this section he shall be deemed guilty of a misdemeanor.

Chap. 111.

AN ACT amendatory of the 28th and 30th Sections of the "Act subdividing the State into Counties, and establishing Seats of Justice therein." Approved February 18th, 1850.

Passed April 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 28 of chapter 16 amended.

The 28th Section of the Act subdividing the State into Counties, and establishing the seats of justice therein; which reads "County of Calaveras—Beginning at the corner of Sacramento and San Joaquin Counties; thence up the middle of Dry Creek to its source; thence following the summit of the dividing ridge between Mokelumne and Cosumne rivers; thence due east to the State boundary line; thence in a south-easterly direction along the boundary of the State to the parallel of 38 degrees of North Latitude; thence due west to the summit of the Sierra Nevada; thence in a westerly direction along said summit to the source of the Stanislaus river; thence down the middle of said river to a point one mile north of Knight's Ferry; thence along the eastern boundary of San Joaquin County, to the place of beginning. The County Seat shall be at Pleasant Valley;" is hereby amended so as to read as follows:

"County of Calaveras—Beginning at the corner of Sacramento and San Joaquin Counties; thence

up the middle of Dry Creek to its source; thence following the summit of the dividing ridge between Mokelumne and Cosumne rivers; thence due east to the State boundary line; thence in a south-easterly direction, along the boundary of the State, to the parallel of 38 degrees of north latitude; thence due west to the summit of the Sierra Nevada; thence in a westerly direction, along said summit, to the source of the Stanislaus river; thence down the middle of said river to a point one mile north of Knight's Ferry; thence along the eastern boundary of San Joaquin County, to the place of beginning. The County Seat shall be at the town of Double Springs."

Also the 30th Section, which reads: "County of Tuolumne—Beginning on the summit of the coast range, at the south-west corner of San Joaquin County, and following in an easterly direction the southern boundary of said county, to the summit of the Sierra Nevada; thence in a north-easterly direction, following the summit of the Sierra Nevada, to the dividing ridge between the Tuolumne and Merced rivers; thence following the top of said ridge down to the plains at a point equally distant between the said rivers; thence in a direct line to the San Joaquin river, at a point seven miles below the mouth of Merced river; thence up the middle of the San Joaquin river to the mouth of the Merced river; thence in a due south-west direction to the summit of the coast range; and thence in a north-westerly direction, following the summit of said range, to the place of beginning. The seat of justice shall be at the town of Stewart;" is hereby amended so as to read as follows:

Section 30 of
chapter 16
amended.

"County of Tuolumne—Beginning on the summit of the coast range, at the south-west corner of San Joaquin County, and following in an easterly direction the southern boundary of said county to the summit of the Sierra Nevada; thence in a north-easterly direction, following the summit of the Sierra Nevada, to the dividing ridge between the Tuolumne and Merced rivers; thence following the top of said ridge down to the plains, at a point seven miles below the mouth of Merced river; thence up the middle of the San Joaquin river to the mouth of the Merced river; thence in a due south-west direction, to the summit of the coast range; and thence in a northwesterly direction, following the summit of said range, to the place of beginning. The seat of justice shall be at the town of Sonora."

Chap. 112.

AN ACT to prescribe the duty of Constables.

Passed April 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Every person elected to the office of Constable shall take the oath of office, and give bond, to be approved by the County Judge of his county, conditioned for the faithful performance of the duties of his office. The bond shall be in such penalty as the County Judge may direct, and after approval shall be filed and recorded in the office of the County Clerk.

Persons elected
to take oath and
give bonds.

§ 2. The Constable shall attend the Courts of Justices of the Peace of his township, whenever required, and within his township execute all lawful orders made by them, and execute and return all writs and processes directed to him by such Justice, or any lawful authority; and shall serve within his township, and return all notices placed in his hands for service, relating to any suit or proceeding in any Court of this State.

Constable to
attend justices'
courts, execute
orders and pro-
cesses, and serve
notices.

§ 3. In regard to the execution, service, and return of orders, writs, processes, and papers, where there are no positive provisions of law prescribing his duties, he shall be governed by the laws relating to Sheriffs, so far as they are applicable.

Laws relating to
sheriffs to apply
to constable.

§ 4. For failing or refusing to return, as required by law, any writ or process issued by a Justice of the Peace, or any paper connected with any suit or proceeding before such Justice, he shall be liable to pay the party at whose instance the suit or process has issued, or for whom the paper is to be served,

Failing to return
process.

the sum of fifty dollars, to be recovered of him and his sureties, by motion, before a Justice of the Peace of his township; five days' notice of the motion having been given.

Neglecting to
levy and sell on
execution.

§ 5. If any Constable to whom any writ of execution shall have been delivered shall neglect or refuse, after being required by the creditor, his agent, or attorney, to levy upon or sell any property of the defendant which is liable to be levied upon and sold, he and the sureties on his bond shall be liable to the creditor for the value of such property.

Neglecting to
pay over moneys
received.

§ 6. If any Constable shall neglect or refuse to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent. damages, and interest at the rate of ten per cent. per month from the time of demand, may be recovered from such Constable and his sureties, as provided in the fourth section of this Act.

Failing to per-
form any official
act.

§ 7. For any official act, or any omission to perform any duty required of him by law, the Constable shall be liable on his bond to any person injured.

Conservators of
the peace.
Penalty for wil-
ful negligence,
&c.

§ 8. Constables shall be conservators of the peace within their respective townships.

§ 9. Any Constable who shall be guilty of any manifest and wilful negligence, or shall in the administration, or under color of his office, be guilty of any oppression or wrongful act, shall, upon conviction, be fined in any sum not exceeding two thousand dollars.

Not to practise
as attorney, &c.

§ 10. No Constable shall be permitted to practise as an Attorney or Counsellor at Law before the Court of any Justice of the Peace of his township. For violating the provisions of this section, he shall be deemed guilty of a misdemeanor.

Chap. 113.

AN ACT concerning Coroners.

Passed April 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

To take oath of
office, &c.

§ 1. Every person who may be chosen Coroner of any County, shall, before he enters upon the discharge of the duties of his office, take the oath of office prescribed by the Constitution of this State, and give bond in the sum of five thousand dollars.

To perform du-
ties of sheriff.

§ 2. The Coroner shall perform the duties of Sheriff in all cases where the Sheriff is interested, or otherwise incapacitated from serving; and also in cases of a vacancy by death, resignation, or otherwise, in the office of Sheriff, the Coroner shall discharge the duties of such office until a Sheriff is elected and qualified.

Acting as sheriff,
to have like
power.

§ 3. Whenever the Coroner acts as Sheriff, he shall possess the powers, and perform all the duties of Sheriff, and shall be liable on his official bond in like manner as a Sheriff would be, and shall be entitled to the same fees as are allowed by law to the Sheriff for similar services.

To inquire into
cause of death.

§ 4. When a Coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is, and forthwith summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith at the place where the body of the deceased is, to inquire into the cause of the death.

Penalty for non-
attendance on
coroner's jury.

§ 5. Every person summoned as a juror, who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one thousand dollars, to be recovered by the Coroner in the name of the people of the State, before any Justice of the Peace, in the proper township, and when collected, to be paid over to the County Treasurer for the use of the County.

§ 6. When six or more of the jurors attend, they shall be sworn by the Coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body.

Oath of jurors.

§ 7. The Coroner may issue subpoenas for witnesses, returnable forthwith, or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, every person, who, in his opinion, or that of any of the Jury, has any knowledge of the facts, and he may summon a Surgeon or Physician to inspect the body, and give a professional opinion as to the cause of the death.

Coroner may issue subpoenas, and may summon surgeon, &c., to inspect body.

§ 8. A witness served with a subpoena may be compelled to attend and testify, or punished by the Coroner for disobedience, in like manner as upon a subpoena issued by a Justice of the Peace.

Disobeying subpoena.

§ 9. After inspecting the body and hearing the testimony, the Jury shall render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another by criminal means, who is guilty thereof.

Verdict and inquisition.

§ 10. The testimony of the witnesses examined before the Coroner's Jury shall be reduced to writing by the Coroner, or under his direction, and shall be forthwith filed by him, with the inquisition, in the office of the Clerk of the District Court of the County.

Testimony to be reduced to writing and filed.

§ 11. If, however, the person charged with the commission of the offence be arrested before the inquisition can be filed, the Coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, to the office of the Clerk of the District Court of the County.

Inquisition may be delivered to magistrate.

§ 12. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the Coroner shall issue a warrant, signed by him, with his name of office, into one or more Counties as may be necessary for the arrest of the person charged.

Coroner may issue warrant to arrest party found guilty of offence.

§ 13. The Coroner's warrant shall be in substantially the following form: "County of The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State: An inquisition having been this day found by a Coroner's Jury before me, stating that A B has come to his death by the Act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith, to arrest the above named C D, and take him before the nearest or most accessible Magistrate in this County. Given under my hand this day of, A.D., 18 E F, Coroner of the County of"

Form of warrant.

§ 14. The Coroner's warrant may be served in any County, and the officers serving it shall proceed thereon in all respects, as upon a warrant of arrest on an information before a Magistrate, except that when served in another County, it need not be endorsed by a Magistrate of that County.

Service of warrant.

§ 15. The Coroner must, within thirty days after an inquest upon a dead body, deliver to the County Treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the Treasurer may proceed against the Coroner, to recover the same, by a civil action in the name of the County.

Disposition of money or other property of deceased.

§ 16. Upon the delivery of money to the Treasurer, he shall place it to the credit of the County. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the County.

Property to be sold and proceeds placed to credit of state.

§ 17. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the Coroner and of the County in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the Court of Sessions of the County.

Claims by representatives of deceased.

Auditing
accounts of
coroner.

§ 18. Before auditing and allowing the account of the Coroner, the Court of Sessions shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the County Treasurer.

Justice of the
peace may perform
duties of
coroner.

§ 19. If the office of Coroner be vacant, or he be absent, or unable to attend, the duties of his office may be performed by any Justice of the Peace of the County, with the like authority, and subject to the same obligations and penalties as the Coroner.

Fees of coroner.

§ 20. A Coroner shall receive thirty dollars for each inquest he may hold; and also one dollar per mile for each mile necessarily travelled to hold any inquest; to be paid by the County, and to be audited and allowed as other County charges.

Fees of justice
acting as coroner.

§ 21. A Justice of the Peace, acting as Coroner, shall be entitled to the same fees, payable in the same manner.

Chap. 114.

AN ACT concerning *Fraudulent Conveyances and Contracts.*

Passed April 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

CHAPTER I.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO LAND.

Fraudulent
deeds void as
against subse-
quent purchasers
for value.

§ 1. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or 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.

Except those
having legal
notice, unless
grantee privy to
fraud.

§ 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser, who shall have 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.

Deed, with
power of revoca-
tion, void as
against subse-
quent purchasers
for value.

§ 3. 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 directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Persons to whom
power of revoca-
tion and recon-
veyance given,
not being the
grantors, may
make a valid
reconveyance.

§ 4. When a power to revoke a conveyance of 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.

Conveyance un-
der either of last
sections to take
effect from vest-
ing of power of
revocation.

§ 5. If a conveyance to a purchaser, under either of the two last preceding Sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless 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.

§ 6. No estate or interest in lands, other than for leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed, or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

No interest in lands, except leases for one year, to pass otherwise than by deed.

§ 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Last section not to apply to wills, nor extinguishment of trusts by implication.

§ 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Contracts for leases for more than one year, or for sale of any interest in land, void if not in writing.

§ 9. Every instrument required to be subscribed by any person, under the last preceding section, may be subscribed by the agent of such party, lawfully authorized.

Instruments may be subscribed by party or agent.

§ 10. Nothing contained in this chapter shall be construed to abridge the powers of Courts to compel the specific performance of agreements, in cases of part performance of such agreements.

Not applicable to cases of part performance.

CHAPTER II.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO GOODS, CHATTELS, AND THINGS IN ACTION.

§ 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

Assignment of goods and chattels in trust for assigner void as against creditors.

§ 12. In the following cases, every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: 1. Every agreement that by the terms is not to be performed within one year from the making thereof: 2. Every special promise to answer for the debt, default, or miscarriage of another: 3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

Certain agreements void unless in writing and signed.

§ 13. Every contract for the sale of any goods, chattels, or things in action, for the price of two hundred dollars or over, shall be void, unless, 1st, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, 2d, unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or, 3d, unless the buyer shall at the time pay some part of the purchase money.

Requisites of contract for sale of goods, &c., to the value of \$200 or more.

§ 14. Whenever any goods shall be sold at auction, and the auctioneer shall, at the time of sale, enter in a sale book, a memorandum, specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made; such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

Sales by auction.

Note of contract of sale defined.

§ 15. Every sale made by a vender of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vender, or the creditors of the person making such assignment, or subsequent purchasers in good faith.

Sale of goods without change of possession evidence of fraud.

§ 16. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vender or assignor, at any time while such goods and chattels shall remain in his possession, or under his control.

The term "creditors" defined.

§ 17. No mortgage of personal property hereafter made shall be valid against any other persons than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee.

Mortgage of personal property not valid as against third party unless mortgagee in possession.

Three preceding sections not to apply to certain cases. Proviso.

Subscription may be by the party or his agent.

§ 18. Nothing contained in the three last sections shall be construed to apply to contracts of bottomry, respondentia, nor assignments or hypothecations of vessels or goods, at sea, or in foreign states, or without this State: *Provided*, the assignee or mortgagee shall take possession of such vessel or goods as soon as may be after the arrival thereof within this State.

§ 19. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by the lawful agent of such party.

CHAPTER III.

MISCELLANEOUS PROVISIONS.

Deeds, &c., made to delay or defraud creditors void.

§ 20. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and 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, suits commenced, decree or judgment suffered, with the like intent as against the persons hindered, delayed, or defrauded, shall be void.

Assignments of trusts to be in writing and signed by the assignor.

§ 21. Every grant or assignment of any existing trust in land, goods, or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void.

Deeds void against creditors or purchasers void against heirs, &c.

§ 22. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this Act, as against creditors or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors or purchasers.

Fraudulent intent a question of fact. Want of valuable consideration alone.

§ 23. The question of fraudulent intent in all cases arising under the provisions of this Act, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Effect of act on title of purchaser for value.

§ 24. The provisions of this Act 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.

The terms "lands" and "estate and interest in lands" defined.

§ 25. The term "lands," as used in this Act, shall be construed as co-extensive in meaning with lands, tenements, and hereditaments, and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, present and future, vested and contingent, in lands, as above defined.

The term "conveyance" defined.

§ 26. The term "conveyance," as used in this Act, 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.

Chap. 115.

AN ACT to provide for the appointment and prescribe the duties of Guardians.

Passed April 19, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Probate judge may appoint guardians of minors.

§ 1. The Probate Judge of each county, when it shall appear to him necessary or convenient, may appoint guardians to minors who have no guardian legally appointed by will, and who are inhabitants or residents in the same county; or who shall reside without the State and have any estate within the county.

§ 2. If the minor is under the age of fourteen years the Probate Judge may nominate and appoint his guardian; and if he is above the age of fourteen years he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly.

Guardian of minors—how nominated.

§ 3. If the guardian nominated by the minor shall not be approved by the judge, or if the minor shall reside out of the State, or if after being duly cited by the judge, he shall neglect for ten days to nominate a suitable person, the judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

Judge may appoint guardian for minor over 14 in certain events.

§ 4. When a guardian has been appointed by the Court for a minor under the age of fourteen years, the minor at any time after he attains that age may appoint his own guardian, subject to the approval of the Probate Judge.

Minor on arriving at 14 may nominate guardians.

§ 5. The father of the minor, if living, and in case of his decease the mother while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor.

Father or mother entitled to guardianship.

§ 6. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Minor having no father or mother.

§ 7. Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of his estate until such minor shall arrive at the age of twenty-one years, or shall marry; or until the guardian shall be discharged according to law.

Powers and duties of guardian.

§ 8. Before appointing any person guardian of a minor, the judge shall require of such person a bond to the minor, with sufficient sureties to be approved by the judge, and in such sum as he shall order, conditioned as follows: 1. To make a true inventory of all the estate, real and personal, of his ward, that shall come to his possession or knowledge; and to return the same within such time as the judge shall order: 2. To dispose of and manage all such estate according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto; and also in relation to the care, custody, and education of the ward: 3. To render an account on oath of the property, estate, and moneys of the ward in his hands; and all proceeds or interest derived therefrom, and of the management and disposition of the same within one year after his appointment, and at such other times as the Court shall direct: and, 4. At the expiration of his trust to settle his accounts with the Probate Judge, or with the ward if he be of full age, or his legal representatives; and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Bond of guardian.

§ 9. If any minor who has a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his 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 education and maintenance of such minor may be defrayed out of the income of his own property in whole or in part, as shall be judged reasonable and shall be directed by the Probate Court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Maintenance of minor out of income of his own property.

§ 10. The father of every legitimate child which is a minor, may, by his last will in writing, appoint a guardian or guardians for his minor children, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time; and every such testamentary guardian shall give bond in like manner, and with like condition as herein before required; and he shall have the same powers, and shall perform the same duties with regard to the person and estate of the ward, as a guardian appointed as aforesaid.

Father may by will appoint a guardian.

§ 11. Nothing contained in this Act shall affect or impair the power^o of any Court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein; nor to appoint or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

Power of courts to appoint guardians and next friend not impaired.

§ 12. Whenever it shall be represented to the Probate Judge upon petition, under oath, by any relative or friend of any insane person, or of any person who by reason of extreme old age, or other cause, is mentally incompetent to manage his property, that such person is insane, or mentally incompetent to manage his property; said Judge shall cause a notice to be given to the supposed insane

Cases of persons alleged to be incompetent to manage their property to be investigated by probate judge.

or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed; and shall also cause such person, if able to attend, to be produced before him on the hearing.

Probate judge may appoint a guardian.

§ 13. If after a full hearing and examination upon such petition, it shall appear to the Probate Judge that the person in question is incapable of taking care of himself, and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and duties of such guardians.

§ 14. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged; and he shall give bond to such ward, in like manner, and with like conditions, as before prescribed with respect to the guardian of a minor.

Guardian to pay debts due from,

§ 15. Every guardian appointed under the provisions of this Act, whether for a minor or any other person, shall pay all just debts due from the ward, out of his personal estate, and the income of his real estate if sufficient; and if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law.

And recover all debts due to, his ward.

§ 16. Every such guardian 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 Probate Judge, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian, or next friend.

And manage his estate.

§ 17. Every guardian shall manage the estate of his ward frugally, and without waste, and apply the income and profits thereof, as 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 such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

And assent to a partition of real estate.

§ 18. The guardian may join in and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law.

Return an inventory to the court.

§ 19. The guardian shall return an inventory of the estate of his ward, at such time as may be fixed by the Court; 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 the estate of a deceased testator, or intestate; and every guardian shall account for and dispose of the personal estate of the ward in like manner as is directed with respect to executors and administrators.

Real estate may be sold for maintenance.

§ 20. When the income of the estate of any person, under guardianship, shall not be sufficient to maintain the ward and his family, or to educate his family, or to educate the ward when a minor, his guardian may sell his real estate for that purpose, upon obtaining an order therefor, and proceeding therein as provided in this Act.

Or to invest proceeds.

§ 21. When it shall appear to the satisfaction of the Court, upon the petition of the guardian, that it would be for the benefit of his ward, that his real estate, or any part thereof, should be sold, or invested in some productive stock; his guardian may sell the same for that purpose, upon obtaining an order therefor, and proceeding therein as hereinafter provided.

Proceeds of sales under sec. 20.

§ 22. If the estate is sold for the purpose mentioned in the twentieth section of this Act, the guardian shall apply the proceeds of the sale to such 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, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Proceeds of sales under sec. 21.

§ 23. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in this Act, the guardian shall make the investment, according to his best judgment, or in pursuance of any order that may be made by the Probate Court.

§ 24. To obtain an order for such sale, the guardian shall present to the Probate Court of the County in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

Order for sale—
how obtained.

§ 25. If it shall appear to the Court 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, the Court shall thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before such Court at a time and place therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate.

Next of kin to be
cited to show
cause against
sale.

§ 26. A copy of the order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition; or shall be published at least three successive weeks, in some newspaper printed in the county; or if there be none printed in the county, then in such newspaper as may be specified by the Court in such order.

Service of order.

§ 27. The Probate Judge, at the time and place appointed in such order, or such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and all other persons interested in the estate who shall think proper to oppose the application.

Hearing on peti-
tion for sale.

§ 28. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the Probate Judge in the same manner and with like effect as in other cases.

Guardian may be
examined.

§ 29. If any person shall appear and object to the granting of any order prayed for under the provisions of this Act, and it shall appear to the Court that either the petition or the objection thereto is unreasonable, said Court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

Objections to
petition.

§ 30. If, after a full examination, it shall appear to the Court either that it is necessary, or that it would be for the benefit of the ward, that the real estate or any part of it should be sold, such Court may grant an order therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward and his children; or in order that the proceeds may be put out and invested.

Order for sale
may be granted.

§ 31. Every guardian authorized to sell real estate, as aforesaid, shall, before the sale, give bond to the Probate Judge, with sufficient security to be approved by such Judge, with condition to sell the same in the manner prescribed by law, for sales of real estate by executors and administrators; and to account for, and dispose of the proceeds of the sale, in the manner provided by law.

Guardian to give
a bond before
selling.

§ 32. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as prescribed in the case of a sale of land by an executor or administrator; the same proceedings shall be had as to the return of the sale and the confirmation thereof, and the order to execute a conveyance, as is prescribed in regard to sales of land made by executors or administrators, and the confirmation shall have the same force and effect.

Notice of time
and place of sale.

§ 33. No order granted in pursuance of this Act, shall be in force more than one year after granting the same.

Order in force for
one year only.

§ 34. No action for the recovery of any estate, sold by a guardian under the provisions of this Act, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within three years next after the termination of the guardianship, excepting only that 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 three years next after the removal of their respective disabilities.

Limitation of
actions to re-
cover property
sold under this
act.

§ 35. The guardian shall, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the Probate Court for settlement and allowance; and all the laws relative to the accounts of executors and administrators shall govern in regard to the accounts of a guardian, so far as they can be made applicable.

Guardian to
present accounts
to probate court
for settlement.

Guardian may be required to invest proceeds of sales, &c.

§ 36. The Probate Judges in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the Probate Judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and also any other money in his hands, in real estate, or in any other manner that shall be most to the interest of all concerned therein; and the said Probate Court may make such further orders, and give such direction as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Guardians becoming incapable of discharging duties.

§ 37. When any guardian, appointed either by the testator or by the Probate Judge, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor; or shall have wasted or mismanaged the estate, the Probate Judge, after notice to the guardian, may remove him; and every guardian may, upon request, be allowed to resign his trust, when it shall appear to the Probate Judge proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the Probate Judge may appoint another in his place.

Guardianship—how terminated.

§ 38. The marriage of any person who is under guardianship as a minor, shall terminate such guardianship; and the guardian of any insane person, or other person, may be discharged by the Probate Judge when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

Guardians may be required to renew their bonds.

§ 39. The Probate Judge may require a new bond to be given by any guardian whenever he shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given as such Court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Guardian's bonds to be filed.

§ 40. Every bond given by a guardian, shall be filed and preserved in the office of the Clerk of the Probate Court of the county; and in case of the breach of any condition thereof, may be prosecuted in the name of the ward, for the use and benefit of such ward, or of any person interested in the estate.

Actions on guardian's bonds.

§ 41. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when the guardian shall have been discharged: *Provided*, that if at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within three years after such disability be removed.

Examination of guardians charged with defrauding their wards.

§ 42. Upon complaint made to the Probate Judge by any guardian, or by the ward, or by any creditor, or by any other person interested in the estate, or by any person having any prospective interest therein as heir, or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or any instrument in writing belonging to the ward, the Judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator, or intestate.

Guardians for minors residing out of the state.

§ 43. When any minor, or other person liable to be put under guardianship, according to the provisions of this Act, shall reside without this State, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy, or otherwise, may apply to the Probate Judge of any county in which there may be any estate of such absent person, and after notice given to all persons interested, in such manner as the Judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Power, and duties of guardians appointed under section 43.

§ 44. Every guardian appointed under the provisions of the preceding Section, shall have the same powers, and perform the same duties, with respect to any estate of the ward that shall be found within this State, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this Act.

Such guardians to give bonds.

§ 45. Every such guardian shall give bond to the ward, in the manner, and with the like condition, as hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and such effects as shall come to his hands in this State.

§ 46. The guardianship which shall be first lawfully granted, of any person residing without this State, shall extend to all the estate of the ward within the same; and shall exclude the jurisdiction of the Probate Court of every other County.

To what guardianship shall extend.

§ 47. Every guardian shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and he shall also have such compensation for his services, as the Court in which his accounts are settled, shall deem to be just and reasonable.

Guardian to be allowed his expenses.

§ 48. The Court in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond, and be governed and liable in all respects as is provided respecting a sole guardian.

More than one guardian of one person may be appointed.

§ 49. When an account is rendered by two or more joint guardians, the Probate Judge may, in his discretion, allow the same upon the oath of any of them.

Allowance of accounts of joint guardians.

Chap. 116.

AN ACT providing for the payment of certain Post-Office expenses of the Assembly, and of certain contingent expenses of the Senate.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The sum of one hundred and eighty dollars is hereby appropriated out of the general fund for the payment of the postage account of the Assembly, from the first day of January to the fifteenth day of April, eighteen hundred and fifty.

\$180 appropriated for postage.

§ 2. That the sum of twenty-five hundred dollars, in addition to the sum already paid, be, and the same is hereby appropriated as a contingent fund for the Senate, to be audited by the Comptroller, upon the certificate of the presiding officer of the Senate.

\$2,500 appropriated for contingent fund.

Chap. 117.

AN ACT to provide for the Incorporation of Colleges.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. Any College may be incorporated in this State, according to the provisions of this Act, by the Supreme Court of the State, upon application.

Supreme court may incorporate colleges.

§ 2. The founders or contributors of any proposed College within this State shall make to the Supreme Court application in writing, under their hands, requesting that ——— College may be incorporated, specifying the first trustees, and the name by which the corporation is to be called.

Application for incorporation of colleges.

§ 3. In case the Court shall be satisfied that the proposed College has an endowment of twenty thousand dollars, and that the proposed trustees are capable men, then the Court shall, by an instrument under its seal, declare the College incorporated, under the provisions of this Act, by the name specified in the application; and the application, together with the declaration of the Court, shall be recorded in the office of the Secretary of State.

Court may declare college incorporated.

Application and declaration to be recorded.

§ 4. Immediately after recording the same, the property and funds of such College shall be vested in the trustees so nominated, for the use and benefit of the College.

Property of college to vest in trustees.

Number of trustees. Quorum. Style of incorporation.

§ 5. The trustees of every such College shall not be more than twenty-four, nor less than twelve in number; and seven trustees of any college shall constitute a quorum for the transaction of business.

§ 6. The trustees of every such College shall be a corporation, known by the name and style of the President and Board of Trustees of ——— College; and by that name they and their successors shall be known in law, have perpetual succession, sue, and be sued, in all Courts and in all actions whatsoever.

Powers of trustees.

§ 7. The trustees shall have power, 1. To elect by ballot, annually, one of their number as President of the Board: 2. Upon the death, removal out of the State, or other vacancy in the office of any trustee, to elect another in his place: 3. To elect additional trustees, provided the whole number elected shall never exceed twenty-four at any one time: 4. To declare vacant the seat of any trustee who shall absent himself from eight succeeding meetings of the Board: 5. To receive and hold, by purchase, gift, or grant, any real or personal property; *Provided*, that the yearly income of the College shall not exceed its necessary yearly expenses ten thousand dollars; 6. To sell, mortgage, lease, and otherwise use and dispose of such property, in such manner as they shall deem most conducive to the prosperity of the College: 7. To direct and prescribe the course of study and discipline to be observed in the College: 8. To appoint a President of the College, who shall hold his office during good behavior: 9. To appoint such Professors, Tutors, and other officers as they shall deem necessary, who, unless employed under a special contract, shall hold their offices during the pleasure of the trustees: 10. To remove from office the President, and every Professor, Tutor, or other officer employed, upon a complaint in writing, by any member of the Board of Trustees, stating the misbehavior in office, incapacity, immoral conduct of the person or persons sought to be removed, and upon due examination and proof of such complaint: 11. To grant such literary honors as are usually granted by any University, College, or Seminary of learning in the United States, and in testimony thereof, to give suitable diplomas under their seal, and the signature of such officers of the College as they shall deem expedient: 12. To fix the salaries of the President, Professors, and other officers of the college: 13. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers, and necessary to advance the interests of the College; *Provided*, that no by-laws or ordinance shall conflict with the Constitution or laws of the United States, or of this State.

Effect of diploma.

§ 8. Every diploma granted by such trustees shall entitle the possessor to all the immunities which, by usage or statute, are allowed to possessors of similar diplomas, granted by any University, College, or Seminary of learning in the United States.

Chap. 118.

AN ACT to prevent the coining of money by Individuals.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Making or uttering pieces of metal as coin a misdemeanor.

§ 1. Any person who shall make or cause to be made, alter or cause to be altered, within this State, or shall make or cause to be made within this State, with intent to utter, either within or without this State, any piece of gold or silver, whether pure or alloyed, in the form of coin, or intended or calculated to circulate as coin, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine in any sum not less than five hundred dollars, nor more than one thousand dollars, or be imprisoned in the County Jail not more than one year, for each offence.

Impressing any piece of gold of less weight than 4 ounces with any mark indicating its weight, &c., a misdemeanor. Commencement of act.

§ 2. Any person who shall stamp or impress, or cause to be stamped or impressed, upon any piece of gold of less weight than four ounces troy weight, whether pure or alloyed, any figures, letter, or mark or marks, indicating, or purporting to indicate, its weight, fineness, or value, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as prescribed in the preceding section.

§ 3. This Act shall take effect on the tenth day after its passage.

Chap. 119.

AN ACT to regulate proceedings in Criminal Cases.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. This Act is divided into seven parts. The first embraces general definitions and provisions. Division of act.
 The second relates to the prosecution of public offences. The third relates to proceedings for the removal of public officers by impeachment or otherwise. The fourth relates to proceedings in criminal actions prosecuted by indictment. The fifth relates to proceedings in the Court of Sessions. The sixth relates to special proceedings. The seventh relates to costs in criminal proceedings.

PART I.

GENERAL DEFINITIONS AND PROVISIONS.

§ 2. A crime, or public offence, is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments : 1. Death ; 2. Imprisonment ; 3. Fine ; 4. Removal from office ; or, 5. Dis-qualification to hold and enjoy any office of honor, trust, or profit, under this State. A crime defined.

§ 3. Public offences are divided into, 1. Felonies ; and 2. Misdemeanors. Division of public offences.

§ 4. A Felony is a public offence punishable with death, or by imprisonment in the State Prison. Felony.

§ 5. Every other public offence is a Misdemeanor. Misdemeanor.

§ 6. No person can be punished for a public offence, except upon legal conviction in a court having jurisdiction thereof. Punishment can only be on legal conviction.

§ 7. Every public offence must be prosecuted by indictment, except: 1st. Where proceedings are had for the removal of civil officers of the State. 2d. Offences arising in the militia, when in actual service, and in the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace. 3d. Offences tried in the Court of Sessions. Public offences—how prosecuted.

§ 8. The proceeding by which a party charged with a public offence is accused and brought to trial and punishment, shall be known as a criminal action. Criminal action defined.

§ 9. A criminal action is prosecuted in the name of the People of the State of California as a party, against the party charged with the offence. Criminal action—how prosecuted.

§ 10. The party prosecuted in a criminal action is designated in this Act as the defendant. Defendant.

§ 11. In a criminal action the defendant is entitled : 1st. To a speedy and public trial. 2d. To be allowed counsel as in civil actions ; or he may appear and defend in person or with counsel : and, 3d. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the Court. Rights of defendant.

§ 12. No person shall be subject to a second prosecution for a public offence for which he has once been prosecuted and duly convicted or acquitted. No second prosecution for same offence.

§ 13. No person shall be compelled, in a criminal action, to be a witness against himself ; nor shall a person charged with a public offence be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge. Not to be a witness against himself, nor subject to unnecessary restraint.

§ 14. No person can be convicted of a public offence, unless by the verdict of a jury accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him on a demurrer to the indictment in the case mentioned in Section 317. How a person may be convicted.

PART II.

OF THE PREVENTION OF PUBLIC OFFENCES.

TITLE I.

Of Lawful Resistance.

How lawful resistance may be made.

§ 15. Lawful resistance to the commission of a public offence may be made : 1st. By the party about to be injured. 2d. By other parties.

Resistance by party about to be injured.

§ 16. Resistance, sufficient to prevent the offence, may be made by the party about to be injured : 1st. To prevent an offence against his person or his family, or some member thereof. 2d. To prevent an illegal attempt by force to take or injure property in his lawful possession.

Resistance in aid of party about to be injured.

§ 17. Any other person, in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offence.

TITLE II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

CHAPTER I.

Intervention of Public Officers generally.

How public offences may be prevented by officers of justice.

§ 18. Public offences may be prevented by the intervention of the officers of justice : 1st. By requiring security to keep the peace. 2d. By forming a police in cities and towns, and by requiring their attendance in exposed places. 3d. By suppressing riots.

By others.

§ 19. Whenever the officers of justice are authorized to act in the prevention of public offences, other persons, who by their command act in their aid, are justified in so doing.

CHAPTER II.

Security to keep the Peace.

Information of threat to commit offence.

§ 20. An information may be laid before any of the Magistrates mentioned in Section 104, that a person has threatened to commit an offence against the person or property of another.

Information—how taken.

§ 21. When the information is laid before the Magistrate he shall examine on oath the complainant, and any witnesses he may produce, and shall take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrate may issue warrant.

§ 22. If it appear from the depositions that there is just reason to fear the commission of the offence threatened, by the person so complained of, the Magistrate shall issue a warrant, directed generally to the Sheriff of the County, or any Constable, Marshal, or Policeman in this State, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of and bring him before the magistrate.

Hearing before magistrate.

§ 23. When the person complained of is brought before the Magistrate, if the charge be controverted, the Magistrate shall take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

Complaint discharged.

§ 24. If it appear that there is no just reason to fear the commission of the offence alleged to have been threatened, the person complained of shall be discharged.

Party held to bail.

§ 25. If, however, there be just reason to fear the commission of the offence, the person complained of may be required to enter into a recognisance, in such sum not exceeding two thousand dollars, as the Magistrate may direct, with one or more sufficient sureties to abide the order of the next Court of Sessions of the County, and in the meantime to keep the peace towards the people of this State, and particularly towards the complainant.

- § 26. If the recognisance required by the last section be given, the party complained of shall be discharged. If he do not give it, the Magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same. Or committed.
- § 27. If the person complained of be committed for not giving the recognisance, he may be discharged by any Magistrate upon giving the same. Discharge on giving bail.
- § 28. A recognisance given as provided in Section 25, must be transmitted by the Magistrate to the next Court of Sessions in the County. Recognisances to be transmitted to sessions.
- § 29. Any person who, in the presence of a Court or Magistrate, shall assault, or threaten to assault, another, or to commit any offence against his person or property, or who shall contend with another with angry words, may be ordered by the Court or Magistrate to give security, as is provided in Section 25 ; or if he refuse to do so, may be committed as provided in Section 26. Offence committed in court.
- § 30. A person who has entered into a recognisance to keep the peace, must appear on the first day of the next term of the Court of Sessions of the County. If he do not, the Court shall forfeit his recognisance, and order it to be prosecuted, unless his default be excused. Persons under recognisance to appear at sessions.
- § 31. If the complainant do not appear, the person complained of shall be discharged, unless good cause to the contrary be shown. Complainant not appearing.
- § 32. If both parties appear, the Court shall hear their proofs and allegations, and may either discharge the recognisance, or require a new one for a time not exceeding one year. Hearing at sessions.
- § 33. A recognisance to keep the peace shall be deemed broken on the failure of the person complained of to appear at the Court of Sessions, as provided in Section 30, or upon his being convicted of a breach of the peace. Recognisances—how broken.
- § 34. Upon the County Attorney producing evidence of such conviction, to the Court of Sessions, to which the recognisance is returned, the Court shall order the recognisance to be prosecuted, and the District Attorney shall thereupon commence an action in the name of the people of this State. Prosecution of recognisance.
- § 35. In the action the offence stated in the record of conviction shall be alleged as the breach of the recognisance, and shall be conclusive evidence thereof. Evidence of breach of recognisance.
- § 36. No security to keep the peace, or be of good behavior, shall be required; except as prescribed in this Chapter. Security to keep the peace.

CHAPTER III.

Police in Cities and Towns, and their Attendance at Exposed Places.

- § 37. The organization and regulation of the Police in the Cities and Towns in this State, are governed by special laws. Regulation of police.
- § 38. The Mayor, or other Officer, having the direction of the Police in a City, Town, or Village, shall order a force sufficient to keep the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended. Police at public meetings.

CHAPTER IV.

Suppression of Riots.

- § 39. When a Sheriff or other public Officer, authorized to execute process, shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his County as he may think proper, and any military company or companies in the County, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished according to law. Sheriff may call male inhabitants to his aid.
- § 40. The Officer shall certify to the Court from which the process issued, the names of the resisters, and their aiders and abettors, to the end that they may be proceeded against for their contempt of Court. Sheriff to certify to court names of resisters.

Refusal to aid
sheriff.

§ 41. Every person commanded by a public officer to assist him in the execution of process as provided in Section Thirty-nine, who shall, without lawful cause, refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.

Military may be
ordored out.

§ 42. If it appear to the Governor that the power of any County is not sufficient to enable the Sheriff to execute process delivered to him, he shall, on the application of the Sheriff, order such a military force from any other County or Counties as shall be necessary.

Sheriff may dis-
perse riotous
assemblies.

§ 43. When three or more persons, whether armed or not, shall be unlawfully or riotously assembled in any City or Town, the Sheriff of the County and his Deputies, the Mayor and Aldermen of the City, or the Constables of the Town, and the Justices of the Peace, shall go among the persons so assembled, or as near to them as possible, and shall command them, in the name of the people of the State, immediately to disperse.

Refusing to dis-
perse.

§ 44. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law; and for that purpose may command the aid of all persons present, or within the County.

Refusing to aid
magistrates.

§ 45. If a person so commanded to aid the magistrates or officers neglect or refuse to do so, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Magistrate refus-
ing to proceed to
disperse riotous
assembly.

§ 46. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in Section Forty-three, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same, and arresting the offenders, he shall be deemed guilty of a misdemeanor.

Refusing to dis-
perse.

§ 47. If the persons so assembled and commanded to disperse, do not immediately disperse, any two of the magistrates or officers before mentioned, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

Duty of military.

§ 48. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the Governor, or by a Judge of a Court of Record, or the Sheriff of the county, or by any two of the magistrates or officers mentioned in Section Forty-three.

Military may be
summoned to
appear.

§ 49. When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the State, and the fact is made to appear to the Governor, or to a Judge of the Supreme or District Court, or to the Sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division, brigade, regiment, battalion, or company, to order his command, or any part thereof (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

Military to
appear armed.

§ 50. The commanding officer to whom the order is given shall forthwith obey the same; and the troops so required shall appear at the time and place appointed, armed and equipped with ammunition as for inspection, and shall execute any order that they shall then and there receive according to law.

Governor may
proclaim county
in a state of
insurrection.

§ 51. When the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the District Attorney, or County Judge of the county, by proclamation, to be published in any newspaper printed at the seat of government, and in such papers in the county as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the State such number and description of volunteer or uniform companies, or other militia of the State, as he shall deem necessary, to serve for such term, and under the command of such officer or officers as he shall direct.

Revoking pro-
clamation.

§ 52. The Governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

§ 53. Any person who shall, after the publication of the proclamation authorized by Section Fifty-one, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the Governor to quell or suppress an insurrection, shall be punished by imprisonment in a State prison for a term not less than two years.

Refusing to aid in suppressing insurrection.

PART III.

OF PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT OR OTHERWISE.

TITLE I.

Of Impeachments.

§ 54. The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court, and Judges of the District Courts, shall be liable to impeachment for any misdemeanor in office.

Certain officers liable to impeachment.

§ 55. All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation.

Trial of impeachments.

§ 56. When a civil officer of the State is impeached by the Assembly for wilful or corrupt misconduct in office, the articles of impeachment shall be delivered to the President of the Senate.

Articles of impeachment to be delivered to president of senate. Notice of time of hearing impeachment.

§ 57. The Senate shall assign a day for hearing the impeachment, and shall inform the Assembly thereof. The President of the Senate shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for the hearing.

§ 58. The service must be upon the defendant personally, or if he cannot upon diligent inquiry be found within the State, the Senate, upon due proof of that fact, may order that publication be made, in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Service of notice of hearing, &c.

§ 59. If the defendant do not appear, the Senate, upon proof of service or publication, as provided in the last two sections, may, of their own motion, or for cause shown, assign another day for hearing the impeachment, or may then, or at any other time which they may appoint, proceed in the absence of the defendant, to trial and judgment.

Senate may proceed in absence of party impeached.

§ 60. When the defendant appears, he must answer the articles of impeachment, which he may do either by objecting to the sufficiency of the same, or of any article therein, or by denying the truth of the same.

Defendant appearing to answer articles.

§ 61. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journals.

Objections to sufficiency of impeachment.

§ 62. If an objection to the insufficiency of the impeachment be not sustained by a majority of the members of the Senate who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment. If he plead guilty, or refuse to plead, the Senate shall render judgment of conviction against him. If he deny the matters charged, the Senate shall, at such time as they may appoint, proceed to try the impeachment.

Objections overruled, defendant to answer forthwith.

§ 63. At the time and place appointed, and before the Senate proceed to act on the impeachment, the Secretary shall administer to the President of the Senate, and the President of the Senate to each of the members of the Senate then present, an oath or affirmation, truly and impartially to hear, try, and determine the impeachment: and no member of the Senate shall act or vote upon the impeachment, or any question arising thereon, without having taken such oath or affirmation.

Members of senate to be sworn

§ 64. The oath or affirmation having been administered, the Senate shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Adjournment of trial.

Two thirds of members must concur to convict.

§ 65. The defendant cannot be convicted on impeachment, without the concurrence of two thirds of the members present; and if two thirds of the members present do not concur in a conviction, he shall be declared acquitted.

Judgment—how pronounced.

§ 66. After conviction, the Senate shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution, entered upon the journals of the Senate. The vote upon the passage thereof shall be taken by yeas and nays, and shall in like manner be entered upon the journal.

Resolution to be the judgment of the senate.

§ 67. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, the same shall be the judgment of the Senate.

Judgment may be either of suspension or removal.

§ 68. The judgment may be, that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust, or profit, under this State.

Judgment of suspension.

§ 69. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees, or emoluments of the office.

Not to act while under impeachment.

§ 70. No judicial officer shall exercise the office after being impeached, until he is acquitted.

Impeachment of lieutenant governor.

§ 71. If the Lieutenant Governor be impeached, notice of the impeachment shall be immediately given to the Senate by the Assembly, that another President may be chosen.

Indictment not barred by impeachment.

§ 72. If the offence for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

TITLE II.

Of the Removal of Civil Officers, otherwise than by Impeachment.

Accusations against county or township officer.

§ 73. An accusation in writing against any county or township officer, for wilful or corrupt misconduct in office, may be presented to the Judge of the District Court of the district within which is the county, or for which the officer accused is elected or appointed.

Accusation—what to state.

§ 74. The accusation shall state the offence charged, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended, and shall be verified by the oath of the person making the same, to the effect that he believes the charges therein contained to be true.

Proceedings of judge on receiving accusation.

§ 75. After receiving the accusation, the Judge to whom it is delivered shall forthwith cause it to be transmitted to the District Attorney of the district, who shall cause a copy thereof to be served upon the defendant, and require, by notice in writing, of not less than ten days, that he appear before the District Court of the county and answer the accusation, at a time specified in the notice, which shall be at a term of the Court.

Defendant to appear and answer accusation.

§ 76. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the Court assign another day for that purpose. If he do not appear, the Court may proceed to hear and determine the accusation in his absence.

How defendant may answer.

§ 77. The defendant may answer the accusation, either by objecting to the sufficiency thereof or of any article therein, or by denying the truth of the same.

Objection to legal sufficiency of accusation.

§ 78. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

Denial of truth of accusation.

§ 79. If he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

Objections to accusation overruled.

§ 80. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

Defendant pleading guilty or refusing to plead.

§ 81. If the defendant plead guilty, or refuse to answer the accusation, the Court shall render judgment of conviction against him; if he deny the matters charged, the Court shall immediately, or at such time as they may appoint, proceed to try the accusation.

§ 82. The trial shall be before a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor. Trial.

§ 83. The District Attorney and the defendant shall be respectively entitled to such processes as may be necessary to enforce the attendance of witnesses, as upon the trial of an indictment. Enforcing attendance of witnesses.

§ 84. Upon a conviction, the Court shall immediately, or at such other time as they may appoint, pronounce judgment, that the defendant be removed from office. But to warrant a removal the judgment must be entered upon the minutes, assigning therein the causes of removal. Judgment upon conviction.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

TITLE I.

Of the Local Jurisdiction of Public Offences.

§ 85. Every person, whether an inhabitant of this or any other State or country, or of a territory or district of the United States, is liable to punishment by the laws of this State, for a public offence committed by him therein, except where it is by law cognisable exclusively in the Courts of the United States. Who liable to punishment by state laws.

§ 86. When the commission of a public offence, commenced without the State, is consummated within the boundaries thereof, the defendant is liable to punishment therefor in this State, though he were without the State at the time of the commission of the offence charged: *Provided* he consummated the offence through the intervention of an innocent or guilty agent, within this State, or any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offence is consummated. Commission of offence commenced out of state, and consummated within the state.

§ 87. When an inhabitant or resident of this State shall, by any previous appointment or engagement, fight a duel, or be concerned as second therein, without the jurisdiction of this State, and in such duel a wound shall be inflicted upon any person, whereof he shall die within this State, the jurisdiction of the offence is in the county where the death shall happen. Duelling.

§ 88. When a public offence is committed, in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offence, occur in two or more counties, the jurisdiction is in either county. Offence committed in two counties.

§ 89. When a public offence is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is within either county. Offence committed on boundaries of counties.

§ 90. When an offence is committed within this State on board a vessel navigating a river, bay or slue, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate. Offences committed on board vessels.

§ 91. The jurisdiction of an indictment for the crime of forcibly stealing, taking, or arresting any man, woman, or child, in this State, and carrying him or her into another County, State, or Territory, or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this State, without having established a claim according to the laws of the United States, or for hiring, persuading, enticing, decoying, or seducing, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, to go out of this State, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, or colored person, into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, is in any county in which the offence is committed, or into or out of which the person upon whom the offence was committed, may, in the prosecution of the offence, have been brought, or in which an act shall be done by the offender, in instigating, procuring, promoting, aiding in, or being an accessory to the commission of the offence, or in abetting the parties therein concerned. Kidnapping.

Bigamy or incest.

§ 92. When the offence, either of bigamy or incest, is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

Property stolen in one county and brought into another.

§ 93. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offence is in either county. But if at any time before his conviction in the latter, he be indicted in the former county, the Sheriff of the latter county shall, upon demand, deliver him to the Sheriff of the former county, upon being served with a copy of the indictment, and upon a receipt endorsed thereon by the Sheriff of the former county of the body of the offender; and shall, on filing the copy of the indictment and the receipt, be exonerated from all liability in respect to the custody of the offender.

Jurisdiction over accessories.

§ 94. In the case of an accessory before or after the fact, in the commission of a public offence, the jurisdiction is in the county where the offence of the accessory was committed, notwithstanding the principal offence was committed in another county.

Conviction in any other state a bar to subsequent prosecution.

§ 95. When an act charged as a public offence is within the jurisdiction of another State, County, or Territory, as well as of this State, a conviction or acquittal thereof in the former is a bar to a prosecution or indictment therefor in this State.

Conviction in one county a bar to prosecution in any other.

§ 96. When an offence is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

TITLE II.

Of the time of commencing Criminal Actions.

Murder.

§ 97. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Felony other than murder.

§ 98. An indictment for any other felony than murder must be found within three years after its commission.

Misdemeanor.

§ 99. An indictment for any misdemeanor must be found within one year after its commission.

Defendant out of state.

§ 100. If, when the offence is committed, the defendant be out of the State, the indictment may be found within the term herein limited, after his coming within the State; and no time during which the defendant is not an inhabitant of, or usually resident within the State, shall be a part of the limitation.

Indictment—when found.

§ 101. An indictment is found within the meaning of this Title, when it is duly presented by the Grand Jury in open court, and there received and filed.

TITLE III.

OF THE INFORMATION AND PROCEEDINGS THEREON, TO THE COMMITMENT INCLUSIVE.

CHAPTER I.

The Information.

Information defined.

§ 102. The information is the allegation made to a Magistrate, that a person has been guilty of some designated public offence.

Magistrate defined.

§ 103. A Magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offence.

Who are magistrates.

§ 104. The following persons are Magistrates: 1st. The Justices of the Supreme Court. 2d. The District Judges. 3d. The County Judges. 4th. Justices of the Peace. 5th. The Recorders and the Mayors of Cities, upon whom are conferred by law the powers of Justices of the Peace.

CHAPTER II.

Warrant of Arrest.

Duty of magistrate when information laid before him.

§ 105. When an information is laid before a Magistrate of the commission of a public offence, triable within the county, he must examine, on oath, the informant or prosecutor, and any witnesses he may

produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

§ 106. The depositions must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offence and the guilt of the defendant.

Depositions—
what to contain.

§ 107. If the Magistrate be satisfied therefrom that the offence complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

Magistrate to
issue warrant
of arrest.

§ 108. A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form :

Warrant of
arrest—form of.

“County of ———. The People of the State of California to any Sheriff, Constable, Marshal, or Policeman, in this State, or in the County of ——— : Information upon oath having been this day laid before me by A. B. that the crime of (designating it) has been committed, and accusing C. D. thereof; you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place); or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this County. Dated at ———, this ——— day of ———, 18—.

§ 109. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town, where it is issued, and be signed by the magistrate with his name of office.

To state name of
defendant and
date.

§ 110. The warrant must be directed to and executed by a peace officer.

To whom
directed.
Peace officers
defined.

§ 111. Peace officers are Sheriffs of Counties, and Constables, Marshals, and Policemen of cities and towns respectively.

§ 112. If a warrant be issued by a Justice of the Supreme Court, District Judge, or County Judge, it may be directed generally to any Sheriff, Constable, Marshal, or Policeman, in this State, and may be executed by any of those officers to whom it may be delivered.

How directed
when issued by
supreme court
justice, or district
or county judge.

§ 113. If it be issued by any other magistrate, it may be directed generally to any Sheriff, Constable, Marshal, or policeman, in the county in which it is issued, and may be executed in that county, or if the defendant be in another county it may be executed therein upon the written direction of a magistrate of that county, endorsed upon the warrant signed by him with his name of office, and dated at the county, city, or town, where it is made, to the following effect: “This warrant may be executed in the county of ———,” or as the case may be.

When issued by
any other officer.

§ 114. The endorsement mentioned in the last section shall not, however, be made, unless the warrant be accompanied with a certificate of the county clerk, under the seal of this Court, as to the official character of the magistrate, or unless upon the oath of a credible witness in writing, endorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate endorsing the warrant shall be exempted from the liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued.

Endorsement on
warrant.

§ 115. If the offence charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in Section 110.

Arrest on war-
rant for felony.

§ 116. If the offence charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

For misde-
meanor.

§ 117. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognisance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognisance to the Clerk of the Court, at which the defendant is required to appear.

Admitting defen-
dant to bail.

§ 118. If, on the admission of the defendant to bail, as provided in Section One Hundred and Sixteen, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section.

Defendant to be
taken before
magistrate.

Magistrate absent.

Defendant to be taken before magistrate without delay.

Defendant taken before magistrate other than the one who issued the warrant.

Information against a defendant out of the county.

Before what magistrate defendant to be taken.

Where offence charged is a misdemeanor.

§ 119. When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer must at the same time deliver to the magistrate the warrant, with his return endorsed and subscribed by him.

§ 120. The defendant must in all cases be taken before the magistrate without unnecessary delay.

§ 121. If the defendant be brought before a magistrate other than the one who issued the warrant, the affidavits on which the warrant was granted, must be sent to such magistrate, or if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

§ 122. When an information is laid before a magistrate of the commission of a public offence, triable within some other county of this State, but showing that the defendant is in the county where the information is laid, the same proceedings shall be had as prescribed in this chapter, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offence is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, shall be delivered by the magistrate to the officer to whom the warrant is delivered.

§ 123. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offence is triable, and shall deliver to such magistrate the depositions and the warrant with his return endorsed thereon, and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

§ 124. If the offence charged in the warrant be a misdemeanor, the officer must, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail.

CHAPTER III.

Arrest by an Officer under Warrant.

Arrest defined.

§ 125. Arrest is the taking of a person into custody, that he may be held to answer for a public offence.

How arrest may be made.

§ 126. An arrest may be either, 1st. By a peace officer under a warrant. 2d. By a peace officer without a warrant; or, 3d. By a private person.

Aiding officer to execute warrant.

§ 127. Every person must aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

When arrest may be made.

§ 128. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate endorsed upon the warrant.

How an arrest is made.

§ 129. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.

Defendant not to be subjected to unnecessary restraint. Officer to show warrant.

§ 130. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

§ 131. The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required.

Resisting arrest.

§ 132. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Officers may break open doors to make arrest.

§ 133. The officer may break open any outer or inner door or window of a dwelling-house to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Or to liberate person detained.

§ 134. An officer may break open any outer or inner door or window of a dwelling-house, for the purpose of liberating a person, who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

Arrest by an Officer without a Warrant.

§ 135. A peace officer may, without a warrant, arrest a person: 1st. For a public offence committed or attempted in his presence. 2d. Where the person arrested has committed a felony, although not in his presence. 3d. Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. 4th. On a charge made upon a reasonable cause of the commission of a felony by the party arrested.

Arrest without warrant.

§ 136. To make an arrest as provided in the last section, the officer may break open any outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he be refused admittance.

May break doors.

§ 137. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony had not been committed.

Arrest at night.

§ 138. When arresting a person without a warrant the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offence, or when he is pursued immediately after an escape.

Officer to state authority and cause of arrest.

§ 139. He may take before a magistrate any person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

May take before magistrate person arrested by third party. Offence committed in presence of magistrate.

§ 140. When a public offence is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

CHAPTER V.

Arrest by a Private Person.

§ 141. A private person may arrest another: 1st. For a public offence committed or attempted in his presence. 2d. When the person arrested has committed a felony, although not in his presence. 3d. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Private person may make arrest.

§ 142. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.

Must state reason of making arrest.

§ 143. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling-house for the purpose of making the arrest.

May break doors.

§ 144. A private person who has arrested another for the commission of a public offence, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

To take party arrested before magistrate

CHAPTER VI.

Retaking after an Escape or Rescue.

§ 145. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time, and in any place within the State.

Escaped person may be retaken.

§ 146. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling-house.

May break doors, &c.

CHAPTER VII.

Examination of the Case, and Discharge of the Defendant, or Holding him to Answer.

Magistrate to inform accused of the charge, against him, &c

§ 147. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offence, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

To allow him time to procure counsel
Message to counsel.

§ 148. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and shall, upon the request of defendant, require a peace officer to take a message to such counsel within the County, Town, or City, as the defendant may name. The officer shall without delay and without fee perform that duty.

Proceeding to examination.

§ 149. The magistrate shall, immediately after the appearance of counsel, or if the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

Examination to be completed at one session, unless adjourned for cause

§ 150. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

On adjournment defendant may be committed or admitted to bail.

§ 151. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in Section 561, as security for his appearance at the time to which the examination is adjourned.

Commitment for examination.

§ 152. The commitment for examination shall be by an endorsement signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the Sheriff of the County of _____." If the Sheriff be not present, the defendant may be committed to the custody of a peace officer.

Depositions to be read to defendant.

§ 153. At the examination, the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined, on the taking of the information. He shall also issue Subpœnas for any witnesses required by the prosecutor or the defendant, as provided in Section Five Hundred and Eighty.

Subpœnas.

Examination of witnesses.

§ 154. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf.

Defendant to be informed of his right to make statement.

§ 155. When the examination of the witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge, and to explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Defendant waiving his right to make a statement.

§ 156. If the defendant waive his right to make a statement, the magistrate shall make a note thereof, immediately following the depositions of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

Statement—how taken.

§ 157. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: "What is your name and age?—where were you born?—where do you reside, and how long have you resided there?—what is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation."

Answers to be read to defendant.

§ 158. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares is the truth.

Statement to be reduced to writing and authenticated.

§ 159. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: 1st. It must set forth in detail, that the defendant was informed

of his rights, as provided by Section One Hundred and Fifty-five, and that after being so informed, he made the statement. 2d. It must contain the questions put to him and his answers thereto, as provided in Sections One Hundred and Fifty-seven and One Hundred and Fifty-eight. 3d. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated, as he gives it. 4th. It must be signed and certified by the magistrate.

§ 160. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

Defendant's witnesses.

§ 161. The witnesses produced on the part either of the people or of the defendant, shall not be present at the examination of the defendant; and while a witness is under examination the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Witnesses not under examination may be excluded.

§ 162. The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate, or under his direction; it must state the name, place of residence, and business or profession of the witness; it must be signed by him, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it; and it must be signed and certified by the magistrate.

Testimony to be reduced to writing.

§ 163. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offence has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged by an endorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offence within mentioned, I order him to be discharged."

Magistrate may discharge the defendant.

§ 164. If, however, it appear from the examination that a public offence has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, endorse on the depositions and statement an order signed by him, to the following effect: "It appearing to me by the within depositions (and statement, if any) that the offence therein mentioned (or any other offence according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Or hold him to answer.

§ 165. If the offence be not bailable, the following words, or words to the same effect, shall be added to the endorsement: "and that he be committed to the Sheriff of the county of ——"

Non-bailable offence.

§ 166. If the offence be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the endorsement: "and I have admitted him to bail, to answer by the recognisance hereto annexed."

Bailable offence.

§ 167. If the offence be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the endorsement mentioned in Section One Hundred and Sixty-four; "and that he be admitted to bail in the sum of —— dollars, and be committed to the Sheriff of the county of —— until he gives such bail."

Bailable offence, but defendant not bailed.

§ 168. If the magistrate order the defendant to be committed, as provided in Sections One Hundred and Sixty-five and One Hundred and Sixty-seven, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

Commitment to be made out.

§ 169. The commitment must be to the following effect: "County of —— (as the case may be). The people of the State of California to the Sheriff of the county of ——; An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offence), you are commanded to receive him into your custody, and detain him until he be legally discharged. Dated ——, this —— day of ——, 18——."

Form of commitment.

§ 170. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him on the part of the people, a written recognisance, to the effect that he

Recognisance from witnesses to appear.

will appear and testify at the Court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

Sureties for appearance of witness may be required.

§ 171. Whenever the Magistrate shall be satisfied, by proof on Oath, that there is reason to believe that any such witness will not fulfil his recognisance to appear and testify, unless security be required, he may order the witness to enter into a written recognisance, with such sureties and in such sum as he may deem meet, for his appearance as specified in the last section.

Infants and married women may be required to give sureties. Refusing to enter into recognisances.

§ 172. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance as provided in the last section.

§ 173. If a witness, required to enter into recognisance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the Magistrate shall commit him to prison until he comply or be legally discharged.

Witness unable to procure sureties.

§ 174. When, however, it shall satisfactorily appear, by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be discharged upon his own recognisance.

Proceedings by magistrate after committal or discharge of defendant.

§ 175. When a Magistrate has discharged a defendant, or has held him to answer as provided in Sections One Hundred and Sixty-four and One Hundred and Sixty-five, he must return without delay to the Court having cognisance of the offence, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all recognisances of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.

CHAPTER I.

Preliminary Provisions.

All public offences to be prosecuted by indictment. Exceptions.

§ 176. All public offences prosecuted in the District Court must be prosecuted by indictment, except as provided in the next section.

§ 177. Where the proceedings are had for the removal of county or township officers before the District Court, they may be commenced by an accusation in writing, as provided in Sections Seventy-three and Seventy-four.

CHAPTER II.

Formation of the Grand Jury.

Grand jury defined.

§ 178. A Grand Jury is a body of men, not less than sixteen nor more than twenty-three in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and sworn to inquire of public offences committed or triable within the county.

Grand jury list to be formed from assessment list.

§ 179. At the first term of the Court of Sessions held in each county, after the assessment roll for the year has been made out and returned, such roll shall be examined by the Court, and under its direction a list formed therefrom of persons competent to serve as jurors.

List how formed.

§ 180. The clerk shall write down the names of such persons as may be designated by the Court, and the list so prepared shall be the jury list of the county.

Qualification of grand jury.

§ 181. No other qualification shall be requisite to render a person a competent juror, than that he should be a qualified elector of the county.

Names not on assessment roll may be inserted on jury list.

§ 182. If any persons are not named on the assessment roll, who are known to the Court to be qualified electors of the county; their names shall be inserted on the jury list.

Jury list to be revised annually.

§ 183. The assessment roll shall be examined from year to year by the Court, at the first term after it is completed, and such changes be made in the jury list as shall have become necessary.

Jury list to be signed and filed.

§ 184. The jury list shall be signed by the judges and clerk, and filed in the office of the Court of Sessions. When changes are required to be made in it, it shall be drawn up anew and again signed.

- § 185. Each name which is upon the jury list shall be written upon a separate ballot, and the ballots shall be deposited in a box, which shall be kept by the Clerk. From this box juries, when required, shall be drawn, until all the ballots are exhausted, when they shall all be returned to the box. **Jurors how drawn.**
- § 186. When any change is made in the jury list, the Court of Sessions shall see that the corresponding change is made in regard to the ballots. **Changing ballots.**
- § 187. There shall be drawn from the jury box, previous to each term of the District Court, the names of forty-eight persons, to serve as jurors at such term. **Names of 48 jurors to be drawn previous to each term. Where drawing to take place.**
- § 188. Drawing shall take place at the office of the Court of Sessions, not less than twenty nor more than thirty days before the first day of the term of the District Court.
- § 189. The Clerk shall give at least six days' notice of the time and place of the drawing, by publication in a newspaper of the county, or if there be none, by affixing the notice on the outer door of the house where the Court is to be held. **Notice of the time and place of drawing to be published, and**
- § 190. A copy of the notice must also be served on the Sheriff of the County and the County Judge, at least three days before the time appointed for the drawing. **Copy served on sheriff and county judge.**
- § 191. At the time appointed, the Sheriff or Deputy Sheriff and the County Judge, shall attend at the office of the County Clerk to superintend the drawing. **Sheriff and county judge to superintend drawing, or in their absence a justice of the peace.**
- § 192. If either of those officers does not appear, any Justice of the Peace of the County, on notice from the Clerk, shall appear forthwith, and the drawing shall proceed.
- § 193. The drawing shall be public, and shall be conducted as follows: 1st. The clerk shall shake the box containing the ballots, so as to mix them as much as possible. 2d. He shall then draw out of the box forty-eight ballots. 3d. A minute of the drawing shall be kept, in which shall be entered the name contained on every ballot drawn, before any other ballot shall be drawn. 4th. If, when the whole number of ballots required is drawn, it shall satisfactorily appear that a person whose name is contained on any ballot is dead, or has become insane, or has permanently removed from the county, that fact shall be entered in the minute of the drawing, and the ballot containing the name shall be destroyed. 5th. Another shall then be drawn in place of that destroyed, and the name contained thereon shall in like manner be entered in the minute of the drawing. 6th. The same proceedings shall be had as often as necessary, until the requisite number of ballots is drawn. 7th. The minute of the drawing shall then be signed by the Clerk and the attending officers, and forthwith filed in the Clerk's office. 8th. A list of the names of the persons drawn as Grand Jurors shall then be made out and certified by the Clerk and the attending officers, and delivered without delay to the Sheriff of the county. **Drawing—how to be conducted.**
- § 194. At least five days before the Court, the Sheriff shall summon the persons named in the list delivered to him, to attend the Court on the first day of the term, by giving notice to each of them personally, or by leaving the same at his place of residence, with some person of suitable age and discretion. **The persons named in the list to be summoned by the sheriff.**
- § 195. The Sheriff shall also return the list to the Court at its opening, specifying the persons summoned, and the manner in which each was notified. **List to be returned to court.**
- § 196. At the opening of the Court, the list shall be called over, and the Court may impose a fine not exceeding one hundred dollars upon any juror so summoned, who, without reasonable cause, neglects to attend. **Jurors not attending may be fined.**
- § 197. If, however, the notice to attend were not personally served the fine shall not be imposed, until, upon an order to show cause, an opportunity is afforded him to be heard.
- § 198. When a juror fails to attend, or is excused for any cause, his name shall be put back into the jury box. **Cause may be shown against imposition of fine.**
- § 199. The number of the Grand Jury, not less than sixteen nor more than twenty-three, shall be designated by the Court; when more than that number of the persons summoned as Jurors attend, the Clerk shall prepare separate ballots, containing their names, which shall be folded each in the same manner, as near as possible, and so that the name shall not be visible, and shall deposit them in a box; he shall then draw from the box the number designated, and the persons whose names are drawn shall constitute the Grand Jury. **Juror failing to attend his name to be returned to jury box. Grand jury—how constituted when more than 23 jurors attend.**

When only 23 jurors or less attend.

When less than 16 jurors attend.

Challenges.

Challenge to the panel—when it may be interposed.

Challenge to individual grand juror.

Challenges may be oral and to be entered on minutes.

Decision of court on challenges.

Effect of allowance of challenge to the panel.

Effect of allowance of challenge to an individual juror.

Violations of last section—how punished.

Only mode of objecting to jury is by challenge.

Foreman of grand jury to be appointed.

Oath to be administered to.

Oath to other grand jurors.

Grand jury to be charged by court.

§ 200. When, of the persons summoned, only the number designated shall attend, they shall compose the Grand Jury.

§ 201. If less than sixteen persons, qualified to serve as Grand Jurors, and who have been summoned, appear, or if the number of jurors attending be reduced below sixteen, they shall be put upon the Grand Jury, and the Court shall order the Sheriff of the County to summon from among the bystanders a sufficient number (specifying it) to complete the Grand Jury.

§ 202. A person held to answer to a charge for a public offence, may challenge the panel of the Grand Jury or any individual Grand Juror.

§ 203. A challenge to the panel may be interposed for one or more of the following causes only: 1st. That the requisite number of ballots was not drawn from the jury box of the county, as prescribed by Section 187. 2d. That notice of the drawing of the Grand Jury was not given, as prescribed by Sections 189 and 190. 3d. That the drawing was not had in the presence of the officers designated in Sections 191 and 192.

§ 204. A challenge to an individual Grand Juror may be interposed for one or more of the following causes only: 1st. That he is a minor. 2d. That he is an alien. 3d. That he is insane. 4th. That he is not a qualified elector.

§ 205. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the Court in the same manner as challenges in the case of a Trial Jury, which are triable by the Court.

§ 206. The Court shall allow or disallow the challenge, and the Clerk shall enter its decision in the minutes.

§ 207. If a challenge to the panel be allowed, the Grand Jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the Court shall direct the indictment to be set aside.

§ 208. If a challenge to an individual Grand Juror be allowed, he shall not be present at or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the Grand Jury thereon.

§ 209. The Grand Jury shall inform the Court of a violation of the last section, and it shall be punished by the Court as a contempt.

§ 210. A person held to answer to a charge for a public offence can take advantage of any objection to the panel, or to an individual Grand Juror, in no other mode than that by challenge, as prescribed in the preceding sections.

§ 211. From the persons summoned to serve as Grand Jurors, and appearing, the Court shall appoint a foreman. The Court shall also appoint a foreman when a person already appointed is discharged or excused before the Grand Jury is dismissed.

§ 212. The following oath shall be administered to the Foreman of the Grand Jury: "You, as Foreman of the Grand Jury, shall diligently inquire into and true presentment make of all public offences against the people of this State, committed or triable within this county, of which you shall have or can obtain legal evidence: you shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

§ 213. The following oath shall be immediately thereupon administered to the other Grand Jurors present: "The same oath which your Foreman has now taken before you, on his part, you, and each of you, shall well and truly observe on your part, so help you God."

§ 214. The Grand Jury being empanelled and sworn, shall be charged by the Court. In doing so, the Court shall read to them the provisions of this code from Section Two Hundred and Twenty-six to Section Two Hundred and Forty, both inclusive, and shall give them such information as it may deem

proper as to the nature of their duties, and any charges for public offences returned to the Court, or likely to come before the Grand Jury. The Court need not, however, charge them respecting violations of any particular Statute.

§ 215. The Grand Jury shall then withdraw to a private room, and inquire into the offences cognisable by them. Jury to withdraw, &c.

§ 216. The Grand Jury, on the completion of the business before them, shall be discharged by the Court; but whether the business be completed or not they are discharged by the final adjournment of the Court. Discharge of grand jury.

§ 217. If an offence be committed during the sitting of the Court after the discharge of the Grand Jury, the Court may, in its discretion, direct an order to be entered that the Sheriff summon another Grand Jury. Another grand jury may be summoned in certain cases.

§ 218. An order shall thereupon be made out by the clerk and directed to the Sheriff, requiring him to summon thirty-six persons, qualified to serve as Grand Jurors, to appear forthwith, or at such time as may be named by the Court. Order on sheriff to summon.

§ 219. The Sheriff shall execute the order, and return it with a list of the names of the persons summoned. Execution of order.

§ 220. At the time appointed, the list shall be called over, and the names of those in attendance be written by the Clerk on separate ballots and put into a box, from which a Grand Jury shall be drawn in like manner as prescribed in Section 193. Grand jury—how drawn.

§ 221. At the first, and at all subsequent terms of the District Court, until an assessment roll in each county be made out and returned, so that a jury list may be formed, and a Jury drawn as required in this Chapter, the Grand Jury and the Trial Jury shall be formed in the following manner: Formation of juries where no assessment roll.

§ 222. On the first day of the term the Court shall, by an entry on the minutes, direct an order to be issued to the Sheriff of the County to summon forty-eight persons to appear forthwith, or at such time as may be named. Order on sheriff to summon 48 persons.

§ 223. The Clerk shall issue the order, and the Sheriff shall execute and return it at the time specified, with a list of the names of the persons so summoned. If he has been unable to summon the whole number in the time allowed, he shall return the order with the list of names summoned. Sheriff to execute and return order.

§ 224. The Court may, in its discretion, enlarge the time of the return, and direct the Sheriff to summon the whole number, or may proceed to empanel a Grand Jury from the number summoned. Time to return order may be enlarged.

§ 225. Upon the return of the order, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the Court shall proceed to empanel a Grand Jury and Trial Jury, in like manner as if such persons had been empanelled upon a regular drawing of a Jury. Jury to be empanelled from names of persons summoned.

CHAPTER III.

Powers and Duties of the Grand Jury.

§ 226. The Grand Jury has power, and it is their duty, to inquire into all public offences committed or triable within the county, and to present them to the Court, either by presentment or indictment. Power of grand jury.

§ 227. An indictment is an accusation in writing, presented by a Grand Jury to a competent Court, charging a person with a public offence. Indictment defined.

§ 228. A presentment is an informal statement in writing, by the Grand Jury, representing to the Court that a public offence has been committed which is triable within the county, and that there is reasonable ground for believing that a particular individual named or described has committed it. Presentment defined.

§ 229. The Foreman may administer an oath to any witness appearing before the Grand Jury. Foreman may administer oath.

§ 230. In the investigation of a charge for the purpose of either presentment or indictment, the Grand Jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence. What evidence to be received.

§ 231. The Grand Jury shall receive none but legal evidence, and the best evidence in degree to the exclusion of hearsay or secondary evidence. Only legal evidence to be received.

Not bound to hear evidence for defence.

§ 232. The Grand Jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses.

On what evidence to find indictment.

§ 233. The Grand Jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury.

Grand jurors to declare knowledge to fellow jurors.

§ 234. If a member of the Grand Jury know, or have reason to believe, that a public offence has been committed, which is triable within the county, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

To inquire into case of persons imprisoned.

§ 235. The Grand Jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted; into the condition and management of the public prisons within the county; and into the wilful and corrupt misconduct in office of public officers of every description within the county.

To have free access to prisons.

§ 236. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

May ask advice of district attorney.

§ 237. The Grand Jury may, at all reasonable times, ask the advice of the Court or of the District Attorney; but unless such advice be asked, neither of those officers shall be permitted to be present, during the sessions of the Grand Jury; nor shall any other person be permitted to be present during such sessions, except the members of the Grand Jury and a witness who may be actually under examination.

To keep manner of voting secret.

§ 238. Every member of the Grand Jury shall keep secret whatever he himself or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before them.

May disclose testimony in certain cases.

§ 239. A member of the Grand Jury may, however, be required by any Court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the Court, or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Not to be questioned for official acts.

§ 240. No Grand Juror shall be questioned for anything he may say, or any vote he may give in the Grand Jury relative to a matter legally pending before the Jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow Jurors.

CHAPTER IV.

Presentment and Proceedings thereon.

Twelve jurors must concur in a presentment.

§ 241. A presentment cannot be found without the concurrence of at least twelve Grand Jurors. When so found, it must be signed by the Foreman.

Presentment—how presented.

§ 242. The presentment, when found, must be presented by the Foreman in the presence of the Grand Jury to the Court, and shall be filed by the clerk.

Presentment not to be disclosed.

§ 243. No Grand Jury, District Attorney, Clerk, Judge, or other officer, shall disclose the fact of a presentment having been made for a felony, until the defendant shall have been arrested. But this prohibition shall not extend to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Penalty for violation of last section.

§ 244. A violation of the provisions of the last section shall be punishable as a contempt and as a misdemeanor.

Bench warrant may be issued.

§ 245. If the Court deem that the facts stated in the presentment constitute a public offence, triable within the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant.

Clerk may issue bench warrant.

§ 246. The clerk, on the application of the District Attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant, under his signature and the seal of the Court, into one or more counties.

§ 247. The bench warrant, upon presentment, shall be substantially in the following form: "County of———. The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State: A presentment having been made on the —— day of —— 18—, to the District Court of the County of —— charging C. D. with the crime of (designating it generally). You are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this County, or in case of his absence or inability to act, before the nearest or most accessible magistrate in this County. Given under my hand, with the seal of said Court affixed, this —— day of —— A. D. 18—. By order of the Court. —— G. H., Clerk.

Form of bench warrant.

§ 248. The bench warrant may be served in any County, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on an information, as provided in Sections 115 to 118, both inclusive, except that when served in another County, it need not be endorsed by a magistrate of that County.

Bench warrant—how served.

§ 249. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner, in all respects, as upon a warrant of arrest on an information.

Examination of charge.

TITLE V.

OF THE INDICTMENT.

CHAPTER I.

Finding and Presentation of the Indictment.

§ 250. An indictment cannot be found without the concurrence of at least twelve Grand Jurors. When so found, it shall be endorsed "A true bill," and the endorsement shall be signed by the Foreman of the Grand Jury.

Twelve jurors must concur to find indictment.

§ 251. If twelve Grand Jurors do not concur in finding an indictment against a defendant, who has been held to answer, the depositions and statement, if any, transmitted to them shall be returned to the Court; with an endorsement thereon signed by the Foreman, to the effect that the charge is dismissed.

Twelve jurors not concurring, charge to be dismissed.

§ 252. The dismissal of the charge shall not, however, prevent the same charge from being again submitted to a Grand Jury, or as often as the Court shall so direct. But without such direction it shall not be again submitted.

Charge may be again laid before jury.

§ 253. When an indictment is found, the names of the witnesses examined before the Grand Jury, shall be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the Court.

Names of witnesses to be inserted at foot of indictment.

§ 254. An indictment, when found by the Grand Jury, as prescribed in Section 250, shall be presented by their Foreman in their presence to the Court, and shall be filed with the Clerk, and remain in his office as a public record.

Indictments to be presented and filed.

§ 255. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in Sections 282 to 289, both inclusive, against a defendant who fails to appear for arraignment.

Proceedings against defendant not in custody.

CHAPTER II.

Form of an Indictment.

§ 256. All the forms of pleading in criminal actions heretofore existing are abolished, and hereafter the forms of pleading and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this Act.

Forms of pleading abolished.

§ 257. The first pleading on the part of the people is the indictment.

Indictment.

§ 258. The indictment shall contain the title of the action, specifying the name of the Court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the

What to contain.

offence in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Form of.

§ 259. It may be substantially in the following form :

“The People of the State of California	}	In the District Court of
Against		the County of
A. B.		Term, A. D. 18 .

“ A. B. is accused by the Grand Jury of the County of ——— by this indictment, of the crime of (giving its legal appellation, such as *Murder*, *Arson*, *Manslaughter*, or the like, or designating it as a Felony or Misdemeanor), committed as follows: The said A. B., on the ——— day of ——— A. D. 18—, at the County of ———” (stating the act or omission constituting the offence, in the manner prescribed in this chapter, according to the forms mentioned in the next section, where they are applicable).

In what respects must be direct and certain.

§ 260. The indictment must be direct and certain as it regards, 1st. The party charged. 2d. The offence charged. 3d. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

Defendant indicted by fictitious name.

§ 261. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Indictment to charge but one offence.

§ 262. The indictment shall charge but one offence, and in one form only, except that where the offence may be committed by the use of different means, the indictment may allege the means in the alternative.

Precise term at which offence committed need not be stated.

§ 263. The precise term at which the offence was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offence.

Erroneous allegation as to person injured—when not to vitiate indictment. Construction of indictment

§ 264. When an offence involves the commission of, or an attempt to commit, private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

§ 265. The words used in an indictment shall be construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning.

Words of statute need not be followed.

§ 266. Words used in a statute to define a public offence need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

When indictment is sufficient.

§ 267. The indictment shall be sufficient, if it can be understood therefrom : 1st. That it is entitled in a Court having authority to receive it, though the name of the Court be not accurately set forth : 2d. That it was found by a Grand Jury of the county in which the Court was held : 3d. That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with the statement that he has refused to discover his real name : 4th. That the offence was committed at some place within the jurisdiction of the Court, except where, as provided by Sections 86 to 94, both inclusive, and as in the case of treason, the act, though done without the local jurisdiction of the county, is triable therein : 5th. That the offence was committed at some time prior to the time of finding the indictment : 6th. That the act or omission charged as the offence is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended : 7th. That the act or omission charged as the offence is stated with such a degree of certainty as to enable the Court to pronounce judgment, upon a conviction, according to the right of the case.

Indictment not to be deemed insufficient for certain defects.

§ 268. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon be affected by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.

Presumptions of law, &c., not to be stated.

§ 269. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

§ 270. In pleading a judgment or other determination of or proceeding before a Court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated; but it may be stated that the judgment or determination was duly made, or the proceedings duly had before such Court or officer. The facts constituting the jurisdiction, however, must be established on the trial. Judgment, &c.—
how pleaded.

§ 271. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof. Private statute—
how pleaded.

§ 272. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libelled, of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published, must be established on the trial. Indictment for
libel.

§ 273. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial. Destruction of
forged instru-
ment.

§ 274. In an indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what Court or before whom the oath alleged to be false was taken, and that the Court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or the authority of the Court or person before whom the perjury was committed. Indictment for
perjury.

§ 275. Upon an indictment against several defendants, any one or more may be convicted or acquitted. Indictment
against several.

§ 276. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals. Distinction be-
tween accessory
and principal.

§ 277. An accessory after the fact to the commission of a felony may be indicted and punished, though the principal felon may be neither tried nor indicted. Accessory after
the fact.

§ 278. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or reward, or an engagement or understanding, express or implied, to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence have not been indicted or tried. Compounding a
public offence.

CHAPTER III.

Arraignment of the Defendant.

§ 279. When the indictment is filed, the defendant must be arraigned thereon before the Court in which it is found. Defendant to be
arraigned.

§ 280. If the indictment be for a felony, the defendant must be personally present; but if for a misdemeanor, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel. When defendant
must be present.

§ 281. When his personal appearance is necessary, if he be in custody, the Court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer shall do so accordingly. Defendant in
custody to be
brought up to be
arraigned.

§ 282. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the Court, in addition to the Defendant ap-
pearing to be
arraigned.

forfeiture of the recognisance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Warrant to apprehend defendant not appearing.
Bench warrant on indictment for felony.

§ 283. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more counties.

§ 284. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form:

“County of ———. The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State: An indictment having been found on the ——— day of ——— A. D. 18—, in the District Court of the County of ———, charging C. D. with the crime of (designating it generally). You are therefore commanded forthwith to arrest the above named C. D. and bring him before that Court to answer the indictment; or if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of ———. Given under my hand, with the seal of the Court affixed, this the ——— day of ———, A. D. 18—.

[Seal.]

By order of the Court,

E. F., Clerk.”

Custody of defendant charged with capital offence.

§ 285. The defendant, if the offence be punishable with death, when arrested under the warrant, shall be held in custody by the Sheriff of the County in which the indictment is found, unless admitted to bail on an examination upon a writ of habeas corpus.

Bench warrant on a charge not amounting to a capital offence.

§ 286. If the offence be not capital, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: “Or if he require it, that you take him before any magistrate in that county, or in the county in which you arrested him, that he may give bail to answer the indictment.”

Amount of bail to be fixed.

§ 287. If the offence charged be not capital, the Court, upon directing the bench warrant to issue, shall fix the amount of bail, and an endorsement shall be made upon the bench warrant, signed by the Clerk, to the following effect: “The defendant is to be admitted to bail in the sum of ——— dollars.”

Service of bench warrant.

§ 288. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county, it need not be endorsed by a magistrate of that county.

Proceedings on defendant's giving bail.

§ 289. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in Sections 115 to 118, both inclusive.

Bail may be increased.

§ 290. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the Court to which the indictment is presented, may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

Defendant may be committed until increased bail given.

§ 291. If such order be made, and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench warrant shall be issued and proceeded upon in the manner provided in this Chapter.

Defendant appearing without counsel.

§ 292. If the defendant appear for arraignment without counsel, he shall be informed by the Court that it is his right to have counsel before being arraigned, and shall be asked if he desire the aid of counsel.

Arraignment—how made.

§ 293. The arraignment must be made by the Court, or by the Clerk or District Attorney, under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the endorsements thereon, including the list of witnesses endorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.

Defendant required to state if indicted by true name.

§ 294. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name, he must then declare his true name, or be proceeded against by the name in the indictment.

No other name given.

§ 295. If he give no other name, the Court may proceed accordingly.

§ 296. If he allege that another name is his true name, the Court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Where defendant alleges another name as his true name.

§ 297. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the Court may deem reasonable to answer the indictment.

Defendant may be allowed time to answer.

§ 298. If the defendant do not require time, as provided in the last section, or if he do, then on next day, or at such further day as the Court may have allowed him, he may answer to the arraignment; either move the Court to set aside the indictment, or may demur or plead thereto.

Where defendant does not require time.

CHAPTER IV.

Setting aside the Indictment.

§ 299. The indictment shall be set aside by the Court in which the defendant is arraigned, and upon his motion, in either of the following cases: 1st. Where it is not found, endorsed, and presented, as prescribed in Sections 250 and 254. 2d. Where the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment or endorsed thereon. 3d. Where any person is permitted to be present during the session of the Grand Jury while the charge embraced in the indictment is under consideration, except as provided in Section 237.

Cases in which indictment shall be set aside.

§ 300. Where the defendant had not been held to answer, before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge either to the panel, or to any individual Grand Juror.

Motion to set aside where defendant has not been held to answer.

§ 301. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

Objections waived.

§ 302. The motion shall be heard when it is made, unless for good cause the Court shall postpone the hearing to another time.

Motion—when to be heard.

§ 303. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

Motion denied.

§ 304. If the motion be granted, the Court shall order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, that his bail be exonerated; or if he have deposited money instead of bail, that the same be refunded to him, unless it direct that the case be re-submitted to the same or another Grand Jury.

Motion granted.

§ 305. If the Court direct that the case be re-submitted, the defendant, if already in custody, shall so remain unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Case re-submitted.

§ 306. Unless a new indictment be found before the next Grand Jury of the county is discharged, the Court shall, on the discharge of such Grand Jury, make the order prescribed in Section 304.

No new indictment found.

§ 307. An order to set aside an indictment, as provided in this Chapter, shall be no bar to a future prosecution for the same offence.

Future prosecution not barred.

CHAPTER V.

Demurrer.

§ 308. The only pleading on the part of the defendant is either a demurrer or a plea.

§ 309. Both the demurrer and the plea must be put in, in open Court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Pleadings for defendant. Demurrer and plea—when and how put in. When defendant may demur.

§ 310. The defendant may demur to the indictment when it shall appear upon the face thereof, either, 1st. That the Grand Jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the county: 2d. That it does

not substantially conform to the requirements of Sections 258 and 259: 3d. That more than one offence has been charged in the indictment: 4th. That the facts stated do not constitute a public offence: 5th. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

Demurrer.

§ 311. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

Hearing of demurrer.

§ 312. Upon the demurrer being filed the objections presented thereby shall be heard, either immediately or at such time as the Court may appoint.

Judgment on demurrer.

§ 313. Upon considering the demurrer, the Court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

Judgment on demurrer—when final.

§ 314. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offence, unless the Court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another Grand Jury.

Case not ordered to be re-submitted.

§ 315. If the Court do not direct the case to be re-submitted, the defendant, if in custody, shall be discharged; or if admitted to bail, his bail shall be exonerated; or if he have deposited money instead of bail, the money shall be refunded to him.

Proceedings where case re-submitted.

§ 316. If the Court direct that the case be re-submitted anew, the same proceedings must be had thereon as are prescribed in Sections 305 and 306.

Demurrer disallowed.

§ 317. If the demurrer be disallowed, the Court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may allow. If he do not plead, judgment shall be pronounced against him.

Certain objections can only be taken by demurrer.

§ 318. When the objections mentioned in Section 310 appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the Court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

CHAPTER VI.

Plea.

Kinds of pleas.

§ 319. There are three kinds of pleas to an indictment: a plea of, 1st. Guilty; 2d. Not Guilty; 3d. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

Pleas to be oral and be entered. Pleas—how to be entered.

§ 320. Every plea shall be oral, and shall be entered upon the minutes of the Court.

§ 321. The plea shall be entered in substantially the following form: 1st. If the defendant plead guilty: "The defendant pleads that he is guilty of the offence charged in this indictment." 2d. If he plead not guilty: "The defendant pleads that he is not guilty of the offence charged in this indictment." 3d. If he plead a former acquittal or conviction: "The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offence charged in this indictment, by the judgment of the Court of — (naming it), rendered at — (naming the place), on the — day of —."

Pleas of guilty—how put in

§ 322. A plea of guilty can in no case be put in except by the defendant himself, in open Court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Plea of guilty may be withdrawn.

§ 323. The Court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Effect of plea of not guilty.

§ 324. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

What may be given in evidence under plea of not guilty. What not deemed an acquittal of same offence.

§ 325. All matters of fact tending to establish a defence other than that specified in the third sub-division of Section 319, may be given in evidence under the plea of not guilty.

§ 326. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offence.

- § 327. Where, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offence, notwithstanding any defect in form or substance in the indictment on which he was acquitted. What an acquittal of same offence.
- § 328. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment, as provided in Section 456. Conviction or acquittal a bar to another indictment.
- § 329. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered. Defendant refusing to answer.

CHAPTER VII.

Removal of the Action before Trial.

- § 330. A criminal action, prosecuted by indictment, may be removed from the Court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending. Criminal action may be removed.
- § 331. The application must be made in open Court, and in writing, verified by the affidavit of the defendant, and a copy must be served upon the District Attorney at least one day before the application is made to the Court. Application for removal.
- § 332. If the Court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the nearest District Court of an adjoining county which is free from the like objection. Order for removal—when made.
- § 333. The order of removal shall be entered on the minutes, and the Clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognisances for the appearance of the defendant and of the witnesses, to the Court to which the action is removed. Order to be entered.
- § 334. If the defendant be in custody, the order shall direct his removal by the Sheriff of the county where he is imprisoned, to the custody of the Sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly. Order—when defendant in custody.
- § 335. The Court to which the action is removed, shall proceed to trial and judgment therein as if the action had been commenced in such Court. If it be necessary to have any of the original pleadings, or other papers, before such Court, the Court from which the action is removed shall, at any time, on application of the District Attorney, or the defendant, order such papers or pleadings to be transmitted by the Clerk, a certified copy thereof being retained. Proceedings after removal.

TITLE VI.

OF THE PROCEEDINGS ON THE INDICTMENT BEFORE TRIAL.

CHAPTER I.

The Mode of Trial.

- § 336. An issue of fact arises: 1st. Upon a plea of not guilty; or, 2d. Upon a plea of a former conviction or acquittal of the same offence. When an issue of fact arises.
- § 337. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the Court into some other county. Issue of fact—how tried.
- § 338. If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant; but if for a felony, he must be personally present. Presence of defendant.

CHAPTER II.

Formation of the Trial Jury.

Drawing trial jury.

§ 339. The Clerk having finished the drawing of the Grand Jury, shall, if there be more than twelve names remaining, continue the drawing until he has drawn the names of twelve persons, who shall compose the Trial Jury for the trial of all actions, civil or criminal, during the term, or until such Jury be discharged by the Court.

Where less than 12 names remain after drawing grand jury.

§ 340. If, after the drawing of the Grand Jury be completed, there are less than the names of twelve persons remaining in the box, such persons shall be put upon the Trial Jury, and the deficiency in the number of Jurors shall be supplied from the bystanders qualified to serve.

Where none of the panel remains after drawing grand jury.

§ 341. If there be none of the panel remaining, after the Grand Jury is formed, the Court shall direct the Sheriff to summon twelve persons from among the bystanders, and such persons shall form the Trial Jury.

Court may discharge jurors.

§ 342. The Court shall have power, on the last day of the first, or any subsequent week of the term, to discharge any or all of the Jurors who have served during the week.

Where whole jury discharged another may be empanelled.

§ 343. If the whole Jury be discharged, another Jury shall be empanelled from among the bystanders as provided in Section 341; and all deficiencies occurring at any time, or from any cause, shall be supplied in like manner.

Summoning jury in capital cases.

§ 344. In any cause where the punishment is death, or imprisonment for life, on the application either of the District Attorney or the defendant, the Court shall direct the Clerk to issue and deliver to the Sheriff an order to summon Thirty-six Jurors to attend on a day to be named therein.

List of jurors to be delivered to defendant.

§ 345. The Sheriff shall promptly execute the order, and return it with the list of the names of the persons summoned. A copy of this list shall be delivered to the defendant at least one day before the trial.

Jury to be selected from such list.

§ 346. When the cause is called for trial, the whole of the list shall be called over, and from among those in attendance the parties shall proceed to select a Jury, the names of the persons in attendance being called in the order in which they stand on the list.

Talesmen.

§ 347. If the panel be exhausted by challenges, or otherwise, the Court shall direct the Sheriff to summon from among the bystanders the requisite number wanting.

Jury defined.

§ 348. The Jury consists of twelve men accepted and sworn to try the issue.

Jurors failing to attend.

§ 349. If any person, summoned as a Juror, fail to attend, the Court may, at the request of either party, issue an attachment against such person, but the proceedings shall not be delayed to await the return of the writ.

Names of persons who have served as Jurors to be withdrawn from jury-box.

§ 350. Immediately after the close of each term of the Court, the Clerk shall make out a list of all persons who have served as Jurors for the term, or during the week, and the names of such persons shall be withdrawn from the Jury box, in like manner as if such persons had been regularly drawn upon the panel of Jurors for the term.

Names of persons failing to attend to be returned to jury-box.

§ 351. If any person drawn upon the panel, as provided in Section 187, fail to attend, or be excused from serving, his name shall be returned into the Jury box.

CHAPTER III.

Criminal Docket.

Clerk to keep a docket.

§ 352. The Clerk shall keep a docket of all the criminal actions pending in the Court, in which he shall enter each indictment according to the date of the filing, specifying opposite the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail.

Issues on docket—how disposed of.

§ 353. The issues on the docket shall be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and, upon two days' notice to the opposite party, with a copy of the affidavit in support of the application, the Court shall direct an indictment to be tried out of its order: 1st. Indictments for felony, when the defendant is in custody. 2d. Indictments for

misdemeanor, when the defendant is in custody. 3d. Indictments for felony, when the defendant is on bail; and, 4th. Indictments for misdemeanor, when the defendant is on bail.

§ 354. After his plea, the defendant shall have at least two days to prepare for his trial, if he require it. Time to prepare for trial.

CHAPTER IV.

Postponement of Trial.

§ 355. When an indictment is called for trial, the Court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term, or to the next term. Trial may be postponed.

CHAPTER V.

Challenging the Jury.

§ 356. A challenge is an objection made to the trial Jurors, and is of two kinds: 1st. To the panel. Challenge defined.
2d. To an individual Juror.

§ 357. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein. Challenges by several defendants.

§ 358. The panel is a list of Jurors returned by the Sheriff to serve at a particular Court, or for the trial of a particular cause. Panel defined.

§ 359. A challenge to the panel is an objection made to all the Jurors returned, and may be taken by either party. Challenge to panel defined.

§ 360. A challenge to the panel can only be founded on a material departure from the forms prescribed by statute, in respect to the drawing and return of the Jury, or on the intentional omission of the Sheriff to summon one or more of the Jurors drawn. On what to be founded.

§ 361. A challenge to the panel must be taken before a Juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge. When to be taken.

§ 362. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered in the minutes of the Court. Exception to challenge.

§ 363. Upon the exception the Court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. Sufficiency of exception to be tried by court.

§ 364. If, on the exception, the Court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the Court may in like manner permit an amendment of the challenge. Exception may be withdrawn and facts of challenge denied.

§ 365. If the challenge be denied, the denial may in like manner be oral, and shall be entered on the minutes of the Court, and the Court shall proceed to try the question of fact. Denial of challenge.

§ 366. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of challenge. Trial of ground of challenge.

§ 367. When the panel is formed in the manner prescribed in Section 341, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good ground of challenge to a juror. Such objection shall be made in the same form and determined in the same manner as when made to a juror. Challenge to panel formed under section 341.

§ 368. If either upon an exception to the challenge or a denial of the facts, the challenge be allowed, the Court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the Court shall direct the jury to be empanelled. Challenge allowed. Disallowed.

§ 369. Before a juror is called, the defendant must be informed by the Court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn. Defendant to be informed of right of challenge.

§ 370. A challenge to an individual juror is either, 1st. Peremptory, or, 2d. For cause. Challenge to the pool.

When to be taken.

§ 371. It must be taken when the juror appears, and before he is sworn; but the Court may for good cause permit it to be taken after the juror is sworn and before the jury is completed.

Peremptory challenge.

§ 372. A peremptory challenge can be taken by the defendant only, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court shall exclude him.

Number of peremptory challenges.

§ 373. If the offence charged be punishable with death, or with imprisonment in a State prison for life, the defendant is entitled to twenty peremptory challenges. On a trial for any other offence, he is entitled to five peremptory challenges.

Challenge for cause.

§ 374. A challenge for cause may be taken either by the people or by the defendant. It is an objection to a particular juror, and is either, 1st. General, that the juror is disqualified from serving in any case, or, 2d. Particular, that he is disqualified from serving in the case on trial.

General causes of challenge.

§ 375. General causes of challenge are, 1st. A conviction for a felony: 2d. A want of any of the qualifications prescribed by statute to render a person a competent juror: 3d. Unsoundness of mind, or such defect in the faculties of the mind or the organs of the body as renders him incapable of performing the duties of a juror.

Particular causes of challenge.

§ 376. Particular causes of challenge are of two kinds: 1st. For such a bias, as when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this Act as implied bias. 2d. For the existence of a state of mind on the part of the juror in reference to the case, which in the exercise of a sound discretion on the part of the trier leads to the inference that he will not act with entire impartiality, and which is known in this Act as actual bias.

Challenge for implied bias.

§ 377. A challenge for implied bias may be taken for all or any of the following causes, and for no other: 1st. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant: 2d. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages: 3d. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution. 4th. Having served on the Grand Jury which found the indictment, or on a Coroner's Jury which inquired into the death of a person whose death is the subject of the indictment. 5th. Having served on a trial jury which has tried another person for the offence charged in the indictment. 6th. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it. 7th. Having served as a juror in a civil action brought against the defendant for the act charged as an offence. 8th. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offence charged. 9th. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

What not a cause of challenge.

§ 378. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

What must be alleged in certain challenges.

§ 379. In a challenge for implied bias, one or more of the causes stated in Section 377 must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the Court.

Exceptions to challenges to the poll.

§ 380. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in Sections 362 and 363, except that if the exception be allowed, the juror shall be excluded. He may also orally deny the facts alleged as the ground of challenge.

Trial of challenge to poll.

§ 381. If the facts be denied, the challenge shall be tried as follows: 1st. If it be for implied bias, by the Court. 2d. If it be for actual bias, by triers.

Triers to be appointed by the court.

§ 382. The triers shall be three impartial persons, not on the jury panel, appointed by the Court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

§ 383. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenging party, and to decide the same truly, according to the evidence.

Triers to be sworn.

§ 384. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be compelled to answer every question pertinent to the inquiry therein.

Juror challenged may be sworn.

§ 385. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues, shall govern the admission or exclusion of testimony on the trial of the challenge.

Other witnesses may be examined.

§ 386. On the trial of a challenge for implied bias, the Court shall determine the law and the fact, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes.

Trial of challenge for implied bias.

§ 387. On the trial of a challenge for actual bias, when the evidence is concluded, the Court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if from the evidence they believe him free from such a bias, they must find the challenge not true. The Court shall give them no other instruction.

Trial of challenge for actual bias.

§ 388. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror shall be excluded.

Decision of triers final.

§ 389. All challenges to an individual juror, except peremptory, must be taken first by the defendant, and then by the people, and each party must exhaust all his challenges to each juror as he is called, before the other begins.

Challenges to the juror—in what order to be taken.

§ 390. The challenges of either party need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: 1st. To the panel. 2d. To an individual juror for a general disqualification. 3d. To an individual juror for implied bias. 4th. To an individual juror for actual bias.

Need not be taken at once.

§ 391. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Defendant entitled to peremptory challenge.

TITLE VII.

OF THE TRIAL.

CHAPTER I.

The Trial.

§ 392. The jury having been empanelled and sworn, the trial shall proceed in the following order: 1st. If the indictment be for a felony, the clerk must read the indictment, and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. 2d. The District Attorney, or other counsel for the people, must open the case and offer the evidence in support of the indictment. 3d. The defendant or his counsel may then open the defence, and offer his evidence in support thereof. 4th. The parties may then, respectively, offer rebutting testimony only, unless the Court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. 5th. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury. 6th. The Court shall then charge the jury, if requested by either party.

Order of trial.

§ 393. When the state of the pleadings requires it, or in any other case for good reasons, and in the sound discretion of the Court, the order prescribed in the last section may be departed from. But in every case the defendant shall have the right to close the argument to the jury.

Order prescribed in last section may be departed from.

§ 394. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offence, the Court may, in its discretion, restrict the argument to one counsel on each side.

Number of counsel to argue.

Defendant presumed to be innocent.

§ 395. A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

In case of doubt as to degree of offence, defendant to be convicted of lowest degree.
Defendants jointly indicted may be tried separately.

§ 396. When it legally appears that a defendant has committed a public offence, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

§ 397. When two or more defendants are jointly indicted for a felony, any defendant requiring it, shall be tried separately. In other cases, the defendants jointly indicted, shall be tried separately, or jointly, in the discretion of the Court.

One of several joint defendants may be discharged so as to become a witness for people.
Or for his co-defendant.

§ 398. When two or more persons are included in the same indictment, the Court may, at any time before the defendant has gone into his defence, on the application of the District Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

§ 399. When two or more persons are included in the same indictment, and the Court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment before the evidence shall be deemed closed, that he may be a witness for his co-defendant.

Such discharge an acquittal.

§ 400. The order mentioned in the last two sections, shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offence.

Two witnesses necessary in treason.

§ 401. Upon a trial for treason, the defendant cannot be convicted, unless upon the testimony of two witnesses to the same overt act, or upon confession in open Court.

Overt act of treason must be alleged.

§ 402. Upon a trial for treason, evidence shall not be admitted of an overt act not expressly charged in the indictment; nor shall the defendant be convicted unless one or more overt acts be expressly alleged therein.

Evidence on trial for conspiracy.

§ 403. Upon a trial for conspiracy, in a case where an overt act is required by law to constitute the offence, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but other overt acts, not alleged in the indictment, may be given in evidence.

Evidence of rape or unnatural offence.

§ 404. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape, or for the crime against nature:

Testimony of accomplice.

§ 405. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to convict the defendant with the commission of the offence; and the corroboration shall not be sufficient if it merely show the commission of the offence, or the circumstances thereof.

Evidence of false pretences.

§ 406. Upon a trial for having, with an intent to cheat or defraud another, designedly, by any false pretence, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, no evidence shall be admitted of a false pretence expressed in language, and unaccompanied by a false token or writing, unless the pretence or some note or memorandum thereof be in writing, either subscribed by or in the handwriting of the defendant.

Last section—when not to apply.

§ 407. The last section shall not apply to a prosecution for falsely representing or personating another, and in such assumed character receiving any money or property.

Evidence in trials for seduction.

§ 408. Upon a trial for having, under promise of marriage, seduced and had illicit connexion with an unmarried female, of previous chaste character, the defendant shall not be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offence.

Proceedings where higher offence proved than that charged in indictment.

§ 409. If it appear by the testimony that the facts proved constitute an offence of a higher nature than that charged in the indictment, the Court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offence.

§ 410. If an indictment for the higher offence be dismissed by the Grand Jury, or be not found at or before the next term, the Court shall again proceed to try the defendant on the original indictment.

Where no indictment for higher offence shall be found Court having no jurisdiction, jury to be discharged.

§ 411. The Court may also direct the Jury to be discharged, when it appears that it has not jurisdiction of the offence, or that the facts as charged in the indictment, do not constitute an offence punishable by law.

§ 412. If the Jury be discharged because the Court has not jurisdiction of the offence charged in the indictment, and it appear that it was committed out of the jurisdiction of this State, it shall order the defendant to be discharged.

And the defendant also.

§ 413. If the offence were committed within the exclusive jurisdiction of another county of this State, the Court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or if the offence be a misdemeanor only, it may admit him to bail in a recognisance with sufficient sureties, that he will, within such time as the Court may appoint, render himself amenable to a warrant for his arrest from the proper county; and if not sooner arrested thereon, will attend at the office of the Sheriff of the County where the trial was had, at a certain time particularly designated in the recognisance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the recognisance.

Unless offence committed within jurisdiction of the state.

§ 414. In the case provided for in the last section, the Clerk shall forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission shall be chargeable to that county.

Clerk to transmit paper to clerk having jurisdiction.

§ 415. If the defendant be not arrested, as provided in Section 413, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the recognisance shall be discharged.

Defendant not arrested under section 413.

§ 416. If he be arrested, the same proceedings shall be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

Defendant arrested under section 413.

§ 417. If the Jury be discharged, because the facts, as charged, do not constitute an offence punishable by law, the Court shall order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he have deposited money instead of bail, that the money deposited be refunded to him, unless, in the opinion of the Court, a new indictment can be framed, upon which the defendant can be legally convicted: in which case, it may direct that the case be submitted to the same or another Grand Jury.

Jury discharged, because facts charged do not constitute a public offence.

§ 418. If the Court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in Sections 305 to 307, both inclusive.

Case re-submitted.

§ 419. If, at any time the evidence on either side is closed, the Court deem the same insufficient to warrant a conviction, it may advise the Jury to acquit the defendant. But the Jury shall not be bound by such advice, nor shall the Court for any cause prevent the Jury from giving a verdict except as provided in Sections 398, 399, 409, and 411.

Court may direct jury to acquit, but jury not bound by direction of court.

§ 420. Whenever, in the opinion of the Court, it is proper that the Jury should view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the Jury to be conducted in a body, in the custody of the Sheriff, to the place, which shall be shown to them by a person appointed by the Court for that purpose.

View may be ordered.

§ 421. No person shall be suffered to speak to the Jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time.

No person to speak to jury.

§ 422. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a Juror declare any fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Juror may be a witness.

Jurors may be permitted to separate or be kept in charge of officer.

§ 423. The jurors sworn to try an indictment, may, at any time before the submission of the cause to the Jury, in the discretion of the Court, be permitted to separate, or be kept in charge of a proper officer. The officers shall be sworn to keep the jurors together until the next meeting of the Court, to suffer no person to speak to them, nor to speak to them themselves, on any subject connected with the trial, and to return them into Court at the next meeting thereof.

Court to admonish jury not to converse on subject of trial.

§ 424. The Jury shall also at each adjournment of the Court, whether they be permitted to separate or be kept in charge of officers, be admonished by the Court, that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

Court may discharge a juror or the jury during a trial.

§ 425. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the Jury may be discharged, and a new Jury then or afterwards impanelled.

Question of law arising on trial. In libel, jury to determine law and fact.

§ 426. The Court shall decide all questions of law which shall arise in the course of the trial.

§ 427. On the trial of an indictment for libel, the Jury shall have the right to determine the law and the fact.

In other case court to determine law and jury fact.

§ 428. On the trial of an indictment for any other offence than libel, questions of law are to be decided by the Court, saving the right of the defendant to except questions of fact by the Jury. And although the Jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the Court.

Charging jury.

§ 429. In charging the Jury, the Court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict; but shall make no statement in regard to the facts of the case, nor give any charge as to the weight of evidence.

Either party may present a written charge.

§ 430. Either party may present to the Court any written charge and request that it may be given. If the Court think it correct and pertinent, it shall be given; if not, it shall be refused.

Court to endorse charge so presented.

§ 431. Upon each charge so presented, and given or refused, the Court shall endorse its decision, and shall sign it. If part be given and part refused, the Court shall distinguish, showing by the endorsement what part of the charge was given, and what part refused.

Proceedings of jury after being charged.

§ 432. After hearing the charge, the Jury may either decide in Court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, without meat or drink, unless otherwise ordered by the Court, and not to permit any person to speak to them, nor speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into Court when they have so agreed.

Defendant on surrendering for trial may be committed.

§ 433. Where a defendant, having given bail, appears for trial, the Court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the Court; and he shall be committed and held in custody accordingly.

CHAPTER II.

Conduct of the Jury after the case is submitted to them.

Room to be provided for use of jury.

§ 434. A room shall be provided by the Court of Sessions of each county, for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the Court of Sessions neglect, the Court may order the Sheriff to do so, and the expenses incurred by him in carrying the order into effect when certified by the Court, shall be a county charge.

Jury to be furnished with food, &c.

§ 435. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided by the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.

Jury on retiring may take papers with them.

§ 436. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, 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.

§ 437. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

And their notes of the testimony.

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§ 438. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into Court. Upon their being brought into Court, the information required shall be given, in the presence of or after notice to the District Attorney, and the defendant or his counsel.

Jury after retiring may return to ask question of court.

§ 439. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Juryman unable to continue duty, the jury may be discharged.

§ 440. Except as provided in the last section, the jury shall not be discharged, after the cause is submitted to them, until they have agreed upon their verdict, and rendered it in open Court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the Court shall deem proper, it satisfactorily appear that there is no reasonable probability that the Jury can agree.

Jury not to be discharged after case submitted to them, except, &c.

§ 441. In all cases where a jury are discharged or prevented from giving a verdict, by reason of any accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

Where jury discharged, cause may be again tried at the same term, except, &c.

§ 442. While the jury are absent, the Court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Court may adjourn during absence of jury.

§ 443. A final adjournment of the Court discharges the jury.

Final adjournment.

CHAPTER III.

The Verdict.

§ 444. When the jury have agreed upon their verdict, they must be conducted into Court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such case the cause may be again tried, at the same or another term.

Jury, having agreed on verdict, to be conducted into court.

§ 445. If the indictment be for a felony, the defendant must, before the verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Appearance of defendant before verdict.

§ 446. If the Jury appear, they shall be asked by the Court or Clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

Jury to be asked if they have agreed on their verdict.

§ 447. The Jury may either render a general verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

Verdict may be either general or special.

§ 448. A general verdict, upon a plea of not guilty, is either "Guilty" or "Not Guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "For the People" or "for the Defendant."

General verdict.

§ 449. A special verdict is that by which the Jury find the facts only, leaving the judgment to the Court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented as that nothing remains to the Court but to draw conclusions of law upon them.

Special verdict.

§ 450. The special verdict must be reduced to writing by the Jury, or in their presence entered upon the minutes of the Court, read to the Jury, and agreed to by them before they are discharged.

Special verdict must be reduced to writing.

Form of special verdict.

§ 451. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the Jury.

Jury to assess fine or other punishment.

§ 452. The Jury shall, in all cases upon a general verdict against the defendant, assess the fine to be imposed, or the punishment to be inflicted. When they find a special verdict, they shall in like manner determine the fine to be imposed, or the punishment to be inflicted, if upon the facts as found, judgment be rendered against the defendant.

Argument on special verdict.

§ 453. The special verdict may be brought to argument by either party, upon one day's notice to the other, at the same or another term of the Court; and upon the hearing thereof the counsel for the defendant shall conclude the argument.

Judgment on special verdict.

§ 454. The Court shall give judgment upon the special verdict as follows: 1st. If the plea be not guilty, and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence of which he could be convicted, as provided in Section 456, under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offence charged, or of any offence of which he could be so convicted under the indictment, judgment of acquittal shall be given. 2d. If the plea be a former conviction or acquittal of the same offence, the Court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

New trial may be ordered.

§ 455. If the Jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the Court to give judgment, or if they find the evidence of facts merely, and not the conclusions of facts from the evidence, as established to their satisfaction, the Court shall order a new trial.

Party charged committing an offence may be found guilty of an attempt to commit. Jury unable to agree on verdict as to all the defendants.

§ 456. In all cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offence charged.

§ 457. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another Jury.

Court may direct jury to reconsider verdict.

§ 458. When there is a verdict of conviction, in which it appears to the Court that the jury have mistaken the law, the Court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if after such reconsideration they return the same verdict, it must be entered; but where there is a verdict of acquittal, the Court cannot require the jury to reconsider it.

Verdict neither general nor special.

§ 459. If the jury render a verdict which is neither a general nor a special verdict, as defined in Sections 448 and 449, the Court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form, from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the Court.

Jury adhering to informal verdict.

§ 460. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the Court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

Jury may be polled.

§ 461. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

Verdict to be recorded.

§ 462. When the verdict is given, and is such as the Court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

§ 463. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given, except that where the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the Court may order his detention, to the end that a new indictment may be preferred, in the same manner and with the like effect as provided in Sections 417 and 418.

On judgment of acquittal defendant to be discharged, unless, &c.

§ 464. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody; or if on bail, he may be committed to the proper officer of the county, to await the judgment of the Court upon the verdict. If so committed, his bail shall be exonerated, or if money be deposited instead of bail, it shall be refunded to the defendant.

Defendant to be remanded.

TITLE VIII.

OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.

CHAPTER I.

Bill of Exceptions.

§ 465. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the Court upon a matter of law in any of the following cases: 1st. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias. 2d. In admitting or rejecting witnesses or testimony, or in charging the triers on the trial of a challenge to a juror for actual bias. 3d. In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

Exceptions may be taken by defendant.

§ 466. The exceptions may be taken by the District Attorney or other counsel for the people to a decision of the Court upon a matter of law, in any of the cases specified in the third subdivision of the preceding section.

Exceptions may be taken for the people.

§ 467. A bill containing the exceptions must be settled and signed by the Judge and filed with the Clerk, during the term, and within three days after the trial of the cause.

Exceptions to be settled, &c.

§ 468. The bill of exceptions shall contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised.

Contents of bill of exceptions.

§ 469. The bill of exceptions must be filed with the Clerk of the Court as soon as it is signed by the judge.

Bill of exceptions to be filed.

§ 470. When any written charge has been presented and given or refused, the question or questions presented in such charge need not be excepted to nor embodied in a bill of exceptions; but the written charge itself, with the endorsements showing the action of the Court, shall form part of the record, and any error in the decision of the Court thereon may be taken advantage of on appeal in like manner as if presented in a bill of exceptions.

Bill of exceptions — when unnecessary.

CHAPTER II.

New Trial.

§ 471. A new trial is a re-examination of the issue in the same Court before another jury, after a verdict has been given. It places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

New trial defined; its effect, &c.

§ 472. The Court in which a new trial is had upon an issue of fact, has power to grant a new trial where a verdict has been rendered against the defendant, upon his application, in the following cases only: 1st. When the trial has been had in his absence, if the indictment be for a felony. 2d. When the jury has received any evidence out of Court, other than that resulting from a view, as provided in Section 420. 3d. When the jury have separated without leave of the Court, after retiring to deliberate

Power of court to grant a new trial.

upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. 4th. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. 5th. When the Court has misdirected the jury in a matter of law, or has given an expression of opinion on a question of fact, or a charge as to the weight of evidence contrary to Section 429. 6th. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

Application for new trial.

§ 473. The application for a new trial must be made before judgment is entered in the cause.

CHAPTER III.

Arrest of Judgment.

Motion in arrest of judgment.

§ 474. A motion in arrest of judgment, is an application on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in Section 310.

Judgment arrested without motion.

§ 475. The Court may also, on its own view of any of these defects, arrest the judgment without motion.

Motion—when to be made.

§ 476. The motion must be made before or at the time when the defendant is called for judgment.

Effect of allowance of motion.

§ 477. The effect of allowing a motion in arrest of judgment, is to place the defendant in the same situation in which he was before the indictment was found.

Court may order defendant to be re-committed.

§ 478. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the Court may order him to be recommitted to the officers of the proper county, or admitted to bail anew, to answer the new indictment. If the evidence show him guilty of another offence, he shall be committed or held thereon; and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offence, he shall, if in custody, be discharged; or if admitted to bail, his bail shall be exonerated; or if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

TITLE IX.

OF THE JUDGMENT AND EXECUTION.

CHAPTER I.

The Judgment.

Court to appoint time for judgment.

§ 479. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the Court shall appoint a time for pronouncing judgment.

What time to be appointed.

§ 480. The time appointed shall be at least two days after the verdict, if the Court intend to remain in session so long; or if not, as remote a time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

Presence of defendant.

§ 481. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

Defendant in custody.

§ 482. When the defendant is convicted of a felony, if he be in custody, the Court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer shall do so accordingly.

Defendant out on bail.

§ 483. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the Court, in addition to the forfeiture of the recognisance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

§ 484. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more Counties. Bench warrant may be issued.

§ 485. The bench warrant shall be substantially in the following form: "County of _____. The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman, in this State. A. B. having been on the _____ day of _____ A. D. 18—; duly convicted in the District Court of the County of _____ of the crime of (designating it generally): You are therefore commanded forthwith to arrest the above named A. B. and bring him before that Court for judgment; or if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of _____. _____ Given under my hand, with the seal of said Court affixed, this the _____ day of _____ A. D. 18—. _____ (Seal.) _____ By order of the Court. _____ E. F., Clerk. Form of bench warrant.

§ 486. The bench warrant may be served in any County, in the same manner as a warrant of arrest, except that when served in another County, it need not be endorsed by a magistrate of that County. Warrant—how served.

§ 487. Whether the bench warrant be served in the County in which it was issued, or in another County, the officer shall arrest the defendant, and bring him before the Court, or commit him to the officer mentioned in the warrant, according to the command thereof. Defendant may be arrested.

§ 488. When the defendant appears for judgment, he shall be informed by the Court, or by the Clerk under its direction, of the nature of the indictment, and of his plea and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him. Defendant to be informed of nature of indictment.

§ 489. He may show for cause against the judgment:

First. That he is insane; and if, in the opinion of the Court, there be reasonable ground for believing him to be insane, the question of his insanity shall be tried as provided in Sections 616 to 619, both inclusive. If, upon the trial of that question, the Jury find that he is of sound mind, judgment shall be pronounced; but if they find him insane, he shall be committed to the custody of some proper and suitable person until he become sane; and when notice is given of that fact, as provided in Section 623, he shall be brought before the Court for judgment. Showing cause against judgment.

Second. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

§ 490. If no sufficient cause be alleged or appear to the Court why judgment should not be pronounced, it shall thereupon be rendered. Judgment may be rendered.

§ 491. If the defendant have been convicted of two or more offences, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offences. Judgment on two or more convictions.

§ 492. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed ten days for every hundred dollars of the fine, or in that proportion. Fine.

§ 493. A judgment that the defendant pay a fine, shall constitute a lien in like manner as a judgment for money, rendered by the District Court in a civil action. Fine to be a lien.

§ 494. When judgment upon a conviction is rendered, the Clerk shall enter the same in the minutes, stating briefly the offences for which the conviction has been had, and shall, within five days, annex together, and file the following papers, which shall constitute the record of the action: First. A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the Grand Jury, or to any individual Grand Juror, and the proceedings thereon. Second. The indictment, and a copy of the minutes of the plea of demurrer. Third. A copy of the minutes of any challenge which may have been interposed to the panel of the Trial Jury, or to an individual Juror, and the proceedings thereon. Fourth. A copy of the minutes of the trial. Fifth. A copy of the minutes of Judgment to be entered on minutes.
Record.

the judgment. Sixth. The bill of exceptions, if there be one. Seventh. The written charges asked of the Court, if there be any.

CHAPTER II.

The Execution.

- Copy of entry to be furnished officer to execute judgment.** § 495. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.
- Judgment for a fine.** § 496. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.
- Judgment of imprisonment.** § 497. If the judgment be imprisonment, or a fine and imprisonment, until it be satisfied the defendant shall forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.
- Judgment of death.** § 498. When judgment of death is rendered, a warrant signed by the judge and attested by the clerk, under the seal of the Court, shall be drawn and delivered to the Sheriff. It shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be less than thirty, nor more than sixty days from the time of the judgment.
- Statement, &c., to governor of conviction requiring judgment of death.** § 499. The Judge of the Court, at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.
- Opinion on statement.** § 500. The Governor may, thereupon, require the opinion of the Justices of the Supreme Court and the Attorney General, or of any of them, upon the statement so furnished.
- Power of reprieve, &c.** § 501. No judge, court, or officer, other than the Governor, can reprieve or suspend the execution of a judgment of death, except the Sheriff, as provided in Sections 502 to 508, both inclusive.
- Defendant becoming insane after judgment of death.** § 502. If, after judgment of death, there be good reason to suppose that the defendant has become insane, the Sheriff of the county, with the concurrence of the judge of the Court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the District Attorney of the county.
- Inquisition to ascertain sanity.** § 503. The District Attorney shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the Grand Jury, and disobedience thereto may be punished at the next term of the District Court for the county, in like manner as disobedience to process issued by that Court.
- Certificate of inquisition.** § 504. A certificate of the inquisition shall be signed by the Jurors and the Sheriff, and filed with the Clerk of the Court in which the conviction was had.
- Defendant found sane.** § 505. If it be found by the inquisition that the defendant is sane, the Sheriff shall execute the judgment; but if it be found that he is insane, the Sheriff shall suspend the execution of the judgment until he receive a warrant from the Governor, or from the Judge of the District Court of the county, directing the execution of the judgment.
- Defendant found insane.** § 506. If the inquisition find that the defendant is insane, the Sheriff shall immediately transmit the same to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.
- Female sentenced to death supposed to be pregnant.** § 507. If there be good reason to suppose that a female, against whom a judgment of death is rendered, is pregnant, the Sheriff of the county, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof shall be given to the District Attorney of the county, and the provisions of Sections 503 and 504 shall govern the proceedings upon the inquisition.
- Found not pregnant.** § 508. If it be found by the inquisition that such female is not pregnant, the Sheriff shall execute the judgment. If it be found that she is pregnant, the Sheriff shall suspend the execution of the judgment, and transmit the inquisition to the Governor.

- § 509. When the Governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment. Warrant for execution.
- § 510. If for any reason a judgment of death shall not have been executed, and the same remain in force, the District Court, at a term held within the county in which the conviction was had, on the application of the District Attorney, shall order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued by that Court, or by the Judge thereof. Judgment of death remaining unexecuted.
- § 511. Upon the defendant being brought before the Court, it shall inquire into the facts, and if no legal reason exist against the execution of the judgment, shall make an order that the Sheriff of the proper county execute the judgment at the time specified therein, and the Sheriff shall execute the judgment accordingly. Order to execute judgment.
- § 512. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead. Death punishment—how inflicted.

TITLE X.

OF APPEALS.

CHAPTER I.

Appeals, when allowed, and how taken.

- § 513. The only mode of reviewing a judgment or order, in a criminal action, shall be that prescribed by this chapter. Judgments and orders—how reviewed.
- § 514. The party aggrieved, whether that party be the people or the defendant, may appeal to the Supreme Court from final judgment, in all criminal cases amounting to felony, on questions of law alone. Appeal to supreme court.
- § 515. The party appealing shall be known as the appellant, and the adverse party as the respondent. But the title of the action shall not be changed in consequence of the appeal. Style of parties to appeal.
- § 516. Upon the appeal, any decision of the Court, in an intermediate order or proceeding, forming a part of the record as prescribed by Section 494, may be reviewed. What may be reviewed on appeal.
- § 517. An appeal must be taken within one year after the judgment was rendered. When to appeal.
- § 518. An appeal must be taken by the service of a notice in writing, on the Clerk of the Court in which the action was tried, stating that the appellant appeals from the judgment. Appeal—how taken.
- § 519. If the appeal be taken by the defendant, a similar notice must be served on the District Attorney of the county in which the judgment was rendered. Appeal by defendant.
- § 520. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the county, or if not, on the counsel, if any, who appeared for him on trial, if he be living within the county. If such service, after due diligence, cannot be made, the appellate Court, upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time as it may deem proper. Appeal by the people.
- § 521. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected. Appeal—when deemed perfected.
- § 522. An appeal taken by the people, shall in no case stay or affect the operation of a judgment in favor of the defendant, until judgment is reversed. Effect of appeal by the people.
- § 523. No appeal from a judgment of conviction, unless it be one imposing a fine only, shall stay the execution of the judgment; but the defendant, if in custody, shall remain in custody to abide the judgment upon the appeal, unless admitted to bail as prescribed in Section 546. Effect of appeal by defendant.
- § 524. Upon the appeal being taken, the Clerk with whom the notice of appeal is filed, must within ten days thereafter, without charge, transmit to the Clerk of the Supreme Court a copy of the notice of appeal and of the record. Notice of appeal, &c., to be transmitted to supreme court.

CHAPTER II.

Dismissing an Appeal for Irregularity.

Appeal may be dismissed for irregularity.

§ 525. If the appeal be irregular in any substantial particular, but not otherwise, the Court may, on any day in term, on motion of the respondent, upon five days' notice, with copies of the papers on which the motion is founded, order the same to be dismissed.

Or if no return made, pursuant to section 524.

§ 526. The Court may also, upon like motion, dismiss the appeal, if the return be not made as provided in Section 524, unless for good cause it enlarge the time for that purpose.

CHAPTER III.

Argument of the Appeal.

Appeals—when to be tried and determined.

§ 527. All appeals in criminal cases shall be tried and determined at the first term of the Supreme Court after the record is filed, and the court shall designate the day or days upon which such appeals shall be heard.

Judgment by default.

§ 528. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

Number of counsel to be heard.

§ 529. Upon the argument of the appeal, if the offence be punishable with death, two counsel shall be heard on each side, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant shall be entitled to the concluding argument.

Appearance of defendant.

§ 530. The defendant need not appear in the appellate court.

CHAPTER IV.

Judgment upon Appeal.

Judgment on appeal.

§ 531. After hearing the appeal, the Court shall give judgment without regard to technical error or defect, which do not affect the substantial rights of the parties.

Nature of the judgment.

§ 532. The appellate Court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

When new trial ordered.

§ 533. When a new trial is ordered, it must be directed to be had in the District Court of the county from which the appeal was taken.

Judgment against defendant reversed.

§ 534. If a judgment against the defendant be reversed without ordering a new trial, the appellate Court shall direct, if he be in custody, that he be discharged therefrom; or if he be admitted to bail, that his bail be exonerated; or if money be deposited instead of bail, that it be refunded to the defendant.

Judgment against defendant affirmed.

§ 535. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the appellate Court shall direct.

Judgment to be entered and remitted to court below.

§ 536. When the judgment of the appellate Court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the clerk of the Court from which the appeal was taken.

Disposition of appeal papers.

§ 537. The papers returned to the appellate Court shall there remain of record, and shall not be remitted to the Court below.

Jurisdiction of appellate court—when to cease.

§ 538. After the certificate of judgment has been remitted, as provided in Section 536, the appellate Court shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect, shall be made by the Court to which the certificate is remitted.

TITLE XI.

OF BAIL.

CHAPTER I.

In what cases the Defendant may be admitted to Bail.

§ 539. Admission to bail is the order of a competent Court or magistrate that the defendant be discharged from actual custody upon the taking of bail. Admission to bail defined.

§ 540. The taking of bail consists in the acceptance by a competent Court or magistrate, of the recognisance of sufficient bail for the appearance of the defendant, according to the terms of the recognisance, or that the bail will pay to the people of this State a specified sum. Taking bail defined.

§ 541. A person charged with an offence may be admitted to bail before conviction, as follows: 1st. As a matter of discretion in all cases where the punishment is death. 2d. As a matter of right in all other cases. When a party may be admitted to bail.

§ 542. No person shall be admitted to bail where he is charged with an offence punishable with death, when the proof is evident or the presumption great. When not to be admitted to bail.

§ 543. When the admission to bail is a matter of discretion, the Court or officer by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable, to be given to the District Attorney of the county where the examination is had, if he reside within such county; if not, then to the County Attorney. Proceedings on admitting to bail.

§ 544. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: 1st. As a matter of right, where the appeal is from a judgment imposing a fine only. 2d. As a matter of discretion in all other cases. Admitting to bail after conviction.

§ 545. Before conviction a defendant may be admitted to bail: 1st. For his appearance before the Magistrate, on the examination of the charge, before being held to answer. 2d. To appear at the court to which the Magistrate is required, by Section 175, to return the depositions and statement, upon the defendant being held to answer after examination. 3d. After indictment, either before the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being summoned by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial. Admitting to bail before conviction.

§ 546. After conviction, and upon an appeal, the defendant may be admitted to bail as follows: 1st. If the appeal be from a judgment imposing a fine only, on the recognisance of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal be dismissed. 2d. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment upon its being affirmed or modified, or upon the appeal being dismissed. Admitting to bail after conviction and on appeal.

CHAPTER II.

Bail upon being held to Answer before Indictment.

§ 547. When the defendant has been held to answer, as provided in Section 164, the admission to bail may be by the Magistrate by whom he is so held, or by any Magistrate who has power to issue the writ of *Habeas Corpus*. Who may admit to bail.

§ 548. Bail is put in by a written recognisance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or Magistrate), and acknowledged before the court or Magistrate, in substantially the following form: "An order having been made on the — day of — A. D. 18—, by A. B. a Justice of the Peace of — county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offence), upon which he has been duly admitted to bail in the sum of — dollars: We, E. F. and G. H. of (stating their place of residence), Bail—how put in.

hereby undertake that the above named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the State of California the sum of ——— dollars" (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail.

§ 549. The qualifications of bail are as follows: 1st. Each of them must be a resident, and a householder or freholder within the State. 2d. They must each be worth the amount specified in the recognisance, exclusive of property exempt from execution; but the Court or Magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognisance, if the whole justification be equivalent to that of two sufficient bail.

Bail to justify by affidavit.

§ 550. The bail shall, in all cases, justify by affidavit, taken before the Court or Magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in Section 549.

Bail may be further examined.

§ 551. The Court or Magistrate may thereupon further examine the bail upon oath concerning their sufficiency, in such manner as the Court or Magistrate may deem proper.

CHAPTER III.

Bail upon an Indictment before Conviction.

Offences not capital, defendant may give bail.

§ 552. When the offence charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail as prescribed in Sections 286 and 289.

Capital offence, defendant to be delivered into custody.

§ 553. If the offence charged in this indictment be capital, the officer arresting the defendant shall deliver him into custody, according to the command of the bench warrant, as prescribed in Section 284.

To remain in custody, unless, &c.

§ 554. When the defendant is so delivered into custody, he shall be held by the Sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

Bail—how put in.

§ 555. The bail must be put in by a written recognisance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form: "An indictment having been found on the ——— day of ———, A. D. 18—, in the District Court of the County of ——— (as the case may be), charging A. B. with the crime of (designating it generally), and he having been duly admitted to bail in the sum of ——— dollars: We, C. D. and E. F. (stating their place of residence), hereby undertake that the above named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted; and shall, at all times, render himself amenable to the orders and processes of the Court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the State of California the sum of ——— dollars" (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail.

§ 556. The provisions contained in Sections 549 to 551, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto.

CHAPTER IV.

Bail on Appeal.

Who may admit to bail.

§ 557. In the cases in which the defendant may be admitted to bail upon an appeal, as provided in Section 544, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus.

Proceedings on admitting to bail.

§ 558. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable, to be given to

the District Attorney of the County in which the verdict or judgment was originally rendered, if he reside within such county; if not, then to the County Attorney.

§ 559. The bail must possess the qualifications, and must be put in all respects as above provided, except that the condition of the recognisance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

Qualifications of bail.

CHAPTER V.

Deposit instead of Bail.

§ 560. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the Clerk of the Court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody.

Deposit may be made in lieu of bail.

§ 561. If the defendant have given bail, he may at any time before the forfeiture of the recognisance, in like manner deposit the sum mentioned in the recognisance, and upon the deposit being made, the bail shall be exonerated.

Exoneration of bail by deposit.

§ 562. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the county clerk shall, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

Return of deposit.

CHAPTER VI.

Surrender of the Defendant.

§ 563. At any time before the forfeiture of their recognisance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner.

Bail may surrender the defendant.

§ 564. A certified copy of the recognisance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon, as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. 2d. Upon the recognisance, and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the District Attorney of the county, or to the County Attorney, if the action is in the Court of Sessions, with a copy of the recognisance and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, they shall be exonerated accordingly.

Detaining defendant and exonerating bail.

§ 565. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the State, may themselves arrest him, or by a written authority endorsed on a certified copy of the recognisance, may empower any person of suitable age and discretion to do so.

Bail may arrest defendant.

§ 566. If money have been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the District or County Attorney, with a copy of the certificate.

Return of deposit on surrender of defendant.

CHAPTER VII.

Forfeiture of the Recognisance, or of the Deposit of Money.

§ 567. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and the recognisance or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

Neglecting to appear for arraignment. Or to surrender.

Court may re-
voke forfeiture
of recognisances,
&c.

§ 568. If at any time before the final adjournment of the Court the defendant appear and satisfactorily excuse his neglect, the Court may direct the forfeiture of the recognisance or the deposit to be discharged, upon such terms as may be just.

Proceedings
against bail.

§ 569. If the forfeiture be not discharged, as provided in the last section, the District Attorney may, at any time after the adjournment of the Court, proceed by action only against the bail upon their recognisance.

Disposition of
money deposited
in lieu of bail—
when forfeited.

§ 570. If by reason of the neglect of the defendant to appear, as provided in Section 567, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in Section 568, the clerk with whom it is deposited shall, immediately after the final adjournment of the Court, pay over the money deposited to the County Treasurer.

CHAPTER VIII.

Recommitment of the Defendant after having given Bail.

When defendant
may be re-com-
mitted after giv-
ing bail.

§ 571. The Court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: 1st. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in Section 567. 2d. When it satisfactorily appears to the Court that his bail, or either of them, are dead, or insufficient, or have removed from the State. 3d. Upon an indictment being found in the cases provided in Section 290.

Form of order for
re-commitment.

§ 572. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any Sheriff, constable, marshal, or policeman, within this State, and committed to the custody of the Sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be: to be detained until legally discharged.

Manner of arrest.

§ 573. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest; except that when arrested in another county, the order need not be endorsed by a magistrate of that county.

Order on ground
of defendant fail-
ing to appear.

§ 574. If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Order for any
other cause.

§ 575. If the order be made for any other cause, and the offence be bailable, the Court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which shall be specified in the order.

Who may admit
to bail.

§ 576. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in Section 547, or by any other magistrate to be designated by the Court.

Form of recog-
nizance.

§ 577. When bail is taken upon the recommitment of the defendant, the recognisance shall be in substantially the following form: "An order having been made on the — day of — A. D. 18—, by the Court (naming it) that A. B. be admitted to bail in the sum of — dollars, in an action pending in that Court against him, in behalf of the people of the State of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F. of (stating their places of residence), hereby undertake that the above named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof: or if he fail to perform

either of these conditions, that he will pay to the people of the State of California the sum of ——— dollars" (inserting the sum in which the defendant is admitted to bail)."

§ 578. The bail must possess the qualifications and must be put in all respects in the manner heretofore prescribed. Qualifications of bail.

TITLE XII.

OF MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

Compelling the attendance of Witnesses.

- § 579. The process by which the attendance of a witness before a Court or Magistrate is required, is a subpoena. Subpoena.
- § 580. A Magistrate before whom an information is laid may issue subpoenas, subscribed by him, for witnesses within the State, either on behalf of the people or of the defendant. Magistrate may issue subpoenas.
- § 581. The District Attorney may issue subpoenas, subscribed by him, for witnesses within the State, in support of the prosecution, or for such other witnesses as the Grand Jury may direct, to appear before the Grand Jury upon any investigation pending before them. Subpoenas to appear before grand jury.
- § 582. The District Attorney may, in like manner, issue subpoenas subscribed by him, for witnesses within the State, in support of an indictment, to appear before the court at which it is to be tried. To appear at trial.
- § 583. The Clerk of the Court at which an indictment is to be tried shall at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as Clerk, for witnesses within the State, as may be required by the defendant. Subpoenas for defendant's witnesses.
- § 584. A subpoena authorized by the last four sections shall be substantially in the following form :
 "The People of the State of California to A. B. You are commanded to appear before C. D., a Justice of the Peace of ——— Township in ——— County (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E. F. Given under my hand this ——— day of ——— A. D. 18—. G. H. Justice of the Peace" (or "J. K. District Attorney," or "by order of the Court, L. M. Clerk," as the case may be). Form of subpoena.
- § 585. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpoena : "And you are required also to bring with you the following" (describing intelligibly the books, papers, or documents required). Subpoena of deeds.
- § 586. A peace officer must serve, within his county, any subpoena delivered to him for service, either on the part of the people or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. Peace officers must serve subpoenas.
- § 587. The service of a subpoena shall be, by showing the original to the witness personally, and informing him of the contents. Service of subpoenas.
- § 588. When a person shall attend before a Magistrate, Grand Jury, or Court, as a witness on behalf of the people, upon a subpoena, or by virtue of a recognisance, and it shall appear that he has come from any place out of the county, or that he is poor, the Court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the County Judge, by an order subscribed by him, may direct the Treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses. Allowance to certain witnesses.
- § 589. Upon the production of the order, or a certified copy thereof, the County Treasurer shall pay the witness the sum specified therein, out of the County Treasury. Allowance to be paid out of treasury.
- § 590. No person shall be obliged to attend as a witness before any Court or Judge out of the county where the witness resides, or is served with the subpoena, unless a Judge of the Court in which the offence is triable, or a Justice of the Supreme Court, or a County Judge, upon an affidavit of the District or County Attorney, or prosecutor, or of the defendant or his counsel, stating that he believes the No witness obliged to attend out of county of residence, unless, &c.

evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpoena an order for the attendance of the witness.

Disobeying subpoenas, &c.

§ 591. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, may be punished by the Court or magistrate as a contempt.

Forfeiture of recognisance by witness.

§ 592. Where a witness has entered into a recognisance to appear, as provided in Section 170, upon his failure so to do, his recognisance shall be forfeited in the same manner as recognisances of bail.

Disobeying subpoena on part of defendant.

§ 593. A witness disobeying a subpoena issued on the part of the defendant, shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

CHAPTER II.

Testimony taken by Commission.

Defendant may have witnesses examined as after provided.

§ 594. When a defendant has been held to answer a charge for a public offence, he may, either before or after indictment, have witnesses examined on his behalf, as prescribed in this chapter, and not otherwise.

Conditional examination.

§ 595. When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

Commission defined.

§ 596. A commission is a process issued under the seal of the Court, and the signature of the Clerk, directed to some person designated as Commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given in the commission.

Who may be a commissioner.

§ 597. The Commissioner shall be either a District Judge, County Judge, County Clerk, or Notary Public, of the county to which the commission is issued.

Application for commission must be made on affidavit.

§ 598. The application must be made upon affidavit, showing: 1st. The nature of the offence charged. 2d. The state of the proceedings in the action. 3d. The name of the witness, and that his testimony is material to the defence of the action. 4th. That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

In term or vacation.

§ 599. The application may be made to the Court, during the term, or to the Judge in vacation, and must be upon three days' notice to the District Attorney.

Order for commission.

§ 600. If the Court or Judge to whom the application is made, be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

Trial may be stayed to give time for return of commission.

§ 601. If the application for a commission be granted, the Court or Judge may insert in the order therefor, a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Copy interrogatories to be served.

§ 602. When the commission is ordered, the defendant must serve upon the District Attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the Court or Judge.

Cross-interrogatories.

§ 603. The District Attorney may, in like manner, serve upon the defendant or his counsel, cross-interrogatories, to be annexed to the commission, with like notice.

What questions may be inserted. Allowances of interrogatories.

§ 604. In the interrogatories, either party may insert any question pertinent to the issue.

§ 605. When the interrogatories and cross-interrogatories are presented to the Court or Judge, according to the notice given, the Court or Judge shall modify the questions so as to conform them to the rules of evidence, and shall endorse upon them his allowance, and annex them to the commission.

Direction as to return of commission.

§ 606. Unless the parties otherwise consent, by an endorsement on the commission, the Court or Judge shall endorse thereon a direction as to the manner in which it shall be returned; and may, in his

discretion, direct that it be returned by mail or otherwise, addressed to the Clerk of the Court in which the action is pending, designating his name and the place where his office is kept.

§ 607. The Commissioner, unless otherwise specially directed, may execute the commission as follows : 1st. He shall publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth : 2d. He shall cause the examination of the witness to be reduced to writing : 3d. He shall write the answers of the witness as near as possible in the language he gives them, and shall read to them each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth : 4th. If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated : 5th. If any papers or documents are produced before him and proved by the witness, they shall be annexed to his deposition, and be subscribed by the witness and certified by the commissioner : 6th. The commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness, to the commission, and must close up, under seal, and address the same as directed on the commission : 7th. If there be a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties, or by the Court or Judge on the commission, as to its return, he must comply with the direction.

How commission to be executed.

§ 608. A copy of the last section must be annexed to the commission.

Copy of sec. 607 to be annexed. Commission returned by agent.

§ 609. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the Judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

§ 610. If the agent be dead, or from sickness or other casualty, unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the Clerk or Judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hand of the commissioner.

Agent dying, &c.

§ 611. The Clerk or Judge receiving and opening the commission and return, must immediately file it with the affidavit mentioned in the last two sections in the office of the Clerk of the Court in which the indictment is pending.

Commission and return to be filed.

§ 612. If the commission and return be transmitted by mail, the clerk to whom it is addressed, must receive it from the post-office, and open and file it in his office, where it shall remain, unless the Court otherwise direct.

Commission, &c., returned by mail.

§ 613. The commission and return shall be at all times open to the inspection of the parties, who shall be furnished by the clerk with copies of the same, or of such part thereof as they may require, on payment of his fees.

Commission, &c., may be inspected.

§ 614. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to any question in the interrogatories, or to any answers in the deposition, as if the witness had been examined orally in court.

Depositions may be read by either party on the trial.

CHAPTER III.

Inquiry into the Insanity of the Defendant before Trial or after Conviction.

§ 615. An act done by a person in a state of insanity, cannot be punished as a public offence; nor can a person be tried, adjudged to punishment, or punished for a public offence while he is insane.

Act done by insane person.

§ 616. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the Court shall order the question to

Question of sanity of defendant may be submitted to jury.

be submitted to the regular jury, or may order a jury to be summoned as prescribed in Section 341, to inquire into the fact.

Trial to be suspended until question of sanity determined. Mode of trying question of insanity.

§ 617. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

§ 618. The trial of the question of insanity shall proceed in the following order: 1st. The counsel for the defendant shall open the case and offer evidence in support of the allegation of insanity: 2d. The counsel for the people shall open their case and offer evidence in support thereof: 3d. The parties may then respectively offer rebutting testimony only, unless the Court, for good reason, in furtherance of justice, permit them to offer evidence upon their original cause: 4th. When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the Jury: 5th. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the Jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side: 6th. The Court shall then charge the Jury, if requested by either party.

Section 429 to apply.

§ 619. The provisions of Section 429, in respect to the charge of the Court to the jury upon the trial of an indictment, shall apply to the trial of the question of insanity.

Defendant found sane.

§ 620. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

Defendant found insane.

§ 621. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane; and the Court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the Sheriff to the custody of some proper person, and that upon his becoming sane, he be re-delivered by such person to the Sheriff.

Exonerated of bail.

§ 622. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

Defendant to be detained until sane. Notice of his becoming sane to be given.

§ 623. If the defendant be received by the person so appointed, he must be detained by him until he become sane. When he becomes sane, such person shall give notice to the Sheriff and District Attorney of the County of that fact. The Sheriff shall, thereupon, without delay, take the defendant from the custody of such person and place him in proper custody until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

Expense of custody of insane defendant.

§ 624. The expenses of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall, in the first instance, be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city, or county, bound to provide for and maintain him elsewhere.

CHAPTER IV.

Dismissal of the Action, before or after Indictment, for want of prosecution or otherwise.

Prosecution may be dismissed, unless indictment found at next term.

§ 625. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the Court at which he is held to answer, the Court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Or if not brought to trial at next term.

§ 626. If a defendant, indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the Court at which the indictment is triable, after the same is found, the Court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Prosecution may be continued from term to term.

§ 627. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own recognisance, or on the recognisance of bail, for his appearance to answer the charge at the time to which the action is continued.

§ 628. If the Court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail, shall be refunded to him.

Effect of courts directing a dismissal.

§ 629. The Court may, either of its own motion, or upon the application of the District Attorney, and in furtherance of justice, order any action, after indictment, to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes.

Reasons for dismissal to be entered on minutes.

§ 630. Neither the Attorney General, nor the District Attorney, shall hereafter discontinue or abandon a prosecution for a public offence, except as provided in the last section.

Abandonment of prosecution.

§ 631. An order for the dismissal of the action, as provided in this Chapter, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar if the offence charged be a felony.

When further prosecution barred.

CHAPTER V.

Proceedings against Corporations.

§ 632. Upon an information or presentment against a corporation, the magistrate shall issue a summons, signed by him with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

Summons to corporation to appear.

§ 633. The summons shall be substantially in the following form: "County of _____ (as the case may be). The People of the State of California to (naming the corporation): You are hereby summoned to appear before me, at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or presentment of the Grand Jury of the County of _____), for (designating the offence generally). Given under my hand, and dated this _____ day of _____ A. D. 18—.

Form of summons.

G. H., Justice of the Peace" (or as the case may be).

§ 634. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof, and showing the original to the President, or other Head of the Corporation, or to the Secretary, Cashier, or managing agent thereof.

Service of summons.

§ 635. At the time appointed in the summons, the magistrate shall proceed to investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

Charge how investigated.

§ 636. After hearing the proofs, the magistrate shall certify upon the depositions, either that there is or is not sufficient cause to believe the Corporation guilty of the offence charged, and shall return the depositions and certificate in the manner prescribed in Section 175.

Proceedings by magistrate after hearing proofs.

§ 637. If an indictment be found, the Corporation may appear by counsel, to answer the same. If they do not thus appear, a plea of not guilty shall be entered, and the same proceedings shall be had thereon, as in other cases.

On indictment found, corporation may answer by counsel.

§ 638. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the Sheriff of the County, out of their real and personal property, in the same manner as upon an execution in a civil action.

Collection of fines imposed on corporations.

CHAPTER VI.

Entitling Affidavits.

§ 639. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

Not necessary to entitle affidavits.

CHAPTER VII.

Errors and Mistakes in Pleadings, and other Proceedings.

Errors and mistakes not to render proceedings invalid, unless, &c.

§ 640. Neither a departure from the form or mode prescribed by this Code, in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

CHAPTER VIII.

Disposal of Property Stolen or Embezzled.

Stolen property, &c., to be held by officer.

§ 641. When property alleged to have been stolen or embezzled shall come into the custody of a peace officer, he shall hold the same, subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Stolen property may be restored to owner.

§ 642. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

Stolen property coming into custody of magistrate.

§ 643. If property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Stolen property not restored may be restored on conviction.

§ 644. If property stolen or embezzled have not been delivered to the owner, the Court before which a conviction is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

Disposition of unclaimed stolen property.

§ 645. If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the county treasurer, by whom it shall be sold, and the proceeds paid into the county treasury.

Receipts to be given for property taken from defendant.

§ 646. When money or other property is taken from a defendant arrested upon a charge of a public offence, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the Court to which the deposition and statements must be sent, as provided by Section 175.

PART V.

TITLE I.

Of Proceedings in the Court of Sessions.

Public offences—how prosecuted in court of sessions.

§ 647. All public offences prosecuted in a Court of Sessions, must be prosecuted either upon the information required by Section 105, or when the defendant has not been previously committed or held to bail upon an information in writing, sworn before the Court or one of the judges thereof.

Form of warrant against defendant not previously committed, &c.

§ 648. When an information is sworn before the Court against a defendant, not previously committed or held to bail, a warrant shall be issued, signed by the Clerk, and under the seal of the Court, and which shall be in substantially the following form: "County of ——. The People of the State of California, to the Sheriff of the County of —— or to any Sheriff, Constable, Marshal, or Policeman, in this State. Information upon oath having been this day laid before the Court of Sessions of the County of —— (or before me, A. B., one of the Justices of the Court of Sessions for the County of ——), by C. D., that the offence of (designating it generally) has been committed, and accusing E. F. thereof: You are therefore commanded forthwith to arrest the above-named E. F., and bring him before the said

Court of Sessions forthwith, at the Court House of said County (or naming the place of the holding of said Court), or in case that said Court be not in session, before the nearest and most accessible Magistrate in this County. Witness, G. H., Clerk of said Court of Sessions, with the seal of said Court of Sessions affixed, this — day of — A. D. 18—. Seal. G. H., Clerk," (or as the case may be), "By order of the Court," or of "J. K., Judge or Associate Justice of said Court." The warrant may be executed in any county in this State.

Warrant—
where executed.

§ 649. The defendant may be immediately tried, or may be held to bail by the Court. If the warrant is not executed during the term of the Court, the defendant shall be taken before some Magistrate, according to the directions of the warrant, and be dealt with in like manner as if arrested under a warrant issued by a Magistrate.

Defendant may
be forthwith
tried or held to
bail.

§ 650. The defendant must, in all cases, be personally present before the trial shall proceed.

Defendant must
be present.

§ 651. The Clerk shall keep a docket, in which he shall enter each action so soon as the information and depositions taken by a Magistrate are delivered to him, or so soon as any information is sworn before the Court.

Clerk to keep a
docket.

§ 652. He shall also keep, in a suitable book, regular minutes of the proceedings of the Court in each cause. The minutes of each day's proceedings shall be read over on the morning of the succeeding day, and may be corrected under the direction of the Court. At the close of the term they shall be signed by the County Judge.

And minutes of
proceedings.

§ 653. All actions shall be tried in the order in which they are entered on the docket, unless otherwise directed by the Court. Upon sufficient cause shown by either party, on affidavit, the Court may postpone the trial to another day of the same term, or to the next term.

Actions to be
tried according
to their order on
the docket.

§ 654. On the first day of the term, the clerk shall make out and deliver to the Sheriff an order to summon twelve persons as jurors, which order the Sheriff shall forthwith execute and return with a list of the names of the persons so summoned.

Summoning
jury

§ 655. If any of the persons summoned fail to attend, their attendance may be compelled by attachment, or the Court may direct the number to be completed from among the bystanders.

Persons sum-
moned failing
to attend.

§ 656. The names of the twelve jurors shall be written on separate ballots, and be deposited in a box, from which the names of six persons shall be drawn, who shall compose the jury for the term.

Names of jurors
to be put on
ballots and 6
drawn.

§ 657. The Court shall have power at any time to excuse one or more jurors, and after the third day may discharge the whole jury and direct another, if necessary, to be empanelled in the same manner.

Court may ex-
cuse and dis-
charge jurors.

§ 658. Whenever a juror is excused, or is challenged and set aside, the deficiency shall be supplied from among the bystanders.

Supplying defi-
ciency in number
of jurors.

§ 659. When the defendant is brought before the Court, the charge against him shall be distinctly read to him, and he shall be required to plead thereto.

Charge to be
read to defen-
dant.

§ 660. The defendant may plead the same pleas as upon an indictment, as provided in Section 319. His plea shall be oral, and shall be entered on the minutes of the Court.

How defendant
may plead.

§ 661. The trial shall, in all cases, be by a jury, unless both parties waive the same, and submit the cause to the Court.

Trial to be by
jury unless
waived.

§ 662. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenges shall in all cases be tried by the Court.

Challenges.

§ 663. When six persons appear and are accepted, they shall constitute the jury.

Six jurors only
appearing.
Oath to jury.

§ 664. The Court or clerk shall thereupon administer to the jury the following oath or affirmation: "You do swear (or affirm, as the case may be) that you will well and truly try this issue between the people of the State of California and A. B., the defendant, and a true verdict give according to the evidence."

§ 665. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

Jury to sit to-
gether and hear
proofs.

- Court to decide questions of law.** § 666. The Court shall decide all questions of law which may arise in the course of the trial; but shall give no charge to the jury.
- Cause—how to be argued.** § 667. The evidence shall be introduced and the cause argued, in the same order prescribed by Section 392; but not more than one counsel shall be heard in argument on each side.
- Jury may decide in court or retire.** § 668. After hearing the proofs and allegations the jury may decide in Court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some private and convenient place, without meat or drink, unless otherwise ordered by the Court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into Court when they have so agreed."
- Oath to officer having charge of jury** § 669. When a verdict of guilty is found by a jury, in their verdict they shall find the punishment to be inflicted. The verdict shall in all cases be general.
- On verdict of guilty, jury to find punishment. General verdict in all cases. Verdict to be delivered publicly.** § 670. When the jury have agreed upon their verdict, they shall deliver it publicly to the Court, who shall cause the same to be entered on the minutes.
- Jury unable to agree as to one or more of defendants.** § 671. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case, as to the rest, may be tried by another jury.
- Jury not to be discharged after cause submitted to them, unless, &c. Proceedings where jury discharged. Judgment on conviction.** § 672. The jury shall not be discharged, after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless, for good cause, the Court sooner discharge them.
- Judgment to pay a fine.** § 673. If the Jury be discharged, as provided in the last section, the Court may proceed again to the trial in the same manner as upon the first trial; and so on until a verdict be rendered.
- Defendant acquitted. Certificate that prosecution malicious.** § 674. When the defendant pleads guilty, or is convicted either by the Court or by a Jury, the Court shall render judgment thereon of fine and imprisonment, or both, as the case may require.
- Judgment against prosecutor for costs.** § 675. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be paid or satisfied, specifying the extent of the imprisonment, which shall not exceed fifteen days.
- Verdict to be entered on minutes. Time for rendering judgment to be appointed** § 676. When the defendant is acquitted, either by the Court or by the Jury, he shall be immediately discharged, and if the Court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.
- Motion for new trial.** § 677. If the prosecutor do not pay the costs or give security therefor, the Court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered by a Justice of the Peace in a civil action.
- When a new trial may be granted.** § 678. When a verdict is rendered, it shall be immediately entered by the Clerk upon the minutes.
- § 679. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, the Court shall appoint a time for rendering judgment, which shall not be more than two days, and not less than six hours after the verdict is rendered; and shall hold the defendant to bail to appear for judgment, and in default of bail he shall be committed.
- § 680. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.
- § 681. A new trial can be granted only in the following cases: 1st. If the trial has been had in his absence: 2d. When the Jury has received any evidence out of Court: 3d. When the Jury have separated without leave of the Court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case: 4th. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors: 5th. When there has been error in the decision of the Court, given on any question of law arising during the course of the trial: 6th. When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

§ 682. The motion in arrest of judgment may be founded on any substantial defect in the information; and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had. Motion in arrest of judgment.

§ 683. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the Court. Judgment may be pronounced at time appointed, unless, &c.

§ 684. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given. When defendant may be discharged as soon as judgment given.

§ 685. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered by the Clerk to the Sheriff, which shall be a sufficient warrant for the Sheriff to execute the same. Copy judgment of imprisonment to be delivered to sheriff.

§ 686. When a judgment is entered imposing a fine, and ordering the defendant to be imprisoned until the fine be paid, he shall be committed to the custody of the Sheriff, and be held by him in custody during the time specified in the judgment, unless the fine be sooner paid. Judgment imposing a fine and imprisonment until paid.

§ 687. Upon the payment of the fine, the Sheriff shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the County Treasurer. Defendant to be discharged on paying fine.

§ 688. If a fine be imposed and paid before commitment, it shall be received by the Clerk, and be applied as prescribed in the preceding Section. Fine paid before commitment.

§ 689. If a defendant has been discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognisance, the same shall be forfeited, or the money appropriated in like manner as in the District Court. Forfeiting recognisances, &c.

§ 690. In case of failure to appear for judgment, the Court shall also direct the issuance of a warrant, as provided in Section 485, and shall enter judgment whenever the defendant appears, or is brought before it. Warrant may be issued.

PART VI.

OF SPECIAL PROCEEDINGS.

TITLE I.

Of Search Warrants.

§ 691. A search warrant is an order in writing, in the name of the people of the State of California, signed by a Magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the Magistrate. Search warrant defined.

§ 692. It may be issued whenever property has been stolen or embezzled; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be. In what cases it may be issued.

§ 693. No search warrant shall be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and place to be searched. Only to be issued upon probable cause being shown.

§ 694. The Magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. Complainant to be examined before issuing.

§ 695. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. What depositions must set forth.

§ 696. If the Magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the Magistrate. When search warrant may be issued.

§ 697. The warrant shall be in substantially the following form: "County of _____. The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman, in the County of _____: Proof, by affidavit, having been this day made before me, by (naming every person whose affidavit has Form of warrant.

been taken), that (stating the grounds of the application according to Section 693, or if the affidavit be not positive, 'that there is probable cause for believing that,' stating the ground of the application in the same manner), you are thereupon commanded, in the day time (or at any time of the day or night, as the case may be, according to Section 703), to make immediate search on the person of C D (or in the house situated ———, describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith before me at (stating the place). Given under my hand, and dated this — day of ———, A.D., 18—. E F, Justice of the Peace" (or as the case may be).

Who may serve

§ 698. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution.

Officer may break doors, &c., to execute.

§ 699. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Or to obtain his own or another's liberation.

§ 700. He may break open any outer or inner door or window of a house, for the purpose of liberating a person, who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

Direction in warrant to be served in day time, unless, &c.

§ 701. The Magistrate must insert a direction in the warrant that it be served in the day time, unless the affidavits be positive that the property is on the person or in the place to be searched; in which case he may insert a direction that it be served at any time of the day or night.

Warrant to be in force for 5 days only.

§ 702. A search warrant must be executed and returned to the Magistrate who issued it, within five days after its date; and if in any other County, within thirty days. After the expiration of these times respectively the warrant shall, unless executed, be void.

Receipt to be given for property taken.

§ 703. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he shall leave it in the place where he found the property.

Disposition of property by magistrate.

§ 704. When the property is delivered to the Magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in Sections 642 to 646, both inclusive.

Warrant to be returned to magistrate with inventory of property taken.

§ 705. The officer shall forthwith return the warrant to the Magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, at the foot of the inventory, and taken before the Magistrate at the time, to the following effect: I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

Copy inventory to be delivered to party from whom property taken

§ 706. The Magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

May take testimony as to grounds of issuing warrant. Testimony to be reduced to writing. Property may be restored to the party from whom taken

§ 707. If the grounds on which the warrant was issued, be controverted, he must proceed to take testimony in relation thereto.

§ 708. The testimony given by each witness must be reduced to writing, and authenticated in the manner prescribed in Section 162.

§ 709. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the Magistrate shall cause it to be restored to the person from whom it was taken.

Warrant, return, &c., to be returned to district court, &c

§ 710. The Magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the District Court, or Court of Sessions, having power to inquire into the offences in respect to which the search warrant was issued, at or before its opening on the first day.

§ 711. Whoever shall, maliciously, and without probable cause, procure a search warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, or imprisonment not more than six months.

Maliciously and without probable cause procuring a search warrant.

§ 712. A peace officer who, in executing a search warrant, shall wilfully exceed his authority, or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor, and punished as in the next preceding Section is provided.

Officer wilfully exceeding his authority.

§ 713. When a person, charged with a felony, is supposed by the magistrate before whom he is brought, to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the Court in which the defendant may be tried.

Person charged with felony may be searched.

TITLE II.

Of Proceedings against Fugitives from Justice.

§ 714. A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice, and be found in this State, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this State, to be removed to the State having jurisdiction of the crime.

Fugitives from justice to be delivered up.

§ 715. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice, and be found in this State.

Warrant may issue for their apprehension.

§ 716. The proceedings for the arrest and commitment of the person charged, shall be in all respects similar to those provided in this Act, for the arrest and commitment of a person charged with a public offence, committed within this State; except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

Proceedings for arrest and commitment.

§ 717. If, from the examination, it appear that the person charged has committed treason, felony, or other crime charged, the magistrate by warrant reciting the accusation, shall commit him to the proper custody within his County, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the Executive of this State, on the requisition of the Executive authority of the State or Territory in which he committed the offence, unless he give bail as provided in the next Section, or until he be legally discharged.

Party charged may be committed.

§ 718. The magistrate may admit the person arrested to bail, by a recognisance with sufficient sureties, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognisance, and for his surrender, to be arrested upon the warrant of the Governor of this State.

Or admitted to bail.

§ 719. Immediately upon the arrest of the person charged, the magistrate shall give notice to the District Attorney of the District, of the name of the person, and the cause of the arrest.

Notice of arrest to district attorney

§ 720. The District Attorney shall immediately thereafter give notice to the Executive authority of the State or Territory, or to the Prosecuting Attorney or Presiding Judge of the Criminal Court of the City or County within the State or Territory having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

District attorney to give notice to executive authority of state where offence committed.

§ 721. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognisance he be arrested under the warrant of the Governor of this State.

When party may be discharged

§ 722. The magistrate shall make return of his proceedings to the next Court of Sessions of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged; and if he be in custody, or the time for his arrest have not elapsed, the Court may discharge him from detention, or may order his recognisance of bail to be cancelled, or may continue his detention for a

Proceedings to be returned to sessions.

longer time, or may re-admit him to bail, to appear and surrender himself within a time to be specified in the recognisance.

Expenses of proceedings—how audited and paid.

§ 723. When the Governor of this State, in the exercise of the authority conferred by Section Two, Article Four, of the Constitution of the United States, or by the laws of this State, shall demand from the Executive authority of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this State of a fugitive from justice, the accounts of the persons employed by him for that purpose shall be audited by the Comptroller, and paid out of the State Treasury.

TITLE III.

OF PROVISIONS APPLICABLE TO CRIMINAL PROCEEDINGS GENERALLY.

CHAPTER I.

Compromising certain Public Offences by leave of the Court.

Certain offences may be compromised.

§ 724. When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offence has a remedy by a civil action, the offence may be compromised, as provided in the next section, except where it was committed—1st. By or upon an officer of justice, while in the execution of the duties of his office: 2d. Riotously: 3d. With an intent to commit a felony.

Compromise—how effected.

§ 725. If the party injured appear before the Court to which the depositions are required to be returned at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in such case, the reasons for the order must be set forth therein, and entered on the minutes.

Compromise to bar a prosecution.

§ 726. The order authorized by the last section shall be a bar to another prosecution for the same offence.

No compromise except as herein provided.

§ 727. No public offence shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter.

CHAPTER II.

Of Fines and Forfeitures.

Application of fines.

§ 728. All fines and forfeitures collected in any Court of this State shall be applied to the payment of the costs of the case in which the fine is imposed, or the forfeiture incurred; and after such costs are paid, the residue shall be paid to the County Treasurer of the county in which the Court is held.

Misapplication of fines by officers authorized to receive same.

§ 729. If any Clerk, Justice of the Peace, Sheriff, Constable, or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent. damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

CHAPTER III.

Miscellaneous Provisions.

Oath defined.

§ 730. The term "oath," when used in this Act, shall be deemed to include an affirmation.

What a sufficient signature.

§ 731. When the signature of a person is required by this Act, the mark of the person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

Order may be made to bring a person in prison before the court.

§ 732. When it is necessary, for any purpose, to have a person who is in prison in any part of the State brought before a Court of criminal jurisdiction, an order for that purpose may be made by the Court, and the order shall be executed by the Sheriff of the county where it is made.

§ 733. Process issued by a Court or Magistrate shall be executed according to its terms.

Process—how executed. Magistrate defined.

§ 734. The term "Magistrate," when used in this Act, signifies any one of the officers mentioned in Section 104.

§ 735. The term "Peace Officer," when used in this Act, signifies any one of the officers mentioned in Section 111.

Peace officer defined.

PART VII.

Of the Costs in Criminal Actions and Proceedings.

§ 736. The only costs or fees allowed in a criminal action or proceeding, shall be such as are prescribed by this Act.

What costs and fees allowed.

§ 737. The magistrate, if he be a justice of the peace, or city or town officer, having the authority and jurisdiction of a justice of the peace, may receive—for all the proceedings before him, to and including his decision upon the question of discharging the defendant, or holding him to answer, ten dollars: for taking bail after a commitment by another magistrate, three dollars.

Magistrate's fees.

§ 738. The clerk may receive, on the trial of an issue where the charge is felony, ten dollars: on the trial of an issue where the charge is a misdemeanor, five dollars: entering judgment, two dollars. He shall receive no other fee for any service whatever in a criminal action or proceeding, except for copies of papers, at the rate of thirty cents for every hundred words.

Clerk's fees.

§ 739. A Peace Officer may receive, for making an arrest, two dollars, together with twenty cents for every mile necessarily travelled by him in rendering such service, and in taking a defendant before a Court or magistrate, or conveying him to prison: for serving a subpoena, fifty cents, together with twenty cents for every mile necessarily travelled by him in rendering such service. The Court of Sessions may allow such further compensation for the service of process, and for other services in criminal cases, as it may think reasonable.

Peace officer's fees.

§ 740. The Sheriff may also receive, for summoning a panel of forty-eight jurors, fifty dollars; for summoning a panel of thirty-six jurors, forty dollars; for summoning a panel of twelve jurors, fifteen dollars; for executing sentence of death, fifty dollars. Each juror shall receive for each day's attendance, five dollars, to be paid on the certificate of the clerk, which shall be issued during the term.

Sheriff's fees.

§ 741. The District Attorney may receive, on each conviction for felony, where the punishment is death, one hundred dollars; on each conviction for other felony, fifty dollars; on each conviction for a misdemeanor, twenty-five dollars; for collecting money on a forfeited recognisance, ten per cent. on the amount collected.

District attorney's fees.

§ 742. The County Attorney may receive, on each conviction, twenty dollars; for collecting money upon a forfeited recognisance, ten per cent. on the amount collected.

County attorney's fees.

§ 743. The fees allowed to Justices of the Peace, and other officers having the jurisdiction and authority of Justices of the Peace, Clerks, Peace Officers, District and County Attorneys, shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

Certain fees to be collected from the defendant if convicted.

§ 744. The fees allowed a Sheriff for summoning jurors, jurors' fees, and the fees allowed Magistrates, Peace Officers, and Clerks, in cases where the defendant is acquitted, or where, being convicted, he is unable to pay the costs, shall be county charges, and shall be audited and paid in like manner as other charges against the county.

Certain fees to be a charge on the county.

Repealing and Saving Sections.

§ 745. All existing provisions of law, relating to and prescribing the modes of proceeding in criminal cases, are hereby abrogated.

Existing provisions of law abrogated.

§ 746. The abrogation of any provision of law shall not affect an act done, or right accrued or established, or a proceeding or prosecution had or commenced in a criminal case before this Act shall take effect; but every such act, right, and proceeding, shall remain as valid and effectual as if such provision had remained in force.

Not to affect any act or right heretofore done or accrued.

Chap. 120.

AN ACT to amend "*An Act to regulate proceedings in Criminal Cases.*"

Passed April 20, 1850.

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*Section 217
amended.

§ 1. The Two Hundred and Seventeenth Section of the "Act to regulate proceedings in Criminal Cases," which is in the following words, viz. "If an offence be committed during the sitting of the Court, after the discharge of the Grand Jury, the Court may, in its discretion, direct an order to be entered to the Sheriff to summon another," is hereby amended so that it shall read as follows, viz. "If an offence be committed during the sitting of the Court, after the discharge of the Grand Jury, or if it be necessary to the finding of indictments in cases in which a challenge, or challenges, have been allowed, the Court may, in its discretion, direct an order to be entered to the Sheriff to summon another."

Section 221
amended.

§ 2. The Two Hundred and Twenty-first Section of the Act aforesaid, which is in the following words, "At the first and all subsequent terms of the District Court, until an assessment roll in each county be made out and returned, so that a jury list may be formed and a jury drawn as required in this chapter, the Grand Jury and Trial Jury shall be formed in the following manner," is hereby amended so that it shall read as follows, viz. "At the first and all subsequent terms of the District Court, until an assessment roll in each county be made out and returned, so that a jury list may be formed and a jury drawn as required in this chapter, and also, whenever, from any cause, there shall be a failure to draw a jury, as prescribed in Sections 189 to 193, both inclusive, the Grand Jury and the Trial Jury shall be formed in the following manner."

Section 342
amended.

§ 3. The Three Hundred and Forty-second Section of the Act aforesaid, which is in the following words, viz. "The Court shall have power, on the last day of the first or any subsequent week of the term, to discharge any or all of the jurors who have served during the week," is hereby amended so that it shall read as follows, viz. "The Court shall have power, on the last day of the first or any subsequent week of the term, to discharge any or all of the jurors who have served during the week, and may, at any time during the week, direct the Sheriff to summon a second jury from among the bystanders, so as to have two or more juries in attendance at the same time."

Chap. 121.

AN ACT relative to *Bonds, Due Bills, and other instruments in writing, and making them Assignable.*

Passed April 20, 1850.

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*Bonds, bills, &c.,
not negotiable,
payable to per-
son in whose
favor they are
made.

§ 1. That all bonds, due bills, and other instruments of writing, not negotiable, hereafter made by any person, body politic or corporate, whereby such person promises or agrees to pay any sum or sums of money, or articles of personal property, or any sum of money in personal property, or acknowledges any sum of money, or articles in personal property, to be due to any other person, shall be taken to be due and payable, and the sum of money or articles of personal property therein mentioned, shall, by virtue thereof, be due and payable to the person to whom the said bond, bill, or other instrument in writing is made.

Such bonds, bills,
&c., may be
assigned by
endorsement.

§ 2. Any such bond, due bill, note, or other instrument in writing, not negotiable, made payable to any person, shall be assignable by endorsement thereon under the hand of such person and his assignee,

in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively.

§ 3. Any assignee to whom such sum of money, or personal property, is by such endorsement made payable, or in case of the death of such assignee, his heirs, executors, or administrators, may in his own name institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill, or other instrument in writing, or against his heirs, executors, or administrators, as might have been maintained against him, by the obligee or payee, in case the same had not been assigned; and in every such action, in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit, as in other cases: *Provided*, that the maker or obligor shall be allowed to set up in defence to the action of the assignee, any matter which he might have set up to the action of the payee, or obligee, when the same has arisen previous to notice of the assignment, but not otherwise.

Assignee may maintain an action thereon.

Proviso.

§ 4. Every assignor, his heirs, executors, or administrators, of every such note, bond, bill, or other instrument in writing, shall be liable to the action of the assignee thereof, his executors or administrators, if such assignee shall have used due diligence by the institution and prosecution of a suit against the maker of such note, bond, bill, or other instrument in writing, or against his heirs, executors, or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof: *Provided*, that if the institution of such suit would have been unavailing, or that the maker had absconded, or left the State, where such assigned note, bond, bill, or other instrument in writing, became due, or within twenty days thereafter, such assignee, his executors or administrators, may recover against the assignee, or his heirs, executors, or administrators, as if due diligence by suit had been used. By "due diligence" shall be understood the institution of suit within sixty days after the maturity of the obligation.

Assignor liable on such bonds, bills, &c.

Proviso.

Due diligence.

§ 5. In any action which may hereafter be commenced in any Court in this State, upon any of the instruments in writing mentioned in this Act, by the obligee or payee thereof, of any of such instruments made or entered into without a good and valuable consideration, or if the consideration upon which any of such instruments was made or entered into, has wholly or in part failed, it shall be lawful for the defendant, against whom such action shall have been commenced by such obligee or payee, to plead such want of consideration; or that the consideration has wholly or in part failed; and if it shall appear that any of the aforesaid instruments were made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case.

Want of consideration, or failure of consideration, may be set up in defence.

§ 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar, in any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee of such instrument.

Fraud in obtaining bill may be pleaded in bar.

§ 7. In all cases where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be specified in such instrument of writing, for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing to tender, or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of such instrument resided at the time of the execution thereof: *Provided*, however, if such property be too ponderous to be easily moved, or if the obligee or payee of such instrument had not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker resided, then it shall be lawful to tender such personal property at the place where the maker of such instrument resided at the time of the execution thereof. Any tender made in pursuance of this Section, shall be equally valid and legal, in case any such instrument of writing shall have been assigned in pursuance of the first Section of this Act, as if no such assignment had been made.

Instruments for delivery of personal property—how satisfied.

Proviso.

Tender after assignment.

§ 8. A legal tender of any such personal property, shall discharge the maker of any such instrument

Legal tender to discharge maker.

from all liability thereon; and the property thus tendered is hereby declared to be vested in and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided*, however, if any such property so tendered, shall be of a perishable nature, or shall require feeding, or other sustentation, and the person owning or holding any such instruments of writing, be absent at the time of tendering the same, it shall be lawful for every person making such tender to preserve, feed, or otherwise take care of the same; and he shall have a lien on such tendered property, for his reasonable trouble and expense of preserving, feeding, or sustaining such property, until payment be made for such trouble and expense.

Chap. 122.

AN ACT concerning the Writ of Habeas Corpus.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Who may prosecute writ of habeas corpus.

§ 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretence whatever, may prosecute a Writ of Habeas Corpus, to inquire into the cause of such imprisonment or restraint.

Application for writ—how made.

§ 2. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and shall specify: 1st, That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained; and the place where, naming all the parties, if they are known, or describing them, if they are not known. 2d, If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists. 3d, The petition must be verified by the oath or affirmation of the party making the application.

Who may grant writ.

§ 3. Such writ of Habeas Corpus may be granted by the Supreme Court, or any Judge thereof, or any District or County Court in term time, or by any Judge of such Courts at any time, whether in term or vacation.

Writ to be granted without delay.

§ 4. Any Court or Judge empowered to grant any writ applied for under this Act, to whom such petition might be presented, if it appear that the writ ought to issue, shall grant the same without delay.

To whom writ is to be directed.

§ 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person so imprisoned or detained, as it is alleged by petition before the Court or Judge, as the case may be, at such time as the Court or Judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his detention, and have then there such writ.

When directed to sheriff, &c.

§ 6. If such writ be directed to the Sheriff or other ministerial officer of the Court out of which said writ is issued, it shall be delivered by the clerk to such officer without delay, as other writs are delivered for service.

When directed to any other person.

§ 7. If such writ be directed to any officer or person other than is specified in the last preceding section, the same shall be delivered to the Sheriff, or his deputy, or the Coroner, as the case may require, and shall be by him served upon such officer or person, by delivering the same to him without delay.

Service of writ.

§ 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered, by leaving

it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside either of his dwelling house, or of the place where the party is confined or under restraint.

§ 9. If the officer or person to whom such writ is directed refuse, after due service as aforesaid, to obey the same, it shall be the duty of the Court or Judge, upon affidavit, to issue an attachment against such person, directed to the Sheriff or Coroner, as the case may require, commanding him forthwith to apprehend such person, and bring him immediately before such Court or Judge; and upon being so brought, he shall be committed to the jail of the county until he make due return to such writ, or be otherwise legally discharged.

Refusing to obey writ.

§ 10. The officer upon whom such writ shall be duly served, shall state in his return, plainly and unequivocally, 1st. Whether he have or have not the party in his custody, or under his power or restraint. 2d. If he have the party in his custody or power, or under his restraint, he shall state the authority and cause of such imprisonment or restraint, setting forth the same at large. 3d. 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 to the Court or Judge on the hearing of such return. 4th. If the officer or person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, any time prior or subsequent to the date of the writ of Habeas Corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly at what time and place, for what cause, and by what authority, such transfer took place. 5th. The return must be signed by the person making the same, and, except when such person shall be a sworn public officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

What to be stated in return to writ.

§ 11. If the writ of Habeas Corpus be served, the person or officer to whom the same is directed, shall also bring the body of the party in his custody, or under his restraint, according to the command of the writ, except in the cases specified in the next two sections.

Party in custody to be brought up.

§ 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of Habeas Corpus, such person cannot, without danger, be brought before the Court or Judge, the officer or person in whose custody or power he is, may state that fact in his return to the writ, verifying the same by affidavit.

Exceptions.

§ 13. If the Court or Judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such Court or Judge may proceed to decide on such return, and to dispose of the matter, as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

When court may proceed in absence of the party.

§ 14. The Court or Judge before whom a writ of Habeas Corpus shall be returned, shall, immediately after the return thereof, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Hearing to take place immediately after return.

§ 15. The party brought before the Court or Judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge.

Facts stated in the return may be controverted.

§ 16. Such Court or Judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require.

Court to hear proofs.

§ 17. Such Court or Judge shall have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment; and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

May compel attendance of witnesses.

§ 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such Court or Judge shall discharge such party from the custody or restraint under which he is held.

When court may discharge the party.

When party to be remanded.

§ 19. It shall be the duty of such Court or Judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody: First. By virtue of process issued by any Court or Judge of the United States, in a case where such Court or Judge has exclusive jurisdiction; or Second. By virtue of the final judgment or decree of any competent Court of criminal jurisdiction, or of any process issued upon such judgment or decree.

Prisoner in custody on process from any court of this state may be discharged in cases specified.

§ 20. If it appear on the return of the writ of Habeas Corpus, that the prisoner is in custody by virtue of process from any Court of this State, or Judge or officer thereof, such prisoner may be discharged in any one of the following cases, subject, however, to the restrictions of the last preceding section: First. When the jurisdiction of such Court or officer has been exceeded. Second. When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged. Third. When the process is defective in some matter of substance required by law, rendering such process void. Fourth. When the process, though proper in form, has been issued in a case not allowed by law. Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth. Where the process is not authorized by any judgment, order, or decree of any Court, nor by any provision of law. Seventh. Where a party has been committed on a criminal charge without reasonable or probable cause.

Party not to be discharged for defect of form in warrant.

§ 21. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment of a Justice of the Peace, such person shall not be discharged from such imprisonment or custody on the ground of any mere defect of form in such warrant or commitment.

Court may examine witnesses and discharge or hold to bail.

§ 22. If it shall appear to the Court or Judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such Court or Judge, that the party is guilty of a criminal offence, or ought not to be discharged, such Court or Judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpoenaed to attend at such time as shall be ordered, to testify before such Court or Judge; and upon the examination, he shall discharge such prisoner, let him to bail if the offence be bailable, or recommit him to custody, as may be just and legal.

Habeas corpus for the purpose of giving bail.

§ 23. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of Habeas Corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Recognisance from person brought up on habeas corpus.

§ 24. Any Judge before whom any person who has been committed on a criminal charge may be brought on a writ of Habeas Corpus, if the same be bailable, may take a recognisance from such person, as in other cases; and shall file the same in the proper court without delay.

Person not entitled to discharge or not giving bail to be remanded.

§ 25. If any party brought before the Court or Judge, on the return of the writ, be not entitled to his discharge, and be not bailed, where such bail is allowable, such Court or Judge shall remand him to custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto.

Party in illegal custody may be committed to legal custody.

§ 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such Judge or Court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Disposition of party pending proceedings on the return.

§ 27. Until judgment be given on the return, the Court or Judge before whom any party may be brought on such writ, may commit him or her to the custody of the Sheriff of the County; or place him or her in such case, or under such custody, as his or her age or circumstances may require.

Habeas corpus not to be dissolved for defect of form.

§ 28. No writ of Habeas Corpus shall be dissolved for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the Court or Judge before whom he is to be brought.

Persons discharged on habeas corpus not to be again imprisoned for same cause.

§ 29. No person who has been discharged by the order of the Court or Judge upon a Habeas Corpus, issued pursuant to the provisions of this Act, shall be again imprisoned, restrained, or kept in custody for the same cause: 1st. If he shall have been discharged from custody on a criminal charge, and be

afterwards committed for the same offence, by legal order or process: or, 2d. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment, in a criminal case, the prisoner be again arrested on sufficient proof and committed by legal process for the same offence.

§ 30. Whenever it shall appear, by satisfactory proof by affidavit, to any Court or Judge authorized to grant a writ of Habeas Corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such Court or Judge, before whom the application is made, or will suffer some irreparable injury before compliance with a writ of Habeas Corpus can be enforced, such Court or Judge may cause a warrant to be issued reciting the facts, and directed to the Sheriff, Coroner, or Constable of the County, commanding such officer to take such person, thus held in custody, confinement, or restraint, and forthwith bring him or her before such Court or Judge, to be dealt with according to law.

Warrant may be issued instead of habeas corpus in certain cases.

§ 31. Such Court or Judge may also, if the same be deemed necessary, insert in such warrant, a command for the apprehension of the person charged with such illegal detention and restraint.

Warrant may include person charged with illegal detention. Warrant—how executed.

§ 32. The officer to whom any such warrant is delivered, shall execute the same, by bringing the person or persons, therein named, before the Court or Judge, who may have directed the issuing of such warrant.

§ 33. The person alleged to have such party under illegal confinement or restraint, may make return to such warrant, as in case of a writ of Habeas Corpus, and the same may be denied, and like allegations, proofs, and trial, shall be thereon had as upon a return to a writ of Habeas Corpus.

Return to warrant.

§ 34. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the care or custody of the person entitled thereto, or left at liberty, as the case may require.

Party may be discharged or remanded.

§ 35. Any writ or process authorized by this Act, may be issued and served on the first day of the week, commonly called Sunday.

Writ, &c., may be executed on Sunday.

§ 36. All writs, warrants, processes, and subpoenas, authorized by the provisions of this Act, shall be issued by the Clerk of the Court, and except subpoenas, sealed with the seal of such Court; and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return.

Writs, &c., to be issued by clerk, and, except subpoenas, be sealed.

§ 37. All such writs and processes, when issued by order of a Judge, shall be returned before him at the County seat, and shall be there heard and determined.

Return of writs issued by judge.

§ 38. If any Judge, after a proper application is made, shall refuse to grant an order for a writ of Habeas Corpus, or if the officer or person to whom such writ may be directed, shall refuse obedience to the command thereof, he shall forfeit and pay, to the person aggrieved, a sum not exceeding five thousand dollars, to be recovered by an action of debt, in any Court having cognisance thereof.

Judge improperly refusing habeas corpus.

§ 39. Any one having in his custody, or under his restraint or power, any person for whose relief a writ of Habeas Corpus shall have been duly issued, pursuant to the provisions of this Act, who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another; or shall place him or her under the power or control of another; or shall conceal or exchange the place of his or her confinement or restraint; or shall remove him or her without the jurisdiction of such Court or Judge; shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding five thousand dollars.

Penalty for attempting to evade this act.

§ 40. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding Section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding Section mentioned.

Assisting to evade act.

§ 41. Every person convicted of any offence under the provisions of the last preceding Sections, in addition to the punishment therein mentioned, may be also imprisoned in the County Jail for a term not exceeding two years.

Additional penalty for offences mentioned in last preceding sections.

Chap. 123.

AN ACT creating the office of State Assayer, Melter, and Refiner of Gold, and defining his Duties.

Passed April 20, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Office for assay-
ing, &c., to be
established.

Director and
surveyor to be
appointed.

They to give
bonds, and, to-
gether with per-
sons employed
by them, to take
oath.

Term of office.
Office hours.

Duties of state
director.

Other duties of
state director.

Other duties of
state director.

Duty of state
assayer.

Proviso.
Other duties of
state assayer.

Other duties of
state assayer.

§ 1. There shall be established in the City of San Francisco, a State Office, for assaying, melting, and refining gold.

§ 2. The Governor of the State shall appoint two competent persons, to take in charge, and perform the duties of said establishment, one as Director, the other as Assayer, Melter, and Refiner of Gold. Before entering upon their duties, each of them shall execute a bond, with two or more good and sufficient sureties of fifty thousand dollars each, to be approved by the Governor: conditioned for the skilful and faithful performance of all the duties required of them by law, which bonds shall be made payable to the people of the State of California, and deposited with the Secretary of State. They, and all persons in their employ, shall take an oath before some Judge duly qualified to administer oaths, truthfully and faithfully to perform their trust.

§ 3. They shall be appointed and hold office for one year, and until their successors are appointed and qualified. They shall keep their office open daily (Sundays excepted), from nine o'clock A. M., until two o'clock P. M., for the transaction of business.

§ 4. It shall be the duty of the State Director to procure and safely keep a series of standard weights, corresponding with the Troy weights of the United States Mint, consisting of pound weights, and the requisite subdivisions. He shall also receive all gold dust or bullion, in quantity not less than two ounces, Troy weight, which may be offered him for the purpose of assaying or refining. All such gold dust or bullion shall be weighed, and, when practicable, in the presence of the depositor, and the Director shall be responsible on his bond for the safe keeping and delivery of the same: if the dust or bullion is in such a state as to require melting before its value can be ascertained, the weight after melting shall be considered as the true weight of the dust or bullion so deposited.

§ 5. It shall be the duty of the Director to keep a record of the weight of all dust or bullion received by him, the time of its reception, the name and residence of the person from whom it is received, and the amount received from each person, and the County from which said dust or metal was taken, and upon delivery of it into the hands of the assayer, he shall take a receipt of the same in a book kept for that purpose.

§ 6. The Director shall keep a book of receipts, and a receipt shall be given to each depositor of the weight and value of the amount deposited; said receipts shall be regularly numbered in the order in which they are given, and the number of the receipt shall be entered upon the margin of the page from which it is taken, with the date when given, the weight and value of the amount, and the name of the person receiving the receipt.

§ 7. It shall be the duty of the State Assayer to carefully refine and assay any and all gold dust or bullion placed in his hands by the Director for that purpose, and to cause the same to be made into ingots or bars, in the form of an oblong square, and of such weight as shall be desired by the depositor: *Provided*, that no such ingots or bars shall be made or issued of less weight than two ounces.

§ 8. The State Assayer shall keep books of record, in which shall be recorded the original weight of all dust or bullion placed in his hands by the Director for assaying, melting, or refining, or either, and the date of receiving it. He shall also keep a record of the weight, value, and fineness, of the respective deposits of all dust or bullion assayed, refined, or melted, and the date when delivered to the Director.

§ 9. The State Assayer shall regularly number and stamp upon the ingots or bars thus made, the true value in dollars and cents, and the correct weight and carat fineness thereof, in accordance with

the United States Mint standard : also the letters "Cal.," the date, and his own initials in plain letters over the words "State Assayer," and upon each end and side of any ingot and bar so issued, some uniform stamp or impression; and shall, as soon as thus prepared, place it in the hands of the Director, taking his receipt in a book kept by the Assayer for that purpose, and the Director shall hand it over to the depositor, if demanded, within four days after the deposit of the dust, unless the time shall be prolonged by the depositor by a written agreement, when the weight given shall be returned to the Director, who shall cancel and keep the same.

§ 10. The State Assayer and Director shall be entitled to charge and collect from each depositor one per cent. each upon the value as stamped upon the ingots or bars issued, out of which they shall pay all expenses attending upon their duties as prescribed in this Act. The balance shall be equally divided between them. They shall also in addition collect and retain in their possession three fourths (3-4) of one per cent. upon the total amount assayed and issued by them, which sum so retained they shall, at the end and expiration of every sixty days, pay or cause to be paid into the State Treasury for the use of the State.

Fees to state assayer and director.

§ 11. The books and papers of the office shall be examined every three months by the Attorney General of the State, who shall make a report to the Governor of each examination. The Judge of either County Court may institute an examination when requested so to do by any depositor, or the Chamber of Commerce, or Board of Trade of either city in the State; and they shall produce all books, records, and papers, when required by any Court before whom complaint or suit is brought, against them or either of them, for any violation of this Act.

Attorney general to examine books and papers.

§ 12. They shall each make a full and correct report under oath to the State Treasurer, every sixty days, in detail of all transactions in his official capacity, as Recorder or Assayer.

Assayer and director to report under oath.

§ 13. All ingots or bars of gold bearing the stamp of State Assayer as provided by this Act, shall be received in payment of all State and County dues, taxes, and assessments, at the value expressed thereon in dollars and cents: *Provided*, such ingots or bars have not been mutilated nor reduced in size, weight, or value.

Ingots with stamp of state assayer to be received in payment of taxes, &c.

§ 14. Neither Assayer nor Director shall loan or use, or cause to be loaned or used for any purpose whatever, any gold dust or bullion in their possession for account of depositors, and no use shall be made of any gold dust or bullion deposited with them otherwise than for the purpose specified in this Act. Any violation of this Act shall be deemed a misdemeanor, and either of them, on conviction thereof before any competent tribunal, shall be punished for each offence by fine not less than one thousand dollars, and by imprisonment not less than six months.

Assayer and director not to use or loan dust or bullion deposited.

Violation of act a misdemeanor.

§ 15. The Governor may, when petitioned so to do, direct the Director and Assayer to establish a branch or branches of their office at Sacramento and Stockton, or Sonora. They shall cause all business of such branch or branches to be conducted in all respects in accordance with the provisions of this Act, regulating the office at San Francisco. The Director and Assayer shall give an additional bond of fifty thousand dollars for each branch formed under the provisions of this Act; and all ingots or bars made at either branch shall be stamped, marked, and numbered as directed in Section 9. And, in addition, the words "Sacramento," or "Stockton," or "Sonora."

Branch offices may be established.

Additional bonds.

Stamps on ingots.

§ 16. The Director and Assayer shall be responsible on his bond for all the acts of their employees and agents.

Director and assayer responsible for agents.

§ 17. Any person or persons, who shall alter, mutilate, reduce in weight, clip, file, sweat, alloy, or reduce in value in any way, any ingots or bars, made under the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof before any competent tribunal, shall be punished for each offence by fine not less than one thousand dollars, nor more than fifty thousand dollars, and imprisonment not less than six months, nor more than two years.

Mutilating ingots a misdemeanor.

§ 18. If any person shall make, or cause or procure to be made, forged, or counterfeited, or aid or assist in making or circulating any ingots or bars in resemblance or similitude to the ingots or bars which may be made under the provisions of this Act, he or they shall be considered guilty of counterfeiting;

Counterfeiting ingots.

and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment in the State Prison for a term not exceeding three years.

Office of state assayer and director—when to be abolished.

§ 19. Whenever any branch mint of the United States shall be in operation within this State, it shall be the duty of the Governor to issue his proclamation, stating the fact, and abolishing the office of State Assayer and Director.

Errors in weights, &c., of ingots issued by state assayer and director.

§ 20. If there shall be any error, either in the weights, quality, or value of the gold or metal so stamped upon the said ingots or bars issued by the said Assayer and Director, they shall forfeit the percentage allowed to them, and shall also be liable to the amount of the difference between the stamp upon said ingots or bars, and its true value at the United States Mint standard, and shall also pay all damages that may accrue by such error, and may be sued upon their bonds or otherwise for the same, in any Court of Record in the District in which they shall reside.

Amendment of sec. 2 of ch. 108.

§ 21. Section second of an "Act to prevent the Coining of Money by individuals," passed April 8, eighteen hundred and fifty, reads as follows: "Any person who shall stamp or impress, or shall cause to be stamped or impressed upon any piece of gold of less weight than four ounces, Troy weight, whether pure or alloyed, any figures, letters, or marks indicating or purporting to indicate its weight, fineness, or value, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in the preceding section." So much of this section above recited as may conflict or be inconsistent with any of the provisions of this Act, is hereby repealed.

Chap. 124.

AN ACT to provide for the Distribution of the Journals, Laws, Supreme Court Reports, and other Documents.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

800 copies of journals of legislature to be printed. To be in one volume and what to include. Size, &c., of volume.

§ 1. There shall be printed eight hundred copies of the journals of the Legislature of this State, to be comprised in one volume, and to include all reports of departments and committees, messages, or other public documents, addressed to, or emanating from the Legislature. The volume shall be of octavo size and form, the pages to be twenty-eight Long Primer ems in width, and forty-eight in length, and shall be printed on good type, and clear, substantial paper, and delivered to the Secretary of State in such time as he and the Comptroller shall decide is sufficient, to be, by the Secretary of State, distributed as follows: To each member of Senate and Assembly of this State; to each officer, chaplain, and clerk of the respective Houses thereof; to each of our Senators and Representatives in Congress; to each of the officers of State, who are obliged by law to keep their offices at the seat of Government; and to each of the District Judges, and Judges of the Superior Court at San Francisco, one copy; to each of the organized Counties of this State three copies, two of which shall be deposited in the office of the County Clerk, in each of said Counties, to be open for the inspection of any persons, and the other copy shall form part of the County Library, which library shall be in charge of the County Clerk, until otherwise provided by law; and to each of the States and organized Territories of the Union, and to the Congressional Library at Washington City, and to the State Department at the Sandwich Islands, two copies. There shall be deposited in the State Library, for the use of the Legislature, and stamped as provided for in "An Act defining the duties of State Librarian, and prescribing rules for the government of the State Library," fifty copies; and the remaining copies shall be deposited with the Secretary of State, who shall distribute them, as aforesaid, to such new Counties, States, or Territories, as shall hereafter become organized, and otherwise as shall hereafter be provided by law. An index shall be affixed to the volume.

How to be distributed.

Index to be affixed.

§ 2. There shall be printed one thousand and fifty copies in English, and three hundred and fifty copies in Spanish, of all laws of California passed at the present session of the Legislature, to be designated, "The Statutes of California."

1050 copies in English and 350 copies in Spanish of laws to be printed.

§ 3. The Statutes shall be comprised in one volume, large octavo; the pages sixty-two long primer cms in length, and forty-six in width, with side and head notes, designating clearly the character of the chapters and sections; the chapters to be numbered in order from the beginning to the end of the volume, to which shall be prefixed a full index of the whole volume.

To be in one volume, its size, &c.

§ 4. The Declaration of American Independence, the Constitution of the United States and its amendments, the Treaty with Mexico by which California was ceded to the United States, and the Constitution of California, shall, in their specified order, preface the Statutes; to which shall be prefixed an appendix, containing the laws of Congress relative to California, and also the Naturalization Laws.

Certain documents to be printed with laws.

§ 5. The Journals of the Legislature shall be half bound in boards, with leather backs and corners and paper sides, and lettered on the back with gilt letters, "Journals of the California Legislature," and printed on the lower title, "First Session, 1850." The general Statutes shall be bound in a substantial and workmanlike manner, in full binding, law style, and lettered on the back with gilt letters, "Statutes of California, 1850."

Binding of journals.

Binding of laws.

§ 6. The Statutes so printed and bound shall be delivered to the Secretary of State within such time as he and the Comptroller shall decide is sufficient in which to execute the work, and shall be by the Secretary of State distributed, the copies in English as follows: To each of our Senators and Representatives in Congress, one copy; to each of the officers of State who are required by law to keep their offices at the seat of government, one copy; to each member of the Senate and Assembly, and to each of the officers, chaplains, and clerks of the respective houses thereof, one copy; to the United States District Judge, Clerk of the United States District Court, and the United States Marshal, one copy; to each of the District Judges, District Attorneys, and the Judges of the Superior Court at San Francisco, one copy; to the American Consul at Panama, one copy; to each of the several States and organized Territories of the United States, three copies; to the State Department of the Sandwich Islands, three copies; to each of the several Departments of the General Government, also to the General Land Office, two copies; to the County Judge, County Clerk, Sheriff, Treasurer, Assessor, Attorney, Surveyor, Coroner, and School Commissioner, in the respective Counties, and County Library, one copy; to each Justice of the Peace, one copy. There shall be deposited in the State Library, for the use of the Legislature, and stamped as is provided for in the "Act defining the duties of State Librarian and prescribing rules for the government of the State Library," one hundred copies in English and fifty copies in Spanish. The remaining copies of said English volumes shall be deposited with the Secretary of State, who shall distribute them as aforesaid, to such new Counties, States, or Territories, as shall hereafter become organized, and to such officers not provided for in this Act, or who may hereafter be elected or appointed, whose duty, in the opinion of the Secretary of State, entitles them to a copy of the laws.

Copies of the laws in English—how to be distributed.

§ 7. There shall be distributed of the volumes in Spanish to each of our Senators and Representatives in Congress, one copy; to each of the officers of State who are required by law to keep their offices at the seat of government, one copy; to the United States District Judge, Clerk of United States District Court, and United States Marshal, one copy; to each of the District Judges, District Attorney, and to each of the Judges of the Superior Court at San Francisco, one copy; to the American Consul at Panama, one copy; to the officers and County Library of each of the following counties, in the same manner as is required for the distribution of the English copies—San Diego, Los Angeles, Santa Barbara, San Luis Obispo, Monterey, and Sonoma; also, to each County Judge, County Clerk, County Attorney, and County Librarian in the remaining counties, one copy.

Copies of the laws in Spanish—how to be distributed.

§ 8. Each copy of laws so distributed shall have stamped or written thereon by the officer receiving the same, the name of the office held by such person, who shall, when he ceases to hold such office, deliver over to his successor all laws and public documents received by him, as such officer, taking a

Duty of the person receiving copies of the laws in regard thereto.

receipt for the same, which he shall deposit in the office of the County Clerk, and for failing so to deliver over such books, he shall be liable to such successor in an action of replevin for the same, to the full amount of the cost of such books, and cost of suit, which action shall be brought and prosecuted by the Attorney of the County.

Volumes of reports of supreme court—how distributed.

§ 9. There shall be distributed of the volumes of reports of the Supreme Court as follows: to each of the officers of State who are required by law to hold their offices at the seat of government, one copy; to each of the District Judges and District Attorneys, one copy; to each of the Judges of the Superior Court at San Francisco, one copy; to the County Library of each county of this State, one copy; to each of the departments of State at Washington City and Congressional Library, one copy; to each of the States and organized Territories of the Union, and the State department of the Sandwich Islands, one copy. There shall be retained for the use of the State Library, and stamped as is provided by law, twenty-five copies, and the remainder shall be kept for future distribution among new counties, States, and Territories, as may hereafter become organized, in the same proportion as aforesaid.

Volumes of laws of U. S. &c.—how distributed.

§ 10. There shall be distributed to each of the several Counties of this State one copy of each of the volumes of the Laws of the United States, of the sets of State Papers, Census, and other Documents, which may be transmitted to this State for distribution among the several Counties; the remaining volumes and sets shall be disposed of in the same manner as is provided for in Section 9, governing the distribution of Reports of the Supreme Court.

Contract for distribution of laws.

§ 11. The Secretary of State is hereby authorized to contract with some suitable person or persons, on the most reasonable terms possible, for the distribution of the Laws, Journals, Reports, and other Documents, as is provided for in this Act, the expenses of which shall be paid out of any money in the Treasury, not otherwise appropriated, on the warrant of the Comptroller and the certificate of the Secretary of State.

State printer may execute printing and at any place. Proviso.

§ 12. The State Printer is hereby authorized to execute the Printing, as contemplated in this Act, and at such place as he may select: *Provided*, that, before proceeding to do so, he shall place in the hands of the Comptroller a relinquishment of one half the cost of said Printing, now fixed by the "Act defining the duties and fixing the compensation of State Printer;" *Provided*, also, that the total amount for binding, stitching, folding, and transportation, and all other expenses, shall not exceed the sum of thirty-five thousand dollars.

Proviso.

Chap. 125.

AN ACT to abolish all Laws now in force in this State, except such as have been passed by the Present Session of the Legislature.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Repeal of all laws except those of present legislature.

That all laws now in force in this State, except such as have been passed or adopted by the Legislature, are hereby repealed: *Provided*, however, that no rights acquired, contracts made, or suits pending, shall be affected thereby; and *Provided*, that the laws relating to "Jueces del Campo," or Judges of the Plains, shall be excepted, until provision is made for that office by law; and *Provided*, also, that such repeal shall not affect any Constitutional Laws or Acts of Congress, or any of the stipulations contained in the Treaty of Peace between the United States and Mexico, ratified at Queretaro, the 30th day of May, 1848.

Chap. 126.

AN ACT amendatory of Section Second of "an Act creating a Marine Hospital for the State of California."

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

That Section second of "an Act providing for the erection of a Marine Hospital for the State of California is hereby amended, so as to read as follows:—The said Marine Hospital, together with its lands, and all buildings and improvements which may be made thereon, shall be held by the Board of Health in trust for the people of this State, for the purpose specified in this Act; and said Board of Health shall have power, and are hereby required, to purchase said lands, and erect for the said Marine Hospital, proper and necessary buildings and improvements as soon as funds sufficient for such purposes over and above salaries, and other incidental expenses, shall be received by them in their official capacity: *Provided*, however, that the whole cost of the said grounds, Hospital, and other buildings and improvements so to be erected, shall not exceed the sum of fifty thousand dollars; and until such time as the said grounds shall be obtained, and the necessary buildings erected thereon and ready for the use of the said Marine Hospital, the said Board of Health shall be authorized to make suitable temporary arrangements for the same within the limits prescribed by the first section of this Act, which shall be kept exclusively for the treatment of persons afflicted with malignant or contagious diseases; and the Resident Physician, under the directions of the Board of Health, shall have power to procure suitable rooms within the city limits for the treatment of all non-malignant cases that may come under his care, as provided for in Section sixth of the "Act creating Officers of Health for the Port of San Francisco;" and said Resident Physician shall have the immediate charge of the same.

Amendment of
sec. 2 of ch. 65.

Chap. 127.

AN ACT defining the time for commencing Civil Actions.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

CHAPTER I.

The time of commencing Actions in General.

§ 1. Civil actions can only be commenced within the periods prescribed in this Act, after the cause of action shall have accrued, except where a different limitation is prescribed by Statute.

§ 2. When the cause of action has already accrued, the party entitled and those claiming under him shall have, after the passage of this Act, the whole period herein prescribed, in which to commence an action.

Within what
periods civil
actions may be
commenced.
Where the cause
of action has
already accrued.

CHAPTER II.

The time of commencing Actions for the recovery of Real Property.

§ 3. The People of this State will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless: 1st. Such right or title shall have accrued within ten years before any action or other proceeding for the same shall

Suits by the
people for real
property.

- to be commenced, or unless, 2d. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.
- Suits by persons claiming by letters patent.** § 4. No action shall be brought for or in respect to real property by any person claiming by virtue of letters patent or grants from this State, unless the same might have been commenced by the people as herein specified, in case such patent or grant has not been issued or made.
- Action for real property after letters patent declared void.** § 5. When letters patent or grants of real property shall have been issued or made by the people of this State, and the same shall be declared void by the determination of a competent Court, rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the premises so conveyed may be brought either by the people of this State, or by any subsequent patentee or grantee of the same premises, his heirs or assigns, within five years after such determination was made, but not after that period.
- Plaintiff not to recover real property unless in possession within 5 years.** § 6. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question, within five years before the commencement of such action.
- No cause of action, &c., founded on title to real property effectual unless party in possession within 5 years.** § 7. No cause of action, or defence to an action founded upon the title to real property, or to rents or services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defence, or under whose title the action is prosecuted, or the defence is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question, within five years before the commencement of the Act in respect to which such action is prosecuted or defence made.
- Entry not valid unless action brought within 5 years thereafter.** § 8. No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make such entry descended or accrued.
- Presumption in favor of persons establishing a legal title.** § 9. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises, shall be presumed to have been possessed thereof, within the time prescribed by law, and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title, for five years before the commencement of such action.
- Presumption of adverse holding.** § 10. Whenever it shall appear that the occupant or those under whom he claims, entered into the possession of premises, under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim for five years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.
- Exception.** § 11. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: 1st. Where it has been usually cultivated and improved. 2d. Where it has been protected by a substantial inclosure. 3d. Where (although not inclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry; or for the use of pasturage, or for the ordinary use of the occupant. 4th. When a known lot or single farm has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.
- What will constitute an adverse possession or claim of title, founded on written instrument, &c.** § 12. When it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment, or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.
- Continued occupation may be an adverse holding.**

§ 13. For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases only: 1. Where it has been protected by a substantial inclosure: 2. Where it has been usually cultivated or improved.

What will constitute adverse possession or claim of title not founded on written instrument, &c.

§ 14. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Possession of tenant the possession of landlord.

§ 15. The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

Descent cast not to impair right.

§ 16. If a person entitled to commence any action for the recovery of real property, or to make an entry or defence, founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either: 1. Within the age of twenty-one years; or, 2. Insane; or, 3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, for a term less than for life; or, 4. A married woman: the time during which such disability shall continue, shall not be deemed any portion of the time in this Act limited for the commencement of such action, or the making of such entry or defence, but such action may be commenced, or entry or defence made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defence made after that period.

Time of limitation not to run during certain periods.

CHAPTER III.

The time of commencing Actions other than for the recovery of Real Property.

§ 17. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years: An action upon a judgment or decree of any Court of the United States, or of any State or Territory within the United States. Within four years: An action upon any contract, obligation, or liability, founded upon an instrument of writing, except those mentioned in the preceding Section. Within three years: 1. An action upon a liability created by statute, other than a penalty or forfeiture; 2. An action for trespass upon real property; 3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; 4. An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud. Within two years: 1. An action upon a contract, obligation, or liability, not founded upon an instrument of writing, except an action on an open account, for goods, wares, and merchandise, and an action for any article charged in a store account; 2. An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this Section shall not apply to an action for an escape. Within one year: 1. An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to an individual and the State, except where the statute imposing it prescribes a different limitation; 2. An action for libel, slander, assault, battery, or false imprisonment; 3. An action upon a statute for a forfeiture or penalty to the people of this State; 4. An action against a Sheriff, or other officer, for the escape of a prisoner, arrested or imprisoned on civil process; 5. An action on an open account, for goods, wares, and merchandise, sold and delivered; 6. An action for any article charged in a store account.

Periods of limitation in actions other than for the recovery of real property.

§ 18. 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 time of the last item proved in the account on either side.

Action to recover balance of mutual account.

Action for relief not provided for.

§ 19. An action for relief, not hereinbefore provided for, must be commenced, within four years after the cause of action shall have accrued.

To apply to actions on behalf of state.

§ 20. The limitations prescribed in this Chapter, shall apply to actions brought in the name of the State, or for the benefit of the State, in the same manner as to actions by private parties.

CHAPTER IV.

General Provisions as to the time of commencing Actions.

Action—when deemed commenced.

§ 21. An action shall be deemed to be commenced within the meaning of this Act when the complaint has been filed in the proper court.

Cause of action accruing against party out of state.

§ 22. If, when the cause of action shall accrue against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action shall have accrued, he depart the State, the time of his absence shall not be part of the time limited for the commencement of the action.

Time of limitation not to run during certain periods.

§ 23. If a person, entitled to bring an action mentioned in the last preceding chapter, except for a penalty or forfeiture, or against a Sheriff or other officer for an escape, be, at the time the cause of action accrued, either: 1st, within the age of twenty-one years; or, 2d, insane; or, 3d, imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life; or, 4th, a married woman: the time of such disability shall not be a part of the time limited for the commencement of the action.

Death of party entitled to sue before time of limitation expires.

§ 24. 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 representatives, after the expiration of that time, and within six months 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 executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary, or of administration.

Alien subject of hostile country.

§ 25. 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 part of the period limited for the commencement of the action.

Time of limitation where judgment reversed.

§ 26. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

Commencement of action stayed by injunction.

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

Disability must exist when right accrued.

§ 28. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Two or more disabilities.

§ 29. When two or more disabilities coexist at the time the right of action accrues, the limitation shall not attach until they all be removed.

Not to apply to actions for penalties against officers of corporations, &c.

§ 30. The preceding sections of this Act shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

Acknowledgment or new promise must be in writing to be valid

§ 31. 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 Statute, unless the same be contained in some writing signed by the party to be charged thereby.

Chap. 128.

AN ACT concerning Corporations.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

CHAPTER I.

General Provisions.

§ 1. Every corporation, as such, has power: 1. To have succession by its corporate name, for the period limited, and when no period is limited, perpetually. 2. To sue and be sued in any Court. 3. To make and use a common seal, and alter the same at pleasure. 4. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited by law. 5. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation. 6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

Powers of corporations.

§ 2. In addition to the powers enumerated in the preceding section, and to those expressly given in the chapter of this Act under which it shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

All to exercise the powers expressly conferred on them.

§ 3. No corporation created, or to be created, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold or silver, bullion or foreign coin; of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loans, or for circulation as money.

No corporation to be deemed to possess certain powers by implication.

§ 4. Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay, on each share held by him, the sum necessary to complete the amount of such share as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company.

Stockholders liable for debts of corporation.

§ 5. When the corporate powers of any corporation are directed to be exercised by any particular body or number of persons, a majority of such body or persons shall be a sufficient number to form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board, shall be valid as a corporate act.

Majority may transact business, &c.

§ 6. If any corporation hereafter formed shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

Corporations must organize within one year of their incorporation. By-laws may be made for certain purposes.

§ 7. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members respectively to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; and they may prescribe suitable penalties for the violation of their by-laws, not exceeding, in any case, one hundred dollars for any one offence.

§ 8. The first meeting of every corporation, where no other provision is specially made, shall be called by a notice, signed by one or more of the persons named in, or associated as incorporators under the law by which it is incorporated, setting forth the time, place, and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation shall be established, or if no newspaper be published in the county, then in some newspaper nearest thereto.

First meeting of corporations.

Justice of the peace may in certain events direct a meeting of a corporation.

§ 9. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the members thereof, issue a warrant to either of the said members, directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

Proceedings at meeting of all the members to be valid.

§ 10. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

At such meeting officers may be elected.

§ 11. The members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Shares may be transferred by endorsement.

§ 12. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by endorsement and delivery of the certificates thereof, such endorsement being by the signature of the proprietor or his attorney, or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

Dividends to be made only from surplus profits.

§ 13. It shall not be lawful for the directors or managers of any incorporated company in this State to make dividends, excepting from the surplus profits arising from the business of such corporation; and it shall not be lawful for the directors of any such company to divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such company, or to reduce the said capital stock, without the consent of the Legislature; and in case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, or when not present when the same did happen, shall in their individual and private capacity jointly and severally be liable to the said corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock of the company so divided, withdrawn, paid out, or reduced, and no statute of limitations shall be a bar to any suit against such directors for any sums for which they are made liable by this section; *Provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of such company which shall remain after the payment of all its debts, upon the dissolution of such company, or the expiration of its charter.

Proviso.

Total amount of debts not to exceed amount of capital stock.

§ 14. The total amount of the debts which any incorporated company shall owe, shall not at any time exceed the amount of the capital stock actually paid in; and in case of any excess, the directors, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, and except those who were not present when the same did happen, shall, in their individual and private capacities, jointly and severally be liable for such excess to the said corporation, and in the event of its dissolution, to any of the creditors thereof to the full amount of such excess, with legal interest from the time such liability accrued, and no statute of limitation shall be a bar to any suit against such directors for any sums of money for which they are made liable by this section.

Complaints against elections by corporate bodies—how made and determined.

§ 15. Upon the application of any person or persons, or body corporate, that may be aggrieved by, or may complain of any election held by any corporate body, or any proceeding, act, or matter in or touching the same, it shall be the duty of the District Judge of the district in which such election is held (reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application), to proceed forthwith and in a summary way to hear the affidavits, proofs, and allegations of the parties, or otherwise inquire into the matters or causes of complaints, and

thereupon to establish the election so complained of, or to order a new election, or make such order and give such relief in the premises as right and justice may appear to the said District Judge to require; *Provided*, that the said judge may, if the case appear to require it, direct the District Attorney of his district to exhibit one or more information or informations in the nature of a *quo warranto* in the premises.

Provis.

§ 16. Upon the dissolution of any corporation, unless other persons shall be appointed by the Legislature, or by some Court of competent authority, the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, collect and pay the out-standing debts, and divide among the stockholders the moneys and other property that shall remain after the payment of the debts and necessary expenses.

Trustees for creditors, &c., on dissolution of corporation.

§ 17. The persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, and shall have full power to settle the affairs of the corporation, and shall be jointly and severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall come into their hands.

Powers of such trustees.

§ 18. Upon the dissolution of any corporation, the District Court of the County in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of and for the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and the power of such receivers may be continued as long as the Court shall think necessary.

District court may appoint receivers and trustees of a dissolved corporation.

§ 19. The said Court shall have jurisdiction of such application, and of all questions arising in the proceedings thereon, and may make such orders, injunctions, and decrees thereon as justice shall require.

District court to have full power over proceedings.

§ 20. When any judgment shall have been recovered against any turnpike or other corporation authorized to receive toll, the franchises of such corporation, with all the rights and privileges thereof, together with all their corporate property, both real and personal, may be taken on execution and sold at public auction.

Executions against turnpike corporations, &c.

§ 21. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days at least before the day of sale of the franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notice thereof in the county in which the Clerk, Treasurer, or any one of the directors of the corporation may dwell, and also by causing an advertisement of the same, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of the aforesaid officers may dwell, if any such there be; and if no newspaper be published in any such county, then in the newspaper published nearest thereto.

Proceedings by officer having such execution.

§ 22. The officer who may levy any execution, as prescribed in the preceding section, may adjourn the sale from time to time, as may be necessary, until the same shall be completed.

Sale may be adjourned.

§ 23. In the sale of any franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses thereon, and shall agree to take such franchise for the shortest period of time, and to receive, during that time, all such toll as the said corporation would by law be entitled to demand, shall be considered the highest bidder.

Who to be considered the highest bidder.

§ 24. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to the corporation so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll-houses and gates belonging to such corporation, in whatever county the same may be situated, and the purchaser may thereupon demand and receive all the toll which may accrue during the time limited by the terms of his purchase, in the same manner and under the same regulations as such corporation was before authorized to demand and receive the same.

Effect of officer's return on such execution.

Purchaser may recover penalties, &c.

§ 25. Any person who may have purchased, or shall hereafter purchase, under the provisions of this chapter, the franchise of any turnpike or other corporation, and the assignees of such purchase, may recover any penalties imposed by law for an injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover during the time limited in the said purchase of the franchise, and during that time the corporation shall not be entitled to prosecute for such penalties.

Corporations to retain same powers and liabilities as before the sale.

§ 26. The corporation whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers, and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures as before such sale.

Corporation may redeem.

§ 27. Such corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may have received; and, upon such payment or tender, the said franchise and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

Where proceedings respecting levy may be had.

§ 28. All the proceedings aforesaid respecting the levy of executions, may be had in any County in which either the creditor, or the president, or any director, or the treasurer, or the clerk of the corporation may reside, or in which the corporation has personal or real estate.

Attorney general or district attorney to examine affairs, &c., of corporation and report thereon.

§ 29. It shall be the duty of the Attorney General or District Attorney, whenever, and as often as shall be required by the Governor, to examine into the affairs and condition of any corporation in this State, and report such examination in writing, together with a detailed statement of facts to the Governor, who shall lay the same before the Legislature; and, for that purpose, the said Attorney General or District Attorney shall have power to administer all necessary oaths to the directors and officers of any corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition; and the Legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any corporation in this State at all times; and, for that purpose, any Committee appointed by the Legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers, and stockholders of such corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers, and documents, by summary process, to be issued on application to any Court of Record, or any Judge thereof, under such rules and regulations as the said Court may prescribe.

Power of legislature to amend or repeal act, and effect of amendment or repeal.

§ 30. The Legislature may, at any time, amend or repeal this Act, and dissolve all corporations created under it; but such amendment or repeal shall not, nor shall the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Proceedings by corporations wishing to dissolve and disincorporate.

§ 31. Any corporation wishing to dissolve and disincorporate itself, shall present a petition to the County Judge of the County in which the meetings of the stockholders are usually held, accompanied by a certificate, signed by its proper officers, and setting forth that, at a general or special meeting of the stockholders, called for that purpose, it was decided, by a vote of two thirds of the stockholders, to disincorporate and dissolve the incorporation. The Clerk shall enter such petition and certificate of record, and the Judge shall, after thirty days' notice by publication in some newspaper published in the County, and if there are none such, then by advertisements, posted up in the principal public places in the County, proceed to consider the same; and, if the Judge be of opinion that such incorporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the incorporation are discharged, he shall declare such incorporation dissolved.

Stockholders personally liable.

§ 32. Each stockholder of any corporation shall be individually and personally liable for a portion of all its debts and liabilities, proportioned to the amount of stock owned by him.

CHAPTER II.

Insurance Companies.

§ 33. Any seven or more persons who may desire to form an insurance company, may make, sign, and acknowledge before some officer competent to take acknowledgment of deeds, and file in the office of the Clerk of the County in which the business of the company shall be carried on, and a duplicate thereof in the office of the Secretary of State, a certificate in writing, in which shall be stated the corporate name of the company, the amount of the capital stock, the term of its existence (not to exceed fifty years), the number of shares of which its stock shall consist, the number of directors and their names who shall manage the concerns of the company for the first year, and the names of the Town and County in which the office of the company is to be established.

Application for certificate of incorporation.

§ 34. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, shall be a body politic and corporate, by the name stated in the certificate.

On filing certificate corporation formed.

§ 35. The business of such company shall be managed by not less than seven directors, one of whom shall be President of the company. They shall, except those of the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company. They shall all be stockholders of the company and citizens of the United States, and the majority of them shall be citizens of this State. Notice of the time of holding such election shall be published not less than ten days previous thereto, in the newspaper nearest to the place where the office of the company is situated; and the election shall be held by such of the stockholders as shall attend in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company; and the persons receiving the greatest number of votes shall be directors; and when any vacancy shall happen among the directors, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said company.

Business—how managed.

§ 36. There shall be a President of the company, who shall be designated from the members of the directors, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

President and other officers—how chosen.

§ 37. It shall be lawful for the directors to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if a personal demand or notice requiring such payment shall have been published for six successive weeks, in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid; the capital shall all be paid in within twelve months from the filing of the certificate.

Directors may make calls on stockholders.

§ 38. The stock of such company shall be transferable in such manner as shall be prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of stock in any other corporation.

Stock to be transferable.

§ 39. The copy of any certificate of incorporation, filed in pursuance of this Act, certified by the County Clerk or his Deputy to be a true copy, and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

Certified copy of certificate of incorporation to be evidence of facts stated therein.

§ 40. Every company incorporated under this chapter, may make insurance upon vessels, freight, money, goods, and effects, and against captivity of persons, and on the life of any person during his absence at sea, and on money lent upon bottomry and respondentia; and they may also make insurance against fire on any dwelling-houses or other buildings, and on merchandise or other property within the United States.

Against what risks such corporations may insure.

All policies to be subscribed by president.

§ 41. All policies of insurance made by such companies, shall be subscribed by the President, or in case of his death, inability, or absence, by any two of the directors, and countersigned by the Secretary of the company, and they shall be binding upon the company in like manner as if executed under the corporate seal thereof.

Corporations not to trade.

§ 42. The said company shall not, directly or indirectly, deal or trade in buying and selling any goods, wares, merchandise, stocks, or commodities whatever.

Certificate of amount of capital paid in to be recorded.

§ 43. The President and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock so fixed and limited by the company, shall make a certificate, stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the President and a majority of the directors, and they shall, within the said thirty days, record the same in the office of the County Clerk of the county wherein the business of the said company is carried on.

Annual report to be made.

§ 44. Every such company shall, annually, within twenty days from the first day of January, make a report, which shall be published in the town or city, or if there be no newspaper in said city or town, then in some newspaper published nearest the place where the business of the company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of its existing debts, and of insurances effected, which report shall be signed by the President and a majority of the directors, and shall be verified by the oath of the President or Secretary of said company, and filed in the office of the County Clerk of the county where the business of the company shall be carried on; and, if any of said companies shall fail so to do, all the directors of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made.

Dividends may be declared.

§ 45. The directors of every such company, at such times as their charter or by-laws shall prescribe, shall make dividends of so much of the profits of the company, and of the interest arising from their capital stock, as to them shall appear advisable; but the moneys received and notes taken for premiums of risks, which shall be undetermined and outstanding at the time of making such dividend, shall not be considered as part of the said profits.

Directors declaring a dividend, except from profits, to be personally liable for debts.

§ 46. If the directors of any such company shall declare and pay any dividends when the company is insolvent, or any dividend, the payment of which shall render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, while they shall respectively continue in office: *Provided*, That if any of the directors shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the Clerk of the company, and with the County Clerk, they shall be exempt from the said liability.

Proviso.

Statement of profits to be made once in 3 years.

§ 47. Once in every three years, and oftener, if required by the stockholders, the directors shall lay before them an exact and particular statement of the profits, if there be any, after deducting losses and dividends.

Directors making insurance while company under liability to an amount equal to their capital.

§ 48. If any of the said companies shall be under liability for losses to an amount equal to their stock, and the president or directors, after knowing the same, shall make any new or further insurance, the estates of all who shall make such insurance, or assent thereto, shall be severally and jointly liable for the amount of any loss which shall take place under such insurance.

Certain particulars to be published before subscribing any policy.

§ 49. The president and directors of every such company shall, previous to subscribing any policy, and once in every year afterwards, publish in two newspapers printed in this State, the amount of their stock, against what risks they insure, and the largest sum they will take on any one risk.

President and directors may be examined on oath.

§ 50. The president and directors of every such company shall, whenever required by the Legislature, lay before them a statement of the affairs of the company, and submit to an examination on oath concerning the same.

Extent of any one risk.

§ 51. The said companies shall never take, on any one risk, whether it be a marine risk or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in.

§ 52. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and, if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

What to be considered payment of the capital stock.

§ 53. If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this Act, shall be false in any material representation, all the officers who have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers hereof.

False certificates or reports.

CHAPTER III.

Railroad Companies.

§ 54. Any number of persons, not less than twenty-five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least one thousand dollars, for every mile of the road so intended to be built, shall be in good faith subscribed, and ten per cent. paid thereon, as hereinafter required, then the said subscribers may elect directors for the said company; and thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the corporation; the number of years the same is to continue, which shall not exceed fifty years; the amount of the capital stock of the company, which shall be the actual cost of constructing the road, together with the cost for the right of way, motive power, and every other appurtenance for the completion and running of said road, as nearly as can be estimated by competent engineers; the number of shares of which the said stock shall consist; the number of directors, and their names, to manage the concerns of the company, who shall not be one half in number of the stockholders, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each county into or through which it is intended to pass, and its length as near as may be, and the names of five Commissioners to open books of subscription to the stock; each subscriber to such articles of association, shall subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company. The said articles of association may, on complying with the provisions of the next section, be filed in the office of Secretary of State, and thereupon the persons who have so subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate, by the name specified in such articles.

Companies may be formed on the conditions here specified.

§ 55. Such articles of association shall not be filed in the office of the Secretary of State, until ten per cent. on the amount of the stock subscribed thereto shall have been actually and in good faith paid in cash to the directors named in such articles, nor until there is endorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in such articles, that the amount of stock required by the first section has been subscribed, and that ten per cent on the amount has been actually paid in.

Articles of association—when they may be filed.

§ 56. A copy of any articles of association filed in pursuance of this chapter, with a copy of the affidavit aforesaid, endorsed thereon or annexed thereto, and certified to be a copy by the Secretary of State, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Certified copies of articles of association to be evidence.

§ 57. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate; and shall be capable, in law, of purchasing, holding, and conveying any real and personal estate whatever, necessary for the construction of such road, and for the erection of all necessary buildings, yards, and appurtenances, for the use of the same.

Corporate body formed by filing certificate

Books of subscription to be opened, &c.

§ 58. The Commissioners for opening books of subscription named in the act of incorporation, shall, from time to time, after the company shall be incorporated, open books of subscription to the capital stock of the company in such places, and after giving such notice as a majority of them shall direct, which books of subscription shall be kept open until all the capital stock shall be subscribed, if the corporation shall so long exist; and, in case a greater amount of stock shall be subscribed than the whole capital stock of such company, the commissioners shall distribute such capital stock as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any subscriber than such subscriber shall have subscribed for.

Meeting for choice of directors.

§ 59. As soon as practicable, after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners to receive subscription thereto shall appoint a time and place for the meeting of the stockholders to choose directors. Such meeting shall be held in one of the counties in or through which such railroad is proposed to be constructed; and notice thereof shall be given by said commissioners, by public notice, to be published not less than twenty days previous thereto, in a newspaper published in each county through which the said road shall be intended to run in which a newspaper shall be published. Thirteen directors shall be chosen at such meeting by ballot, and by a majority of the votes of the stockholders, being citizens of the United States, and being present in person or by proxy; and every such stockholder being so present at such election, or at any subsequent election of directors, shall be entitled to give one vote for every share of stock which he shall have owned for the thirty days next preceding such election: but no stockholder shall vote at any such election upon any stock except such as he shall have owned for such thirty days. No person shall be a director unless he shall be a stockholder owning stock absolutely and in his own right, and qualified to vote for directors at the election at which he shall be chosen, nor unless he shall be a citizen and a resident of this State; and at least seven of the directors shall, at the time of their election, be residents of the counties in or through which the route of such railroad shall run. The directors shall be directors for one year, and till others are elected in their places.

The commissioners named in the last preceding Section shall be inspectors of the first election of directors; shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them, or a majority of them, in the office of the Secretary of State, and in the office of the clerk of each county in or through which such railroad shall be proposed to be constructed, and shall also deliver to the said directors or the treasurer of such company, all moneys received by such commissioners on subscription to such capital stock, and all books and papers in their possession relating to such subscription. All subsequent elections shall be held at such time and place, in one of the counties through which such railroad shall pass, as shall be directed by the by-laws of the company.

Effect of not holding such meeting on the day designated.

§ 60. In case it shall happen, at any time, that an election of directors shall not be made on the day designated by the by-laws of the said company when it ought to have been made, the company, for that reason, shall not be dissolved, if, within ninety days thereafter, they shall hold an election for directors in such manner as shall be provided for by the said laws. There shall be a president of the company, who shall be chosen by and from the directors, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company, by its by-laws, may require.

Directors may make calls.

§ 61. It shall be lawful for the directors to call in and demand from the stockholders respectively all sums of money by them subscribed, at such times and in such payments or instalments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in a newspaper published in each county through which said road shall be laid out, in which a newspaper shall be published.

§ 62. The directors of such company shall have power to make by-laws for the management and disposition of the stock, property, and business affairs of such company, not inconsistent with the laws of the State, and prescribing the duties of officers, artificers, and servants, that may be employed; for the appointment of all officers and the carrying on all the business within the objects and purposes of such company.

Directors may make by-laws.

§ 63. The stock of such company shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or the said shares shall have been declared forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in their own or in any other corporation.

Stock to be deemed personal estate.

§ 64. The President and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed by the President and a majority of the directors, and sworn to by the President and Secretary; and they shall, within the said thirty days, file and record the same in the office of the Secretary of State.

Certificate of capital paid in to be recorded.

§ 65. If the directors of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office: *Provided*, that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall, within thirty days thereafter, or after his return, if absent, file a certificate of his absence or objection in writing with the clerk of the company, and with the clerk of the county in which the principal office of said company is located, they shall be exempt from the said liability.

Directors making dividends when company insolvent, &c.

Provido.

§ 66. If any certificate or report made, or public notice given by the officers of any such company, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

False certificates or reports.

§ 67. No person holding stock in such company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such company: but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable, in like manner and to the same extent as the testator or intestate, or the ward' or person interested in such trust-fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Executors, &c., holding stock as such not personally liable.

§ 68. Every such executor, administrator, guardian, or trustee, shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock, as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Executor, &c., holding stock may vote at meetings.

§ 69. Every such corporation shall have power; 1. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad; and, for such purpose, by their officers, agents, and servants, to enter upon lands or waters of any person, but subject to responsibility for all damages which they shall do thereto. 2. To receive, hold, and take such voluntary grants and donations of real estate and other property as shall be made to it to aid in the construction, maintenance, and accommodation of such railroad; but the real estate thus received by voluntary grant shall be held and used for the purposes of such grant only. 3. To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers, surveyors, and agents, enter upon and take possession of, and hold and use all such lands and real estate and other property as may be necessary for the construction and maintenance of its railroad, and the stations, depôts, and other accommodations necessary to accomplish the objects for which the

Powers of such corporation.

corporation is created, but not until the compensation to be made therefor, as agreed upon by the parties, or ascertained as hereinafter prescribed, be paid to the owner or owners thereof, or deposited in Court, as hereinafter directed, unless the consent of such owner be given to enter into such possession. 4. To lay out its road, not exceeding six rods wide, and to construct the same, and for the purposes of cuttings, embankments, and procuring stone and gravel, may take as much more land within the limits of its charter, in the manner provided hereinafter, as may be necessary for the proper construction and security of the road. 5. To construct their road across or upon any stream of water, water-course, road, highway, railroad, or canal, which the route of its road shall intersect; but the corporation shall restore the stream or water-course, road or highway, railroad or canal thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness.

Companies may take possession of real estate requisite for roads, &c., and proceedings thereon.

§ 70. Any company organized under this chapter may enter upon, take possession of, and use all such real estate and property as may be required for the construction and maintenance of their railroad, and the convenient accommodations appertaining to the same; making compensation in the manner hereinafter provided, for all land, real estate, and property thus taken possession of and used, except such as may be voluntarily given to or purchased at an agreed price by the said corporation. Whenever the said corporation shall not have acquired, by gift or purchase, any land, real estate, or property so required as aforesaid, or which may be affected by any operation connected with such construction and maintenance, the said corporation may present to the District Court of the county where the said lands, real estate, or property shall lie, a petition signed by its attorney or agent, describing, with convenient accuracy and certainty, by map or otherwise, the lands, real estate, or property so required to be taken, or to be affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, tenant, lessee, or incumbrancer, as far as known to such attorney or agent, or appearing of record, and praying the appointment of commissioners to ascertain the compensation to be made to such owners and persons interested, for the taking or injuriously affecting such land, real estate, or property as aforesaid. The Court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of commissioners of appraisement between said corporation and the owners and persons interested in such lands, real estate, and property, had been given at least ten days previously, to such owners personally, or to some person of suitable age, at their residence or on the premises, or by the publication thereof in a newspaper printed in the county in which such land, real estate, or property may lie; such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county known to such agent or attorney, whereat such notice could be delivered as aforesaid. The Court may adjourn the proceedings from time to time; shall direct any further notice thereof to be given that may seem proper; shall hear the proofs and allegations of all parties interested, touching the regularity of the proceedings; and shall, by an entry in its minutes, appoint five competent and disinterested persons commissioners to ascertain such compensation as aforesaid, specifying in such entry a time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall be sworn; any one of them may administer oaths to witnesses produced before them, and may adjourn and may hold meetings for that purpose. Whenever they shall meet to hear proofs or allegations, unless by appointment of the Court or pursuant to adjournment, they shall cause reasonable previous notice of such meetings to be given to the said owners or parties interested, or their attorney or agent, and may each of them issue subpoenas and compel witnesses to appear and testify. They shall hear the proofs and allegations of the parties, and any three or more of them shall, after viewing the premises, without fear, favor, or partiality, ascertain and certify the compensation proper to be made to the said owners and parties interested, for the land, real estate, and property so to be taken or injuriously affected as aforesaid, without any deduction or allowance on account of any real or supposed benefit or advantage which such owners or parties interested may derive from the construction of such road; and may, in their discretion, assess a separate reasonable sum in favor of such owners and parties interested, or of any person appointed by the Court to appear as attorney for them, for

costs, expenses, and reasonable counsel fees. They, or a majority of them, shall make, subscribe, and file with the clerk of the county in which such lands, real estate or property, shall lie, a certificate of their said ascertainment and assessment, in which such land, real estate and property shall be described, by map or otherwise, with convenient accuracy and certainty. The Court, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been paid into Court, shall make and cause to be entered in its minutes, a rule describing such lands, real estate, and property in manner aforesaid, such ascertainment of compensation, with the mode of making it, and such payment or deposit of the same compensation as aforesaid; a certified copy of which rule shall be recorded and indexed in the proper Recorder's office, in like manner and with the like effect as if it were a deed of conveyance from the said owners and parties interested, to the said corporation. Upon the entry of such rule, the said corporation shall become entitled to use and occupy all lands, real estate, and property described in said rule, as required to be taken as aforesaid, during the continuance of the corporation by this or any subsequent Act; and may take possession of, hold, and use the same for the purpose of said road, and shall thereupon be discharged from all claims for damages by reason of any matter specified in the said petition, certificate, or rule of Court. If, at any time after an attempted or actual ascertainment of compensation under this or any other Act, or any purchase, by or donation to the said corporation of any lands for the purposes aforesaid, it shall appear that the title thereby acquired to all or any part of such lands, for the use of said road or of said corporation, shall fail or be deemed defective, the said corporation may proceed anew to perfect such title, by procuring an ascertainment of the compensation proper to be made to any person or persons whose title, claim, or interest in or lien upon such lands, shall not have been compensated and extinguished according to law, and by making payment thereof in the manner hereinbefore provided, as near as may be. And at any stage of such new proceedings, or of any proceeding under this Chapter, the Court may, by a rule in that behalf made, authorize the said corporation, if already in possession, to continue in the use or possession, and if not in possession, to take possession of and use such premises during the pendency and until the final conclusion of such proceedings; and may stay all actions or proceedings against such corporation on account thereof: *Provided*, such corporation shall pay a sufficient sum into Court, or give approved security to pay the compensation in that behalf, when ascertained; and in every case where possession shall be so authorized, it shall be lawful for the owner or owners to conduct the proceedings to a conclusion, if the same shall be delayed by the said company. The said commissioners shall be entitled to receive from said corporation their reasonable disbursements, and a compensation not exceeding five dollars for each day actually employed by them in the discharge of their duties; such compensation and disbursements to be taxed and allowed by the Court. If any commissioner so appointed, shall die, be unable or fail to serve, the Court may appoint another in his place, on reasonable notice of the application, to be approved by the Court.

Proviso.

Fees to commissioners.

§ 71. In case any married woman, infant, idiot, or insane person, or any unknown owner, or owner not personally notified to appear, and who shall not appear after such notice on the appointment of commissioners, shall be interested in any such lands, real estate, and property, the Court shall appoint some proper person to appear before the said commissioners and act as Attorney for and in behalf of such married woman, infant, idiot, insane person, unknown owner, or non-appearing owner, not personally served with notice.

Cases of married woman, infant, idiot, or unknown owner, &c.

§ 72. If at any time after the location of the tract of said road, in whole or in part, and the filing of the map thereof, it shall appear to the directors of said Company that the line in some parts thereof may be improved, it shall be lawful for the said directors, from time to time, to alter the line and cause a new map to be filed in the office where the map showing the first location is or shall be filed; and may thereupon proceed to take possession of the lands embraced in such new location that may be required for the construction and maintenance of said road on such new line, and the convenient accommodations appertaining to the same, and acquire the same either by agreement with the owner or owners, or by

Company may alter line of road.

such proceedings, as near as may be, as are authorized under the preceding sections of this chapter, and use the same in place of the line for which the new line is substituted.

Powers where line of road crosses a railroad or highway.

§ 73. Whenever the track of said railroad shall cross a railroad or highway, such railroad or highway may be carried under or over the track as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such railroad or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road or highway on such new line as may be deemed requisite by said directors. Unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained in the manner in this chapter provided, as nearly as may be, and duly made by the said corporation to the owners and persons interested in such lands; the same, when so taken, on compensation made, to become part of such intersecting railroad or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

Proceedings where state, or county, or town lands required for road.

§ 74. If any such corporation shall, for its purposes aforesaid, require any land belonging to the people of this State, or to any of the counties or towns, the State, county, and town officers respectively having charge of such lands, may grant such lands to such corporation for a compensation which shall be agreed upon between them; and if they shall not agree upon a sale and price, the same may be taken by the corporation as is before provided in respect to other cases.

Corporation to report annually.

§ 75. Every such corporation shall make an annual report to the surveyor general of the operations of the year ending on the first day of January, which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in his office by the twentieth of January in each year, and shall state, 1. The capital stock and the amount actually paid in: 2. The amount expended for the purchase of land for the construction of the road, for buildings, and for engines and cars respectively: 3. The amount and nature of its indebtedness, and the amount due the corporation: 4. The amount received for the transportation of passengers, of property, of the mails, and from all other sources: 5. The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles: 6. The amount paid out for repairs, engines, cars, buildings, and salaries: 7. The number and amount of dividends, and when made: 8. The character: 9. The number of miles run by passenger, freight, and other trains respectively: 10. The number of men employed and their occupations: 11. The number of persons injured in life or limb, and the cause of such injuries: 12. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

Penalty for not reporting.

§ 76. Any such corporation which shall neglect to make such report, shall be liable to a penalty of two thousand dollars, to be sued for in the name of the people, for their use.

Legislature may regulate tolls.

§ 77. The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of tolls, freight, fare, or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than thirty per centum per annum on the capital actually paid in; nor unless, on an examination of the amounts received and expended, to be made by the Surveyor General and Comptroller, they shall ascertain the net income derived by the company from all sources for the year then last past shall have exceeded an annual income of twenty per cent. upon the capital of the corporation actually paid in.

Corporation to convey mails.

§ 78. Any such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on their road or roads respectively; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner, and condition of carrying the same, it shall be lawful for the Governor of this State to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms, and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as

freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the Postmaster General shall require the mail to be carried at other hours or at a higher speed than the passenger trains be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services, to be fixed as aforesaid.

§ 79. If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select.

Passenger refusing to pay his fare.

§ 80. Every such corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and the junctions of other railroads, and at sidings and stopping places established for receiving and discharging way passengers and freights; and shall take, transport, and discharge such passengers and property at, from, and to, such places, on the due payment of the tolls, freight, or fare legally authorized therefor.

Regulating starting and running of cars.

§ 81. In case of refusal by such corporation or their agents so to take and transport any passenger or property, or to deliver the same, or either of them, at the regular or appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

Penalty for refusing to carry passengers, &c.

§ 82. In forming a passenger train, baggage, or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed, or knowingly suffered such arrangement, and the conductor and engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly.

Lumber cars not to be placed in rear of passenger cars.

§ 83. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the County jail not exceeding three months.

Being intoxicated while in charge of a locomotive.

§ 84. If any person shall wilfully do or cause to be done any act or acts whatever, whereby any building, construction, or work of any such corporation, or any engine, machine, or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damage sustained by means of such offence.

Wilful injury to property, &c., of corporation.

§ 85. Every such corporation shall, within a reasonable time after their road shall be located, cause to be made: 1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Surveyor-General; and also like maps of the parts thereof located in different counties, and file the same in the offices for recording deeds in the county in which such parts of said road shall be, there to remain on file as of record. Every such map shall be drawn on a scale and on paper to be designated by the Surveyor General, and certified and signed by the President of such corporation: 2. A certificate specifying the line upon which it is proposed to construct the railroad, and the grades and curves.

Corporation to make a map, &c.

§ 86. If any such corporation shall not, within one year after its incorporation, begin the construction of its road, and expend thereon ten per cent. on the amount of its capital, and finish the road and put it in full operation in five years, its act of incorporation shall become void.

Act of incorporation to become void.

CHAPTER IV.

Companies to construct Turnpike Roads or Plank Roads.

§ 87. Any number of persons, not less than five, may be formed into a corporation for the purpose of constructing and owning a plank road or a turnpike road, by complying with the following requirements: Notice shall be given in at least one newspaper printed in each county through which said road is

Companies may be formed on the conditions here specified.

intended to be constructed, should any newspaper be published therein, of the time and place or places where books for subscribing to the stock of such road will be opened; and when stock to the amount of at least two thousand dollars for every mile of the road so intended to be built shall be in good faith subscribed, and five per cent. paid thereon as hereafter required, then the said subscribers may, upon due and proper notice, elect directors for the said company, and thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the company; the number of years that the same is to continue, which shall not exceed thirty years from the date of such articles; whether it is a plank road or turnpike which the company is formed to construct; the amount of the capital stock of the company; the number of shares of which the said stock shall consist; the number of directors and their names, who shall manage the concerns of the company for the first year, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each city and town into or through which it is intended to pass, and its length, as near as may be. Each subscriber to such articles of association shall subscribe thereto his name and place of residence, and the number of shares of stock taken by him in said company. The said articles of association may, on complying with the provisions of the next section, be filed in the office of the Secretary of State, and thereupon the persons who have so subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate, by the name specified in such articles.

Articles of association—when to be filed.

§ 88. Such articles of association shall not be filed in the office of the Secretary of State until five per cent. on the amount of the stock subscribed thereto, shall have been actually and in good faith paid, in cash, to the directors named in such articles, nor until there is endorsed thereon or annexed thereto an affidavit, by at least three of the directors named in such articles, that the amount of capital stock required in the first section has been subscribed, and that five per cent. on the amount has actually been paid in. A copy of any article of association filed in pursuance of this chapter, with a copy of the affidavit aforesaid endorsed thereon or annexed thereto, and certified to be a copy by the Secretary of this State, shall in all courts and places be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Application for leave to lay out road and take land for the purpose.

§ 89. Whenever any such company shall be desirous to construct a plank road or turnpike road through any part of any county, it shall make application to the Court of Sessions of such county at any meeting thereof legally held for authority to lay out and construct such road, and to take the real estate necessary for such purpose; and the application shall set forth the route and character of the proposed road as the same shall have been described in the articles of association filed as aforesaid. Public notice of the application shall be given by the company previous to presenting the same to such court by publishing such notice once in each week for six successive weeks, in all the public newspapers printed in such county, or in three of such newspapers, if more than three are published in such county, which notice shall specify the time when such application will be presented to such court, the character of the proposed road, and such city or town in or through which it is proposed to construct the same.

Objections to proposed road.

§ 90. Upon the hearing of said application all persons residing in such county or owning real estate in any of the towns through which it is proposed to construct such road may appear and be heard in respect thereto. Such court may take testimony in respect to such application, or may authorize it to be taken by any judicial officer of such county, and it may adjourn the hearing from time to time.

Court may authorize construction of road.

§ 91. If, after hearing such application, such court shall be of the opinion that the public interests will be promoted by the construction of such road on the proposed route as shall be described in the application, it may, by an order to be entered in its minutes, authorize such company to construct such a road upon the route specified in the application, and to take the real estate necessary to be used for that purpose, a copy of which order, certified by the Clerk of such court, the said company shall cause to be recorded in the Clerk's office of such county, before it shall proceed to do any act by virtue thereof.

Commissioners to be appointed to lay out road.

§ 92. Whenever any such court shall grant such an application, it shall appoint three disinterested persons, who are not the owners of real estate in any township through which such road shall be proposed

to be constructed, commissioners to lay out such road; the said commissioners, after taking the oath prescribed by the constitution, shall proceed, without unnecessary delay, to lay out the route of such road, in such manner as, in their opinion, will best promote the public interest: they shall hear all persons interested who shall apply to them to be heard; they may take testimony in relation thereto; they shall cause an accurate survey and description to be made of such route, and of the land necessary to be taken by such company for the construction of such road, and the necessary buildings and gates; they shall subscribe such survey, and acknowledge its execution, as the execution of deeds is required to be acknowledged, in order that they may be recorded; and they shall cause such survey to be recorded in the Clerk's Office of such county. If such company shall intend to construct its road continuously in or through more than one county, such application shall specify the number of commissioners which the company desire to have appointed to lay out such road, which shall not exceed three for each county; and an equal number of such commissioners shall be appointed by the Court of Sessions of each county in or through which it shall be proposed to construct such road; but the whole number of such commissioners shall not be less than three, nor, without the consent of such company, shall it exceed six, unless the number of counties in or through which it is proposed to construct such road shall exceed that number; and the commissioners so appointed shall lay out the whole of such road, and shall make out a separate survey of so much thereof as lies in each county, which shall be subscribed and acknowledged as aforesaid, and recorded in the County Clerk's Office of such county. Such company shall pay each of the said commissioners such compensation for their services as the Court may direct.

Road through more than one county.

Pay to commissioners.

§ 93. No such road shall be laid out through any orchard to the injury or destruction of fruit trees, or through any garden, without the consent of the owner thereof; nor shall any such road be laid out through any dwelling-house or buildings connected therewith, or any yards or inclosures necessary for the use and enjoyment of such dwelling, without the consent of the owner; nor shall any such company bridge any stream where the same is navigable by vessels or steamboats, or in any manner that will prevent or endanger the passage of any raft of twenty-five feet in width.

Road not to pass through orchard or garden without consent of owner.

§ 94. The route so laid out and surveyed by the said commissioners shall be the route of such road; and such company may enter upon, take, and hold, subject to the provisions of this Chapter, all such lands as the said survey shall describe as being necessary for the construction of such road, and the necessary buildings and gates. But before entering upon any such lands, the company shall purchase the same of the owner thereof, or shall, pursuant to the provisions of this Chapter, acquire the right to enter upon, take, and hold the same.

Route of such road.

Company to purchase lands before entry thereon.

§ 95. If any owner of such land shall, from any cause, be incapable of selling the same; or if such company cannot agree with him for the purchase thereof; or if, after diligent inquiry, the name or residence of any such owner cannot be ascertained, the company may present the County Judge of the County in which the lands of such owner lie, a petition setting forth the grounds of the application, a description of the lands in question, and the name of the owner, if known, and the means that have been taken to ascertain the name and residence of such owner, if his name and residence have not been ascertained, and praying that the compensation and damages of the owner of the lands described in the petition may be ascertained by a jury. Such petition shall be verified by the oaths of at least two of the directors of the company, and if it shall allege that the name or residence of any owner is unknown, it shall be accompanied by affidavits, proving, to the satisfaction of the said Judge, that all reasonable efforts have been made by the company to ascertain the name and residence of any owner whose name or residence is unknown.

Proceedings where owner unable to sell, or company cannot agree with him as to purchase.

§ 96. On receiving such petition, the Judge shall appoint some day on which it will be heard, which may be either at a regular term of the Court, or at a special term to be held for the purpose, and may order such further notice to be given to the parties as he may deem requisite. At the time appointed, the like proceedings shall be had as are required to be had in the District Court for the appointment of Commissioners of Appraisalment, under the provisions of the Chapter to authorize the formation of railroad corporations; and all the provisions of said Chapter relative to the appointment of

Such proceedings continued.

Commissioners, their powers and duties, their proceedings, their certificate, the effect thereof, and the judgment of the Court thereon, shall apply to the proceedings of the Commissioners appointed by the County Court, and the action of the Court thereon.

Cases of married woman, infant, idiot, &c., or unknown owner.

§ 97. In case any married woman, infant, idiot, or insane person, or any unknown owner, or owner not personally notified to appear, and who shall not appear after such notice, on the appointment of Commissioners, shall be interested in any such lands, real estate, and property, the Court shall appoint some proper person to appear before the said Commissioners, and act as attorney for and in behalf of such married woman, infant, idiot, insane person, unknown owner, or non-appearing owner not personally served with notice.

Mode of constructing plank roads.

§ 98. Every plank road made by virtue of this Chapter, shall be laid out at least fourteen feet wide, with turnouts fourteen feet wide, at intervals not more than four hundred yards apart, and shall be so constructed as to make secure and maintain a smooth and permanent road, the track of which shall be made of timber, plank, or other hard material, so that the same shall form a hard and even surface, and be so constructed as to permit carriages, and other vehicles, conveniently and easily to pass each other, and also so as to permit all carriages to pass on and off where such road is intersected by other roads.

Mode of constructing turnpike roads.

§ 99. Every turnpike road that shall be constructed by virtue of this Chapter, shall be laid out at least thirty feet wide, and shall be so constructed as to form a hard and even surface, with good and sufficient ditches on each side, wherever the same is practicable.

Inspectors of roads.

§ 100. In each County of this State, in which there shall be any plank road or turnpike road constructed by virtue of this Chapter, there shall be three inspectors of such roads, who shall not be interested in any plank or turnpike road in such County. They shall be appointed by the Court of Sessions of the County, and shall hold their offices during the pleasure of such Court. Before entering on their duties, such inspectors shall take and subscribe the constitutional oath of office, and file the same in the office of the Clerk of the County.

How appointed.

To take oath of office.

Company may apply to road inspectors for certificate.

§ 101. Whenever any such company shall have completed their road, or any five consecutive miles thereof, it may apply to any two of the inspectors to be appointed pursuant to this chapter, in the county where said road or a part thereof so completed and to be inspected is located, to inspect the same; or if such inspectors, or a majority of the same, are satisfied, on inspection, that the road so inspected is made and completed according to the true intent and meaning of this chapter, they shall grant a certificate to that effect, which shall be filed in the office of the County Clerk. The inspectors shall be allowed a reasonable compensation for their services, to be paid by the Court.

Compensation to inspectors.

Toll-gates may be erected on plank roads.

§ 102. Upon filing, as aforesaid, such certificate, the company owning any plank road so inspected may erect one or more toll-gates upon their road, but not within three miles of each other, and may demand and receive such toll as may be prescribed by law.

Toll-gates may be erected on turnpike roads.

§ 103. Upon filing such certificate, as aforesaid, the company owning any turnpike road so inspected may erect one or more toll-gates upon its road, but not within three miles of each other, and may demand and receive toll, at such rates as may be fixed by the company from time to time. The Legislature shall, at any time, have power to regulate the rates of toll, or authorize the Court of Sessions of each county through which any such road shall run, to determine the rates: *Provided*, they shall not be reduced below such rates as shall yield less than ten per cent. upon the cost of the road.

Legislature may regulate toll.

Location of toll-gate may be altered.

§ 104. The Court of Sessions may, on at least fifteen days' written notice to the President or Secretary of the said company, alter or change the location of any toll-gate, if the location of such gate is unjust to the public interest, by reason of the proximity of diverging roads, or for other reasons. The company may, within fifteen days thereafter, appeal from such order to the District Court of the county, on giving such security as the said County Judge shall require. Such order, unless appealed from, shall be observed by the respective parties, and may be enforced by attachment or otherwise, as the said Court shall direct; and, if appealed from, the decision of the District Court shall be final in the matter. The said County and District Court may direct the payment of costs in the premises as shall be deemed just and equitable.

§ 105. The business and property of such company shall be managed and conducted by a Board of Directors, consisting of not less than five nor more than nine, who, after the first year, shall be elected at such time and place as shall be directed by the by-laws of such corporation; and public notice shall be given of the time and place of holding such election, not less than twenty days previous thereto, in a newspaper printed in each county in or through which the road of such company is located: the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors. Whenever any vacancy shall happen in the Board of Directors, such vacancy shall be filled for the remainder of the year by the remaining directors. The directors shall hold their offices for one year, and until others are elected in their places. No person shall be a director unless he is a stockholder in the company, and no stockholder shall be permitted to vote at any election for directors, on any stock, except such as he has owned for the thirty days next previous to the election.

Business, &c., of company—how managed.— Election of directors.

Term of office. Who may be a director, and who may vote at his election.

§ 106. The directors of any company incorporated under this chapter may require payment of the sums subscribed to the capital stock, at such times, and in such proportions, and on such conditions as they shall see fit, under the penalty of the forfeiture of their stock and all previous payments thereon; and they shall give notice of the payments thus required, and of the place and time when and where the same are to be made, at least thirty days previous to the payment of the sums, in one newspaper printed in each county in or through which their road is located, or by sending such notice to such stockholder by mail, directed to him at his usual place of residence.

Directors may make calls.

§ 107. The shares of any company formed under this chapter shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company. The directors of every such company may, at any time, with the consent of a majority in amount of the stockholders in such company, provide for such increase of the capital stock of such company as may be necessary to finish the making of a road actually commenced and partly constructed.

Shares in company personal property.

Capital stock may be increased.

§ 108. It shall be the duty of the directors of every company formed under this chapter to report annually to the Surveyor General, under the oath of any two of such directors, the cost of their road, the amount of all money expended, the amount of their capital stock, and how much paid in, and how much actually expended; the whole amount of tolls or earnings expended on such road; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made, and the amount set apart for a reparation fund, and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued.

Directors to report annually to surveyor general.

§ 109. Within two weeks after the formation of any company by virtue of this chapter, the directors thereof shall designate some place within a county in which, according to the articles of association of such company, its road or some part thereof is to be constructed, as the office of such company, and shall give public notice thereof by publishing the same in a public newspaper published in such county, which publication shall be continued once in each week for three successive weeks, and shall file a copy of such notice in the office of the county clerk of every county in which any part of such road is constructed, or is to be constructed; and if the place of such office shall be changed, like notice of such change shall be published and filed as aforesaid before it shall take place, in which notice the time of making such change shall be specified; and every notice, summons, declaration, or other paper required by law to be served on such company, may be served by leaving the same at such office with any person having charge thereof, at any time between nine o'clock in the forenoon and noon, and between two and five o'clock in the afternoon of any day except Sunday.

Company to have an office.

Service of papers at such office.

§ 110. It shall be the duty of the directors of any such company to cause a book to be kept by the Secretary, Treasurer, or Clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall, within six years, have been stockholders of such company, and showing their places of residence, the number of shares of the stock held by them respectively, and the time when they respectively became the holders of such shares; which book shall, from nine o'clock in the forenoon until noon, and from two o'clock in the afternoon until five on every day, except Sunday and the fourth

Alphabetical index to stockholders to be kept.

Index to be open to public inspection.

No transfer valid unless entered in such index.

Such index to be evidence.

Refusing to make entry or permit inspection.

Application of penalty.

Debts not to exceed 50 per cent. of capital actually paid.

Proceedings in actions against company.

Toll to be prepaid.

of July, be open for the inspection of all persons who may desire to examine the same at the office of such company; and any and every person shall have right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this chapter, until it shall have been entered therein, as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company, or against any one or more stockholders, or against such company and one or more stockholders jointly. Every officer or agent of any such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of one hundred dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such a book open for inspection as aforesaid, shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people by the County Attorney of any county in or through which the road of such company shall be constructed, or shall be, according to its articles of association, intended to be constructed; and when so recovered, the amount shall be paid in equal proportions to every such county for the use thereof.

§ 111. The debts and liabilities of any company formed under this chapter shall not exceed in amount, at any one time, fifty per cent. of the amount of its capital actually paid in; and if such debts and liabilities shall at any time exceed such amount, the stockholders who were such at the time any excess of debts or liabilities shall be created or incurred, shall be, jointly and severally, individually liable for such excess in addition to their other individual liability as provided in this chapter.

§ 112. In any action against any company formed under the provisions of this chapter, the plaintiff may include as defendants any one or more of the stockholders of such company who shall, by virtue of the provisions of this chapter, be claimed to be liable to contribute to the payment of the plaintiff's claim; and if judgment be given against such company, in favor of the plaintiff for his claim or any part thereof, and any one or more of the stockholders so made defendants shall be found to be liable as aforesaid, judgment shall also be given against him or them, and shall show the extent of his or their liabilities individually. The execution upon such judgment shall direct the collection of the sum for which it may be issued, of the property of such company liable to be levied upon by virtue thereof; and in case such property, sufficient to satisfy the same, cannot be found in the County of the officer to whom the same shall be directed, that the deficiency, or so much thereof as the stockholders who shall be defendants in such judgment shall be liable to pay, shall be collected of the property of such stockholders respectively. And if in any such action any one or more of such stockholders shall be found not to be liable for the demand of the plaintiff, or any part thereof, judgment shall be given for the stockholders so found not to be liable; but no verdict or judgment in favor of any such stockholder shall prevent the plaintiff in such action from proceeding thereon against the company alone, or against it and such defendants who are stockholders as shall be liable for such demand or some portion thereof. Suits may be brought against one or more stockholders who are claimed to be liable for any debt owing by the company, or any part of such debt, without joining the company in such suit; but no such suit shall be so brought until judgment on the demand shall have been obtained against the company and execution thereon returned unsatisfied in whole or in part, or the company shall have been dissolved; but it shall not be necessary that such dissolution shall have been declared by any judicial decree, sentence, or determination, and in such suit there may be a verdict and judgment in favor of any defendant not liable as aforesaid; but such verdict and judgment shall not prevent the plaintiff in such suit from proceeding therein against any defendant who shall be liable as aforesaid.

§ 113. Each toll gatherer may detain and prevent from passing through his gate the persons leading

or driving animals or carriages subject to toll, until they shall have paid respectively the tolls authorized by law.

§ 114. No tolls shall be collected at any gate of any company incorporated under this title, in either of the following cases: 1. From any person passing to or from public worship or a funeral, to or from a gristmill for the grinding of grain for family use, or to or from the blacksmith's shop to which he usually resorts for work there to be done: 2. From any person going for a physician or midwife, or returning from such errand; going to or returning from Court when legally summoned as a juror, or witness; going to or returning from a militia training which, by law, he is required to attend; or going to a town meeting or election, at which he is entitled to vote, for the purpose of giving such vote and returning therefrom: 3. From any person residing within one mile of the gate at which toll is demanded, unless he shall be employed in the carriage or transportation of the property of other persons not so residing: 4. From troops in the service of this State or of the United States.

Toll not to be collected in certain cases.

§ 115. It shall be the duty of the President and directors to affix and keep up at or over each gate or some conspicuous place, so as to be conveniently read, a printed list of the rates of toll demanded at such gate.

List of tolls to be affixed over each gate.

§ 116. Every toll-gatherer who, at any turnpike gate, shall unreasonably hinder or delay any traveller or passenger liable to the payment of toll, or shall demand and receive from any person more than by law he is authorized to collect, shall, for each offence, forfeit the sum of ten dollars to the person aggrieved.

Penalty for demanding more than lawful toll.

§ 117. Every person who shall, 1. Wilfully break, cut down, deface, or injure any millstone or post, on any turnpike road; or 2. Wilfully break or throw down any gate on such road; or 3. Dig up or spoil any part of such road or anything thereunto belonging; or 4. Forceibly or fraudulently pass any gate thereon, without having paid the legal toll: For each offence, shall forfeit to the corporation injured, the sum of twenty-five dollars in addition to the damages resulting from his wrongful act.

Penalty for certain offences named.

§ 118. Every person who, to avoid the payment of the legal toll, shall with his team, carriage, or horse, turn out of a turnpike road or pass any gate thereon, on ground adjacent thereto, and again enter upon such road, shall for each offence forfeit the sum of five dollars to the corporation injured.

Penalty for unlawfully evading toll.

§ 119. So much of any such road and of the toll-houses, gates, and other appurtenances thereof constructed by virtue of this chapter, as shall be within any city or town, shall be liable to taxation in such city or town as real estate.

Road and toll-houses, &c., liable to taxation.

§ 120. Every company incorporated under this chapter shall cease to be a body corporate: 1. If within six months from the filing of their articles of association, they shall not have commenced the construction of their road, and actually expended thereon at least ten per cent. of the capital stock of such company; and, 2. If, within five years of such filing of the articles of association, such road shall not be completed according to the provisions of this chapter.

In what events company to cease to be a body corporate.

§ 121. All companies formed under this Act shall at all times be subject to visitation and examination by a committee appointed by either house of the Legislature, or by any agent or officer in pursuance of law.

Companies subject to visitation and examination.

CHAPTER V.

Companies for Manufacturing, Mining, Mechanical, or Chemical Purposes.

§ 122. At any time hereafter, any three or more persons, who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the Clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the Secretary of State, a certificate in writing, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence, not to exceed fifty years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage

Persons desirous of forming a company may make and sign a certificate.

the concerns of said company for the first year, and the names of the town and county in which the operations of the said company are to be carried on.

On filing such certificate, body corporate to be formed.

§ 123. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate, and they shall, by their corporate name, be capable, in law, of purchasing, holding, and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same nor give any lien thereon.

Business of company—how managed. Election of trustees.

§ 124. The stock, property, and concerns of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in such company and citizens of the United States, and a majority of whom shall be citizens of this State, who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the laws of the company; and public notice of the time and place of holding such election shall be published, not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of said company shall be carried on; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled, for the remainder of the year, in such manner as may be provided for by the by-laws of the said company.

Vacancies.

Election not made on day specified may be made afterwards.

§ 125. In case it shall happen, at any time, that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company, for that reason, shall not be dissolved; but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding against such company, until their successors shall be elected.

President and officers to be appointed.

§ 126. There shall be a President of the company, who shall be designated from the number of the trustees, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office, as the company, by its by-laws, may require.

Trustees to make calls.

§ 127. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

Trustees may make by-laws.

§ 128. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

Stock deemed personal property. When shares not transferable.

§ 129. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in any other corporation.

Certified copy of certificate of incorporation evidence.

§ 130. The copy of any certificate of incorporation filed in pursuance of this Act, certified by the County Clerk or his deputy to be a true copy, and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

§ 131. The President and a majority of the trustees; within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the President and a majority of the trustees; and they shall, within the said thirty days, record the same in the office of the County Clerk of the county wherein the business of the said company is carried on.

Certificate of amount of capital to be filed with county clerk.

§ 132. Every such company shall annually, within twenty days from the first day of January, make a report which shall be published in the town, city, or village, or if there be no newspaper in said town, city, or village, then in some newspaper published nearest the place where the business of the company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of its existing debts, which report shall be signed by the president, and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the County Clerk of the county where the business of the company shall be carried on; and if any of said companies shall fail so to do, all the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made.

Company to report annually.

§ 133. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which shall render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, while they shall respectively continue in office: *Provided*, that if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the County Clerk, they shall be exempt from the said liability.

Dividends to be declared only out of profits.

§ 134. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan, and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

Only money to be considered as payment of the capital stock.

§ 135. If any certificate or report made, or public notice given, by the officers of any such company in pursuance of the provisions of this Chapter, shall be false in any material representation, all the officers who have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

False certificate or report.

§ 136. No person holding stock in any such company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company; but the person so pledging such stock, shall be considered as holding the same, and shall be liable as a stockholder accordingly: and the estates and funds in the hands of the executors, administrators, guardians, or trustees, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.

Executors, &c., holding stock as such not to be personally liable.

§ 137. Every such executor, administrator, guardian, or trustee, shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings, and may vote accordingly, as a stockholder.

But such executor may vote as a stockholder.

§ 138. The stockholders of any company organized under the provisions of this Chapter, shall be, jointly and severally, individually liable for all debts that may be due and owing to all their laborers, servants, and apprentices, for services performed for such corporation.

Stockholders personally liable.

§ 139. Any company which may be formed under this Chapter may increase or diminish its capital stock, by complying with the provisions of this Chapter, to any amount which may be deemed sufficient

Companies may alter amount of capital or nature of business.

and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining, or chemical business, subject to the liabilities and provisions of this Chapter. But, before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced, so as not to exceed such diminished amount of capital.

Meeting to determine as to such alteration—how called.

§ 140. Whenever any company shall desire to call a meeting of the stockholders, for increasing or diminishing the amount of capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid.

What consent necessary to change business or capital
Organization of meeting and proceedings thereat.

§ 141. If, at any time and place specified in the notice provided for in the preceding section of this Chapter, stockholders shall appear in person, or by proxy, in number representing not less than two thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person secretary, and proceed to a vote of those present, in person or by proxy; and if, on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, a certificate of the proceedings, showing a compliance with this Chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed, as required by the first section of this Chapter; and, when so filed, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, as the case may be.

Business and capital changed.

Trustees liable for debts exceeding capital.

§ 142. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto, shall be personally and individually liable for such excess to the creditors of such company.

In what cases stockholder not personally liable.

§ 143. No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this Chapter, which is not to be paid within one year from the time the debt is contracted; nor unless a suit for the collection of such debt shall be brought against such company, within one year after the debt shall become due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

Alphabetical list of stockholders, &c., to be kept.

§ 144. It shall be the duty of the trustees of every such corporation, or company, to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall within six years have been, stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in; which book, during the usual business hours of the day, on every day except Sunday and the Fourth of July, shall be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be

List to be open to inspection.

located; and any and every such stockholder, creditor, or representative, shall have a right to make extracts from such book, and no transfer of stock shall be valid for any purpose whatever except to render the person to whom it shall be transferred, liable for the debts of the company, according to the provisions of this Act, until it shall have been entered therein, as required by this Section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceedings against such company, or against any one or more stockholders.

No transfer valid unless entered on list.

List to be evidence.

§ 145. Every officer or agent of any such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this Section, shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of fifty dollars for such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars, for every day it shall so neglect, to be sued for and recovered, in the name of the People, by the District Attorney of the District in which the business of such corporation shall be located; and when so recovered, the amount shall be paid into the Treasury of such county for the use thereof.

Refusing to make entry in or to exhibit such list.

CHAPTER VI.

Telegraph Companies.

§ 146. Any number of persons may associate for the purpose of constructing a line or lines of wires of telegraph through this State, or from and to any point within this State, upon such terms and conditions, and subject to the liabilities prescribed in this Chapter.

Companies may be formed.

§ 147. Such persons, under their hands and seals, shall make a certificate which shall specify: 1. The name assumed to distinguish such association, and to be used in its dealings, and by which it may sue and be sued; 2. The general route of the line or lines of telegraph, designating the points to be connected; 3. The capital stock of such association, and the number of shares into which the stock shall be divided; 4. The names and places of residence of the shareholders, and the number of shares held by each of them respectively; 5. The period at which such association shall commence and terminate; which certificate shall be proved, or acknowledged, and recorded in the office of the clerk of the county where any office of such association shall be established, and a copy thereof filed in the office of the Secretary of State. Such acknowledgment may be taken by any officer authorized to take the acknowledgment of deeds of real estate, at the place where such acknowledgment is taken.

Parties desirous to form a company to make and sign a certificate.

§ 148. Upon complying with the provisions of the last preceding Section, such association shall be and is hereby declared to be a body corporate by the name as aforesaid to be designated in said certificate; and a copy of said certificate, duly certified by the Clerk of the county where the same is filed and recorded, or by the Secretary of State, may be used in all courts and places for and against such association.

On making and filing certificate to become a body corporate.

§ 149. Such association shall have power to purchase, receive, and hold and convey such real estate, and such only, as may be necessary for the convenient transaction of the business, and for effectually carrying on the operations of such association; and may appoint such directors, officers, and agents, and make such prudential rules, regulations, and by-laws, as may be necessary in the transaction of their business, not inconsistent with the laws of this State or of the United States.

Company may purchase real estate, appoint officers, and make by-laws.

§ 150. Such association is authorized to construct lines of telegraph along and upon any of the public roads and highways, or across any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers, or abutments, for sustaining the cords or wires of such lines: *Provided*, the same shall not be so constructed as to incommode the public use of said roads and highways, or injuriously interrupt the navigation of said waters; nor shall this Chapter be so construed as to authorize the construction of any bridge across any of the waters of this State.

May construct lines of telegraph along public roads, &c.

Proviso.

Commissioners may be appointed to estimate damage of persons complaining of injury.

§ 151. If any person over whose lands said lines shall pass, upon which posts, piers, or abutments shall be placed, shall consider himself aggrieved or damaged thereby, it shall be the duty of the County Court of the County within which said lands are, on the application of such person, and on notice to said association (to be served on the president or any director), to appoint five discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this Chapter; and it shall be the duty of said commissioners, or a majority of them, to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, posts, piers, or abutments, duplicates of which said appraisal shall be reduced to writing, and signed by said commissioners, or a majority of them; one copy shall be delivered to the applicant, and the other to the president, or any director, or officer, of said association or corporation, on demand; and, in case any damage shall be adjudged to said applicant, the association or corporation shall pay the amount thereof, with costs of said appraisal, said costs to be liquidated and ascertained in said award, and said commissioners, for their services, shall receive such compensation as the Court may award.

Company to pay amount of damage assessed, &c.

Penalty for injuring property of company.

§ 152. Any person who shall unlawfully and intentionally injure, molest, or destroy any of said lines, posts, piers, or abutments, or the materials, or property belonging thereto, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or imprisonment in the County Jail, not exceeding one year; or both, at the discretion of the Court before which the conviction shall be had.

Increase of capital may be provided for.

§ 153. It shall be lawful for any association of persons organized under this Chapter, by their articles of association, to provide for an increase of their capital, and the number of the association.

Duty in transmitting despatches.

§ 154. It shall be the duty of the owner, or the association owning any telegraph line, doing business within this State, to receive despatches from and for other telegraph lines and associations, and from and for any individual; and, on payment of their usual charges for individuals for transmitting despatches, as established by the rules and regulations of such telegraph lines, to transmit the same with impartiality and good faith, and shall not disclose any communication, transmitted on said line or lines, directed to a third person, in the penalty of five hundred dollars for every neglect or refusal so to do, or confidential disclosure, to be recovered with costs of suit in the name and for the benefit of the person or persons sending or desiring to send such despatches.

Despatches to be transmitted in order in which received.

§ 155. It shall likewise be the duty of every such owner or association to transmit all despatches in the order in which they are received under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose despatch is postponed out of its order, as herein prescribed; *Provided*, however, that an arrangement may be made with the proprietors or publishers of newspapers for the transmission, for the purpose of publication, of intelligence of general and public interest out of its regular order.

Proviso.

CHAPTER VII.

Bridge Companies.

Bridge companies may be formed.

§ 156. Any number of persons, not less than five, may be formed into a corporation for the purpose of constructing and owning a bridge across any stream of water, as hereafter provided, upon complying with the following requirements: First. They shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to continue (which shall not exceed fifty years), the amount of the capital stock of the corporation (which shall be divided into shares of one hundred dollars each), the number of directors and their names who shall manage the concerns of the corporation for the first year, and until others are elected, the location of such bridge, and the plan thereof. Second. Each subscriber to such articles of association shall subscribe thereto his name and place of residence, and the number of shares of stock taken by him in such corporation. Third. Whenever one fourth part of the amount of the capital stock specified in the

articles of association shall have been subscribed, and, on complying with the provisions of the next Section, such articles may be filed in the office of the Clerk of the County, or Counties, in which the bridge is built; and thereupon the persons who have subscribed the articles of association, as aforesaid, and such other persons as shall become stockholders in such company, and their successors, shall be a body corporate, by the name specified in such articles of association.

§ 157. Such articles of association shall not be filed as aforesaid until ten per cent. on one fourth the amount of the stock of such company, fixed as aforesaid, shall have been actually paid in, in good faith, to the directors named in such articles of association, in cash, nor until there shall be endorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in such articles of association, that the amount of stock required by the 156th Section of this chapter to be subscribed, has been subscribed, and that ten per cent. on the amount has been actually paid in as aforesaid.

Articles of association—when to be filed.

§ 158. A copy of such articles of association, filed in pursuance of this chapter, with a copy of such affidavit endorsed thereon, or annexed thereto, and certified to be a copy by the proper officer, shall in all courts and places be presumptive evidence of the facts therein contained.

Certified copies of articles of association evidence.

§ 159. The business and property of every such corporation shall be managed and conducted by a Board of Directors, consisting of not less than five nor more than nine; who shall be chosen, except those for the first year, at such place within a county in which the bridge of such corporation, or some part thereof, shall be located, as shall be prescribed by the laws thereof. The directors shall give notice of every such election previous to the holding thereof, by publishing the same once in each week for four successive weeks, in a public newspaper, published in each county in which such bridge, or any part thereof, shall be located; and if, in any such county, no paper shall be published, such notice shall be published in some county adjoining such last mentioned county. All elections of directors shall be by ballot, and by a majority of all votes given thereat; and every stockholder, being a citizen of the United States, and attending in person, or by proxy, shall be entitled to one vote for each share of stock which he shall have owned absolutely, or as executor, administrator, or guardian, for thirty days previous to such election. No person shall be a director unless he shall be a stockholder, owning at least four shares of stock absolutely in his own right, or as executor, administrator, or guardian, and entitled to vote at the election at which he shall be chosen, nor unless he shall be a citizen of this State; and a majority of the directors shall, at the time of their election, be residents of the county or counties in which such bridge shall be located. Whenever any vacancy shall happen in the Board of Directors, it shall be supplied until the next election by the remaining directors. The directors of every such company shall be elected in the same month, in each and every year, and such election after the first shall be held on the first Tuesday of such month, and the directors chosen at any election shall hold their offices to, and including Tuesday next after that appointed by law for holding the election, next succeeding that at which they were chosen. If an election of directors shall not be held on the day prescribed by this chapter for holding the same, the directors in office on that day shall hold their offices until their successors shall be elected; but, after the expiration of their regular term of office, as prescribed by this section, they shall be incapable of doing any act as such directors, except such as may be necessary to give effect to an election of directors.

Business to be managed by board of directors.

Election of directors.

Election after time hereby prescribed.

§ 160. When any bridge corporation shall be desirous of constructing a bridge, or any part thereof, in any county, it shall apply to the Court of Sessions of such county, at any regular term thereof, for authority to construct such bridge, of which application such corporation shall give notice, by publishing the same in at least one public newspaper from time to time. A copy of the articles of association of such corporation, certified by the Surveyor General of this State, or by the clerk where such articles are filed, shall be attached to and filed with the application. No such corporation shall be authorized to bridge any stream in any manner that will prevent or endanger the passage of any raft of forty-five feet in width, or any ark, where the same is navigated by rafts or arks.

Application for leave to construct bridge.

§ 161. If, after hearing such application, such Court shall be of opinion that the public interest will be promoted by the construction of such bridge on the proposed site, it may, if the Court of Sessions

Company may be authorized to construct bridge.

- shall assent thereto, by an order to be entered in its minutes, authorize such company to construct such bridge as shall have been specified in the application which shall be particularly described in such order, such corporation shall cause a copy of such order, certified by the Clerk of the Court, with a copy of such application, to be recorded in the clerk's office of such county, before it shall proceed to do any act by virtue thereof; and such Court shall cause such application, when it shall have finally acted on the same, to be filed at the expense of the corporation, with all the other papers relating thereto, or to the proceedings of said Court thereon, in the office of the Clerk of the County in which it shall have been made. Any corporation formed under this chapter, may use, in such manner as such Court shall prescribe, so much of any public highway, on either side of any stream, as may be necessary for the construction and maintenance of such bridge and toll-houses.
- Application to be filed.** § 162. In case any bridge shall be constructed under the provisions of this chapter, over any stream navigable by rafts, it shall be the duty of the corporation constructing such bridge, at all times to keep the channel of said stream both above and below said bridge, free and clear from all deposits in any way prejudicial to the navigation thereof, which may be formed or occasioned by the erection of such bridge.
- Public highways may be used.** § 163. Any corporation organized under the provisions of this chapter, which shall construct any bridge over any stream navigable by rafts as hereinbefore provided, shall be liable to pay all persons who may be unnecessarily or unreasonably hindered or delayed in passing such bridge, all damages which they shall sustain thereby, to be recovered with cost of suit.
- Bridges over streams navigated by rafts.** § 164. Every bridge constructed by virtue of this chapter, shall be built with a good and substantial railing, or siding, at least four and a half feet high. Whenever such bridge shall be completed, and a certificate signed by the County Judge of the county in which such bridge is situated, or if such bridge shall be located in more than one county, by the County Judge of each of such counties, and such certificate filed in the office of the clerk of such county, or of each of said counties, if such bridge shall be located in more than one county, that such bridge is constructed and completed in a manner safe and convenient for the public use, the directors may direct a toll gate at such bridge, and demand and receive such sum as shall be from time to time prescribed by the court of the county or counties where the bridge is located.
- To pay damages to persons injured.** § 165. No tolls shall be collected for crossing any bridge constructed by any corporation formed under this chapter, from any person going to or from public worship, or to or from a funeral; or to or from school; or to or from a town meeting or election at which he is entitled to vote, for the purpose of giving such vote, and returning therefrom; or to or from a military parade which he is by law required to attend; or to or from any court which he shall be required to attend as a juror or a witness; or to or from his legally required work upon any public highway.
- Bridges—how to be built.** § 166. The directors of any incorporation formed under this chapter, may require payment from the stockholders of the sum subscribed to the capital stock, at such times, and in such proportions, and on such conditions as they shall see fit, under the penalty of the forfeiture of their stock, and all previous payments thereon; and they shall give notice of the payments thus required, and of the place and time when and where the same are to be made, at least thirty days previous to the time fixed for the payment of the same, for the time and in the manner hereinbefore prescribed for giving notice of the election of directors, and by sending such notice to such stockholders by mail, directed to him at his usual place of residence.
- Toll gate may be erected.** § 167. The shares of any corporation formed under this chapter, shall be deemed personal property, and may be transferred in such manner as shall be prescribed by the by-laws of such corporation; and the directors of every such corporation may at any time, with the consent of a majority in amount of the stockholders in such corporation, provide for such increase of the capital stock thereof, as may be necessary for the completion or reconstruction of such bridge, and the certificate of the amount of any such increase, within thirty days thereafter, shall be filed in the offices of the Surveyor General, and the clerk or clerks of the county or counties in which such bridge is located, which certificate shall be authenticated by the signatures and oaths of a majority of said directors.
- When toll not payable.**
- Directors may make calls.**
- Shares personal property. Transfer of shares and increase of capital.**

§ 168. So much of any such bridge or toll-house constructed by virtue of this chapter, as shall be within any town, city, or village, shall be liable to taxation in such town, city, or village, as real estate.

Bridges and toll-houses liable to taxation.

§ 169. Every company incorporated under this chapter, shall cease to be a body corporate: 1. If within six months from their filing their articles of association, they shall not have commenced the construction of their bridge, and actually expended thereon at least ten per cent. of the capital stock of such company: 2. If within three years from the filing of such articles of association, such bridge shall not be completed according to the provisions of this Chapter: 3. If in case the bridge of such company shall be destroyed, it shall not be reconstructed within three years thereafter.

In what events company to cease to be body corporate.

§ 170. It shall be the duty of the President and Secretary of every corporation formed under this chapter to report annually to the Surveyor General and the County Clerk where the papers are filed, under oath, the cost of their bridge; the amount of all moneys expended; the amount of their capital stock, and how much paid in, and how much actually expended: the amount received during the year for tolls, and from all other sources, stating each separately; the amount of dividends made, and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued: and such other particulars in respect to the business affairs of such corporation as the said Surveyor General, or the Legislature, or either branch thereof, require to be so reported.

President and secretary to report annually.

§ 171. When any bridge may be in process of construction by private subscriptions, at the time of the passage of this Chapter, the subscribers may organize into a corporation pursuant to the provisions of this Chapter, with the same power and privileges as if such bridge had not been so commenced.

Bridges in course of construction by private subscription.

§ 172. All companies formed under this Chapter shall, at all times, be subject to visitation and examination by an officer or agent, in pursuance of law, or by the Legislature, or by a committee appointed by either house thereof.

Companies subject to examination, &c.

§ 173. Every report required to be made by the 170th Section of this Chapter, shall be made in the month of January in each year, and shall show, in respect to the particulars required therein to be set forth, the affairs and business of the corporation, making the same, at the close of the year ending on the thirty-first day of December next preceding the time of making the same, and shall be published in the nearest newspaper four weeks; and every corporation formed under this Chapter, which shall neglect to make such report as is thereby required, shall forfeit to the people of this State, for every such neglect, the sum of two hundred dollars; and for every week such corporation shall neglect to make such report, after the expiration of the time within which it is required, as aforesaid, to make the same, it shall forfeit, as aforesaid, the further sum of fifty dollars. The Surveyor General shall report to the Attorney General every such forfeiture, by whom the same shall be sued for and recovered, with the costs in the name of the people; and the certificate of the said Surveyor General of any such neglect, shall be presumptive evidence thereof; and if any such river, water course, or lake, now so navigable, shall hereafter be rendered navigable up stream, by vessels or steamboats, power to require such bridge to be altered or removed, is reserved to the Legislature.

Reports—when to be made.

Penalty for neglecting to report.

§ 174. Nothing in this Chapter shall be construed so as to authorize the bridging of any river or water course where the tide ebbs and flows, and any water used for a harbor, any lake, river, or water, which is navigable by said vessel or steamboat.

To what this act shall not apply.

CHAPTER VIII.

Religious and other Associations or Societies.

§ 175. It shall be lawful for all churches, congregations, religious, moral, beneficial, literary or scientific associations or societies, by such method as their rules, regulations, or discipline may direct, to appoint or elect any number not less than three, or more than nine, as trustees or directors, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

Trustees may be appointed of churches and certain associations, &c.

Certificate of appointment of trustees to be made.

§ 176. Upon the appointment or election of such trustees or directors, a certificate of such appointment or election shall be executed by the person or persons making the appointment, or the Judges holding the election, stating the names of the trustees or directors. The names by which the said trustees shall thereafter for ever be called and known, shall be particularly mentioned and specified.

Such certificate to be recorded.

§ 177. Such certificate shall be acknowledged by the person making the same, or proved by a subscribing witness thereto, before some officer authorized to take acknowledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the Clerk of the County within which such church, congregation, religious, moral, beneficial, literary, or scientific society or association shall be situated.

Powers of such Trustees.

§ 178. Such trustees or directors may have a common seal, and may alter the same at pleasure; they may take into their possession and custody all the temporalities of such corporation, whether the same shall consist of real or personal estate, and whether given, granted, or devised, directly or indirectly, to such society or association, or to any person or persons for their use; they may sue and be sued; may recover and hold all the debts, demands, rights, and privileges, all churches, burying places, halls, school houses, hospitals, or other buildings, all the estates and appurtenances belonging to such association or society; they may have, lease, and improve the same, erect all houses or buildings that are necessary to carry out the objects of the society or association, and perform all duties imposed on them by the regulations, rules, or discipline of such organization.

Order for real estate.

§ 179. It shall be lawful for the County Court of the County in which any such corporation shall have been constituted, on the application of such corporation, if such shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom to such uses as the said corporation, with the approbation of said Court, shall conceive to be for the interest of such corporation.

Certain corporations confirmed.

§ 180. Every corporation of the character aforesaid, heretofore incorporated, or in pursuance of law, and not since dissolved, shall be and is hereby established and confirmed; and in case of the dissolution of any such corporation, or any corporation hereafter to be formed in pursuance of the provisions of this Chapter, for any cause whatever, the same may be incorporated under the provisions of this Chapter, at any time within six years after such dissolution: and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed, shall rest in such corporation, as if there had been no such dissolution.

Dissolved corporations may be incorporated.

Real estate, &c., to pass to successors.

§ 181. All lands, tenements, and hereditaments, that have been or may hereafter be lawfully conveyed by devise, gift, grant, purchase, or otherwise, to any persons, as trustees in trust for the use of any such organization, shall descend, with the improvements, in perpetual succession to, and shall be held by such trustees, in trust for such organizations, provided the amount of real estate held by such society shall never exceed the amount named in the following section.

Amount of real estate that may be held.

§ 182. The real estate held by the trustees in trust for such organization shall in no case exceed two whole lots in a town or city, or twenty acres in the county; nor shall the annual income of such real and personal property held in trust by them, exceed the sum of ten thousand dollars.

Trustees to report annually.

§ 183. It shall be the duty of said trustees annually, to make a full report of all property real and personal held in trust by them, and of the condition of the corporation, to the society or association by which they have been appointed or elected, a copy of which report shall be filed in the County Clerk's office where the original certificate is filed, with an affidavit of the truth of such report, and also that such association or corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the original certificate on file.

District judges to have access to books.

§ 184. The District Judges of the District in which such corporation exists shall at all times have access to the books of such corporation.

CHAPTER IX.

Steam Navigation Companies.

§ 185. One or more persons, being subscribers to the stock of any contemplated company for the purpose of navigating the ocean, or any bay, river, or stream within this State, with vessels propelled in whole or in part by steam, may be formed into a corporation for that purpose by complying with the following requirements: When stock to the amount of one fourth part of the whole capital stock of such company shall have been in good faith subscribed for, and ten per cent. thereof actually paid in, they may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds in this State, a certificate in writing, and file the same in the office of the Secretary of State; and a duplicate thereof with the County Clerk of each County wherein may be situated the port or ports hereafter in this section mentioned, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed; the amount of the capital stock of the said company; the amount subscribed for, and the amount actually paid in; the term of its existence, not to exceed fifteen years; the number of shares of which the said stock shall consist; the number of directors or trustees, and their names, who shall manage the concerns of the company for the first year, and the name of the port or ports in this State where the principal business of said company is to be transacted.

Certain persons may be formed into a corporation.

§ 186. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate; and by that name have succession, and be capable of suing and being sued in any Court of law or equity in this State; and they or their successors may have a common seal, and make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of purchasing, holding, or conveying any real or personal estate whatever, which may be necessary to enable the said company to carry on the operations named in such certificate.

On filing certificate, parties who signed same to become a body politic.

§ 187. The stock, property, and concerns of such company shall be managed by any number not exceeding fifteen directors, or trustees, who shall respectively be stockholders in such company, and a majority of whom shall be residents of this State, and who shall, except the first year, be annually elected by the stockholders at such time and place as shall be directed by the by-laws of the company; and a public notice of the time and place of holding such election, shall be published not less than twenty days previous thereto; and the election shall be made by such stockholders as shall attend for that purpose, either in person or by proxy; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company: and the persons receiving the greatest number of votes shall be directors or trustees as aforesaid; and when any vacancy shall happen among the directors or trustees by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as shall be provided for by the by-laws of said company.

Business of company to be managed by directors. Election of directors.

§ 188. In case it shall happen at any time that an election of directors or trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for directors or trustees in such manner as shall be provided for by the said by-laws, and all acts of directors or trustees shall be valid and binding as against such company, until their successors shall be elected.

Election after time prescribed.

§ 189. There shall be a president of the company who shall be designated from the number of directors or trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office, as the company by its by-laws may require.

President and officers to be elected, &c.

§ 190. It shall be lawful for the directors or trustees to call in, and demand from the stockholders respectively all such sums of money by them subscribed, at such time, or in such payments or instalments as to them shall seem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within forty-five days after a personal demand or notice requiring such payment shall have been made or published for

Directors may make calls.

two successive weeks in any newspaper where the business of the company shall be carried on as aforesaid.

Stock to be personal property.

§ 191. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company.

Directors may make by-laws.

§ 192. The directors or trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, engineers, agents, and servants that may be employed; for the appointment of all officers, and for the carrying on of the business aforesaid.

Certified copy of certificate of incorporation evidence.

§ 193. A copy of the certificate of incorporation, filed in pursuance of this Chapter, certified by the County Clerk or his deputy, to be a true copy of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the incorporation of such company, if the same shall comply with the provisions of this Chapter.

Capital stock—when to be paid in.

§ 194. The capital stock in said corporation, fixed and limited, shall all be paid in, one half thereof within one year, the other half thereof within two years, from the incorporation of said company, or such corporation shall be dissolved; and certificates of its having been so, as aforesaid, paid, shall be signed and sworn to by the president and a majority of the trustees, before some person authorized to administer oaths, and filed in the office of the Clerk or Clerks where the original certificate aforesaid shall have been filed, within thirty days after the same shall have been paid as aforesaid.

Certificates of paid in capital to be filed.

Stockholders personally liable.

§ 195. Each stockholder in any company formed under the provisions of this Chapter, shall be personally liable for all debts and liabilities of said company, in proportion to the amount of stock by him held at the time such debts or liabilities shall have been incurred; but no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company, for any such debt or liability, unless the same shall be commenced within one year from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

Capital may be increased or diminished.

§ 196. Any corporation formed under the provisions of this Chapter may, at any time, by a vote representing two thirds of all its stockholders, increase or diminish its capital, by filing a new certificate, similar in other respects to the original one, and an affidavit of the president and a majority of the directors or trustees, that the new stock has been paid in within thirty days thereafter, in the office of the Clerk of the County where their principal place or places of business are situated, except that the term of office of the existing directors shall not be thereby shortened or enlarged.

Penalty for declaring dividends otherwise than out of profits.

§ 197. If the directors or trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would reduce the amount of the capital stock, all the directors or trustees voting to declare the same, shall be jointly and severally liable for all the debts of the company then existing.

Penalty for making false certificates or reports.

§ 198. If any certificate, report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this Chapter, be false in any material representation, any and all such officers who shall have signed the same, knowing it to be false, shall be deemed guilty of a misdemeanor, and shall be dismissed from office; and, on conviction thereof, before any Court having jurisdiction, be fined in a sum not exceeding ten thousand dollars, and imprisoned for a term of time not exceeding twelve months, at the discretion of the Court.

Chap. 129.

AN ACT to regulate the Settlement of the Estates of Deceased Persons.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

CHAPTER I.

Jurisdiction.

§ 1. The County Court, when sitting for the transaction of Probate business, shall be known and called the "Probate Court," and the County Judge shall be *ex officio* Probate Judge.

Probate court.

§ 2. Wills shall be proved, and letters testamentary or of administration shall be granted : 1. In the county of which the deceased was a resident, at or immediately previous to his death, in whatever place his death may have happened. 2. In the county in which he may have died, leaving estate therein, and not being a resident of the State. 3. In the county in which any part of his estate may be, he having died out of the State, and not having been a resident thereof at the time of his death.

Where wills to be proved and letters testamentary, &c., granted.

§ 3. Where the estate of the deceased is in more than one county, he having died out of the State, and not having been a resident thereof at the time of his death, the Probate Court of that county in which application is first made for letters testamentary, or of administration, shall have exclusive jurisdiction of the settlement of the estate.

Estate of non-resident having property in more than one county.

CHAPTER II.

Of the Proof of Wills.

§ 4. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the Probate Court, which has jurisdiction of the case, or to the person named in the will as executor.

Persons having custody of wills to deliver same to probate court.

§ 5. Any person named as executor in any will shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the Probate Court which has jurisdiction.

Persons named as executors to deliver will to probate court.

§ 6. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing ; if he intends to accept, he shall present with the will a petition, praying that the will be admitted to probate, and that letters testamentary be issued to him.

With renunciation or petition for probate.

§ 7. Every person who shall neglect to perform any of the duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages they may sustain in consequence of such neglect.

Penalty for non-observance of preceding sections.

§ 8. Any person named as executor in a will, though the will is not in his possession, may present his petition to the Probate Court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

Person named as executor, not having possession of the will, may petition for probate.

§ 9. Any person having an interest in the will may in like manner present a petition, praying that it may be required to be produced and be admitted to probate.

And so may any person having an interest in the will. Order may be made for production of will.

§ 10. If it shall be alleged in any petition that any will is in the hands of a third person, and the Court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

§ 11. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the Court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

Penalty for not obeying such order.

When application for probate may be made.

§ 12. Applications for the probate of a will, or for letters testamentary, may be made to the Probate Judge, out of term time, and he may also, out of term time, issue all necessary orders and warrants to enforce the production of any will.

Court to appoint time for proving will.

§ 13. When any will shall have come into possession of the Probate Court, the Court shall appoint a time for proving it, which shall not be less than ten nor more than thirty days, and shall cause notice to be given thereof by publication in some newspaper, if there is one printed in the county; if not, by notices in writing posted in three public places in the county.

Citations to be served on heirs.

§ 14. If the heirs of the testator reside in the county, the Court shall also direct citations to be issued and served upon them, to appear and contest the probate of the will at the time appointed.

When person named as executor to be cited.

§ 15. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

Subscribing witnesses to be subpoenaed.

§ 16. The Court shall also direct subpoenas to be issued to the subscribing witnesses to the will, if they reside in the county.

Court to hear testimony to prove will.

§ 17. At the time appointed, or at any time to which the hearing may be continued, upon proof being made that notice has been given as required in the preceding sections, the Court shall proceed to hear testimony to prove the will.

Who may contest the will.

§ 18. Any person interested may appear and contest the will. If it appear that there are minors who are interested, or persons residing out of the county, the Court shall appoint some attorney to represent them.

No person appearing to contest will, court may admit it to probate.

§ 19. If no person shall appear to contest the probate of a will, the Court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Statement of grounds of opposition to be filed.

§ 20. If any person appears and contests a will, he shall file a statement in writing of the grounds of his opposition.

Where will contested, all subscribing witnesses to be examined.

§ 21. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity, of any of them shall be satisfactorily shown to the Court.

Proceedings where none of the subscribing witnesses reside in the county.

§ 22. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the Court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will, and as evidence of the execution, it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

Testimony—how taken.

§ 23. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contest concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from this State.

Certificate of proof may be attached to will.

§ 24. If the Court shall be satisfied upon the proof taken that the will was duly executed, and that the testator at the time of its execution was of sound mind and not under restraint, a certificate of the proof, signed by the Probate Judge, and attested by the seal of the Court, shall be attached to the will.

Will and certificate of proof to be recorded.

§ 25. The will and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the clerk, and recorded by him in a book to be provided for the purpose.

Record of will evidence.

§ 26. The record of the will, and the exemplification by the clerk, in whose custody it may be, shall be received in evidence, and be as effectual in all cases as the original would be if proved.

Wills duly proved in any other state may be recorded. *Provido.*

§ 27. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or State, may be allowed and recorded in the Probate Court of any county in which the testator shall have left any estate: *Provided*, it has been executed in conformity with the laws of this State.

§ 28. When a copy of the will and the Probate thereof duly authenticated, shall be produced by the executor, or by any other person interested in the will, the Court shall appoint a time of hearing, and notice shall be given in the same manner as in the case of an original will for probate.

Notice of hearing on production of copy will, &c.

§ 29. If on the hearing it shall appear to the Court that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same Court.

Copy may be recorded, &c., and effect thereof.

§ 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose he shall file in the Court before which the will was proved, a petition in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Petition to contest validity of will after probate.

§ 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will residing in the State, or to their guardians, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the Court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

Citation to issue.

§ 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citation having been made upon any person named therein, the Court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors, and have no guardians, the Court shall appoint some attorney to represent them.

Court to proceed to hear proofs.

§ 33. If, upon hearing the proofs of the parties, the Court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

Court may revoke probate.

§ 34. Upon the revocation being made, the powers of the executor or administrator, with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Effect of revocation.

§ 35. The fees and expenses shall be paid by the party contesting the validity of the will, or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings out of the property of the deceased.

Costs of proceedings.

§ 36. If no person shall, within one year after the probate, contest the same, or the validity of a will, the probate of the will shall be conclusive; saving to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Probate—when conclusive.

§ 37. Whenever any will shall be lost, or destroyed by accident or design, the Probate Court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all parties interested having been first given as prescribed in regard to proof of wills in other cases. All the testimony given shall be reduced to writing and signed by the witnesses.

Lost or destroyed will may be proved.

§ 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses, a correct copy or draft being deemed equivalent to one witness.

In what cases.

§ 39. When any such will shall be established, the provisions thereof shall be distinctly stated and certified by the Probate Judge, under his hand and the seal of his Court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

Certificate of provisions of lost or destroyed will.

Court may restrain proceedings on letters testamentary granted before application to prove a lost will.

§ 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the Court shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

CHAPTER III.

Letters Testamentary and of Administration, and Bonds of Executors and Administrators.

Executors to qualify.

§ 41. When any will shall have been proved and allowed, the Probate Court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

Who competent to act as executor.

§ 42. No person shall be deemed competent to serve as executor, who, at the time the will is proved, shall be: 1. Under the age of twenty-one years; or, 2. Who shall have been convicted of an infamous crime; or, 3. Who, upon proof, shall be adjudged by the Court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of understanding. If any such person be named as the sole executor in any will, or if all the persons named as executors are incompetent, letters of administration, with the will annexed, shall be issued.

Objection to persons named as executors may be taken.

§ 43. Any person interested in a will may file objections, in writing, to the granting of letters testamentary to the persons named as executors, or any of them; and the objections shall be heard and determined by the Court.

Executrices.

§ 44. No married woman shall be appointed executrix, nor shall her husband be executor in her right. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority.

Executor of executor.

§ 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator; but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator left unadministered, shall be issued.

Letters of administration durante minority.

§ 46. When a person under the age of twenty-one years shall be named executor, letters of administration, with the will annexed, shall be granted during the minority of the executor, unless there is another executor who shall accept the trust and qualify; in which case, the executor who shall accept the trust and qualify, shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

Powers of executors named by the court.

§ 47. When all the executors named shall not be appointed by the Court, such as are appointed shall have the same authority to perform every act, and discharge every trust required by the will, and their acts shall be as effectual for every purpose, as if all were appointed and should act together.

Powers of administrators with will annexed.

§ 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Letters testamentary, &c., to be signed and sealed. Form of letters testamentary.

§ 49. Letters testamentary and of administration, with the will annexed, shall be signed by the Clerk, and be under the seal of the Court.

§ 50. Letters testamentary may be in substantially the following form: "The State of California, County of _____. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the County of _____, C. D., who is named therein, is hereby appointed executor. Witness, G. H., Clerk of the Probate Court of the County of _____, with the seal of the Court affixed, the ____ day of _____, A.D., 18—. [Seal.] By order of the Court. G. H., Clerk."

Form of letters of administration.

§ 51. Letters of administration, with the will annexed, may be substantially in the following form: "The State of California, County of _____. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the County of _____, and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed. Witness, G. H., Clerk of the Probate Court of the County of _____, with the

seal of the Court affixed, the — day of —, A.D., 18—. [Seal.] By order of the Court. G. H., Clerk.”

§ 52. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order: 1st. The surviving husband or wife, or such person as he or she may request to have appointed; 2d. The children; 3d. The father; 4th. The brothers; 5th. The sisters; 6th. The grandchildren; 7th. Any other of the next of kin, who would be entitled to share in the distribution of the estate; 8th. Creditors; 9th. Any person or persons legally competent.

Administration of intestates' estates—to whom to be granted.

§ 53. When there shall be several persons claiming, and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of the half blood.

Males and females entitled in equal degrees, male to be preferred.

§ 54. When there are several persons equally entitled to administration, the Court may, in its discretion, grant letters to one or more of them.

Several entitled in equal degrees, court to exercise its discretion. Who not entitled to letters of administration.

§ 55. No person shall be entitled to letters of administration, who shall be: 1st. Under the age of twenty-one years; or, 2d. Who shall have been convicted of an infamous crime; or, 3d. Who, upon proof, shall be adjudged by the Court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of understanding.

§ 56. Letters of administration shall not be granted to any married woman, nor to her husband in her right; and when any unmarried woman, who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority.

Letters of administration to females.

§ 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

To guardian of minors.

§ 58. Application for letters of administration shall be made by petition in writing, signed by the applicant or his counsel, and filed with the clerk of the Court. The petition must state the facts essential to give the Court jurisdiction of the case.

Petition for letters of administration.

§ 59. Letters of administration shall only be granted at a regular term of the Court, or at a special term appointed by the Judge for the hearing of the application.

When letters of administration to be granted.

§ 60. When any petition praying for letters of administration has been filed, the Clerk shall give notice thereof, by causing notices to be posted up in at least three public places in the county, one of which shall be at the place where the Court is held. The notice shall state the name of the deceased, the name of the applicant, and the term of the Court at which the application will be heard. Such notice shall be given at least ten days before the hearing.

Notice of filing petition for letters of administration.

§ 61. Any person interested may contest the application by filing a written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own right to the administration, and pray that letters may be issued to himself.

Contesting application.

§ 62. On the hearing, it being first proved that notice has been given according to law, the Court shall proceed to hear the allegations and proofs of the parties, and to order the issuance of letters of administration, as the case may require.

Court to proceed to hear proofs.

§ 63. An entry in the minutes of the Court that proof was made that notice had been given according to law, shall be conclusive evidence of the fact of such notice.

Entry on minutes of court, evidence.

§ 64. Letters of administration may be granted to any applicant, though it appear that there are other persons having better right to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

Letters of administration may be granted to any applicant in certain cases.

§ 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate shall be proved by the oath of the applicant, and the Court may also examine any other person concerning the time, place, and manner of the death, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

Fact of death intestate to be proved before letters of administration are granted.

§ 66. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person entitled, to be joined with such person. The request shall be in writing, and shall be filed in the Court.

When administration may be granted to persons not otherwise entitled.

Revocation of letters of administration on petition of husband, wife, or child.

§ 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, or the brother of the intestate, any one of them may obtain the revocation of the letters, by presenting to the Probate Court a petition, praying the revocation, and that letters of administration be issued to him or her.

On filing such petition, citation to issue to administrator.

§ 68. When any such petition is filed, the clerk shall issue a citation to the administrator to appear and answer the petition at the next regular term of the Court, or at any special term that may be appointed by the Judge.

Court to hear proofs and may revoke letters of administration.

§ 69. At the time appointed, the citation having been duly served and returned, the Court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

Revocation of letters of administration on petition of surviving husband or wife.

§ 70. The surviving husband or wife, when letters of administration have been granted to a child, to the father, or to a brother of the intestate, or any one of such relatives, when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked, in the manner prescribed in the three preceding sections.

Form of letters of administration.

§ 71. Letters of administration shall be signed by the clerk, and be under the seal of the Court, and may be in substantially the following form: "THE STATE OF CALIFORNIA, County of _____ C. D. is hereby appointed administrator of the estate of A. B., deceased. [SEAL.] Witness, G. H., Clerk of the Probate Court of the County of _____ with the seal of the _____ Court, affixed the _____ day of _____, A. D. 18—. By order of the Court. G. H., Clerk."

Executor or administrator to take oath.

§ 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation before the Probate Judge or Clerk, that he will perform, according to law, the duties of executor or administrator.

Executors and administrators to execute bond to state.

§ 73. Every person to whom letters testamentary or of administration shall have been directed to issue, shall, before receiving the letters, execute a bond to the State of California, with two or more sufficient sureties, to be approved by the Probate Judge. In form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate, which value shall be ascertained by the Probate Judge, by the examination, on oath, of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Separate bond from each executor, &c.

§ 74. When two or more persons shall be appointed executors or administrators, the Probate Judge shall take a separate bond from each of them.

Bond not to be void on first recovery.

§ 75. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any person aggrieved, in his own name, until the whole penalty is exhausted.

Effect of neglecting to take oath and give bond.

§ 76. When any person to whom letters testamentary or of administration have been ordered by the Court to issue, shall neglect, for the space of ten days, to take the oath and give the bond required by law, the order shall be deemed revoked, unless the Judge shall, for good cause shown, extend the time by an order entered upon the minutes.

When bond may be dispensed with.

§ 77. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor to whom letters have been issued without bond, may, at any time afterwards, whenever it may be shown, from any cause, to be necessary or proper, be required to appear and file a bond as in other cases.

Further security may be required from executor, &c.

§ 78. Whenever any person interested in any estate shall discover that the sureties of any executor or administrator have become or are becoming insolvent; that they have removed, or are about to remove from the State; or that from any other cause the bond is insufficient; he may apply, by petition, to the Probate Judge, and require that further security be given.

Executor or administrator may be cited to show cause why he should not give further security.

§ 79. If the Probate Judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally

on the executor or administrator at least five days before the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy at his last place of residence.

§ 80. On the return of the citation, or at such other time as the Judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not exceeding five days.

Judge to hear proofs and may order further security.

§ 81. If the executor or administrator neglect to comply with the order within the time prescribed, the Judge shall, by order, revoke his letters, and his authority shall thereupon cease.

Effect of non-compliance with such order.

§ 82. When a petition is presented, praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the Judge may, by order, suspend his powers until the matter can be heard and determined.

Powers of executor or administrator may be suspended.

§ 83. When it shall come to his knowledge that the bond of any executor or administrator is from any cause insufficient, it shall be the duty of the Probate Judge, without any application, to cause him to be cited to appear and show cause why he should not give further surety, and to proceed thereon as upon the application of any person interested.

Probate Judge may cite executor, &c., to show cause why he should not give further security.

§ 84. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility on account of his future acts, they may make application to the Probate Judge for relief, and the Judge shall cause a citation to the executor or administrator to be issued and served, requiring him to appear at a time and place to be therein specified, and to give other security.

Release of sureties of executor, &c., at their request.

§ 85. If new sureties be given to the satisfaction of the Judge, he may thereupon make an order that the surety or sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

Sureties relieved from liability for subsequent acts.

§ 86. If the executor or administrator neglect or refuse to give new sureties to the satisfaction of the Judge, on the return of the citation, or within such reasonable time as the Judge shall allow, not exceeding five days, he shall by order revoke the letters granted.

Effect of executor, &c., refusing to give new sureties.

§ 87. The applications authorized by the preceding Sections of this Chapter may be heard and determined out of term time. All orders made therein shall be entered upon the minutes of the Court.

Applications may be made out of term. Orders to be entered on minutes.

§ 88. When there shall be a delay in granting letters testamentary or of administration, from any cause, or when no application shall have been made for such letters, the Probate Judge may appoint a special administrator to collect and take charge of the estate of the deceased, and to exercise such other powers as may be necessary for the preservation of the estate; or he may direct the Public Administrator of his County, if there be one, to take charge of the estate.

Special administrator may be appointed.

§ 89. The appointment may be made out of term time, and without notice, and shall be made by entry upon the minutes of the Court, which shall specify the powers to be executed by the Administrator. Upon such order being entered, and after the person appointed has given bond, the Clerk shall issue letters of administration to such person, in conformity with the order.

How special administrator appointed.

§ 90. In making the appointment of a special administrator, the Probate Judge shall give preference to the person or persons entitled to letters testamentary or of administration. But no appeal shall be allowed from the appointment.

Who to be preferred as special administrator.

§ 91. Before any letters shall issue to any special administrator, he shall give bond in such sum as the Probate Judge may direct, with sureties to the satisfaction of said Judge, conditioned for the faithful performance of his duties.

Special administrator to give bond.

§ 92. The special administrator shall collect and preserve for the executor or administrator all the goods, chattels, and debts of the deceased, and for that purpose may commence and maintain suits as an administrator. He may sell such perishable estate as the Probate Court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but in no case shall he be liable to an action by any creditor on a claim against the estate, nor pay any claim against the deceased.

Duties of special administrator.

Powers of special administrator to cease on granting letters testamentary or of administration.

§ 93. When letters testamentary or of administration on the estate of the deceased have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands, and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

Special administrator to render an account.

§ 94. The special administrator shall also render an account on oath of his proceedings, in like manner as other administrators are required to do.

In case of death of executor or administrator, special administrator may be appointed.

§ 95. Whenever an executor or administrator shall die or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the Probate Judge may appoint a special administrator, as provided in the preceding sections.

Where one executor, &c., becomes incapable to act, the other, or others, to complete execution of will, &c.

§ 96. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous offence, or otherwise become incapable of executing the trust; or in case the letters testamentary or of administration shall be revoked or annulled according to law with respect to any one executor or administrator, the remaining executors or administrators shall proceed and complete the execution of the will or administration.

Where all the executors, &c., become incapable to act, the other, or others, to complete execution of will annexed may issue.

§ 97. If all such executors or administrators shall die or become incapable, or the power and authority of all of them shall be revoked according to law, the Probate Court shall issue letters of administration, with the will annexed or otherwise, to the widow or next of kin or others, in the same manner as is directed in relation to original letters of administration. The administrator so appointed shall give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have the like power and authority.

Letters of administration revoked by subsequent proof of will.

§ 98. If, after granting letters of Administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the Court, the letters of administration shall be revoked, and the power of the Administrator shall cease, and he shall render an account of his administration within such time as the Court shall direct.

Power of executor of will, &c., in such case.

§ 99. In such case the executor of the will, or the administrator with the will annexed, shall be entitled to demand, sue for, and collect, all the rights, goods, chattels, and effects of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Executors may resign. Proviso.

§ 100. Any executor or administrator may, at any time, by writing filed in the Probate Court, resign his appointment; *Provided*, he shall first settle his accounts, and deliver up all the estate to such person as may be appointed by the Court.

Acts before revocation to be valid.

§ 101. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Letters testamentary and of administration—evidence.

§ 102. Letters testamentary and of administration granted by any Probate Court having jurisdiction, shall be conclusive evidence of the authority of the persons to whom they may be granted, until the same shall be reversed on appeal, or revoked according to law.

Transcript from minutes of court to be evidence.

§ 103. A transcript from the minutes of the Court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his Court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

Probate judge of county not to act in certain cases.

§ 104. No Probate Judge shall admit to probate any will, or grant letters testamentary or of administration in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under such will, or where he shall be named as executor or trustee in the will, or shall be a witness thereto.

In such case, power vested in probate judge of adjoining county.

§ 105. When any Probate Judge, who would otherwise be authorized to act, shall be precluded from acting, from the causes mentioned in the preceding section, or when he shall be in any manner interested,

upon a representation and due proof thereof to the Probate Judge of an adjoining county, such judge shall be vested with all the powers and authority of the proper Probate Judge, in relation to the proof of any will, and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

CHAPTER IV.

Of the Inventory and Collection of the Effects of Deceased Persons.

§ 106. Every executor or administrator shall make and return to the Court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

Executors, &c., to make and return an inventory.

§ 107. For the purpose of making the appraisement, the Probate Judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the Court. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed either by the Probate Judge having jurisdiction of the case, or by the Probate Judge of such county.

Three appraisers to be appointed.

§ 108. Before proceeding to the execution of their duty the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which shall be exhibited to them according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property, and shall set down each article separately, with the value thereof in dollars and cents, in figures opposite to the articles respectively. The inventory shall contain all the estate of the deceased; real and personal, a statement of all bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraiser, may be collectable on each security.

Proceedings by appraisers.

§ 109. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the hands of the executor or administrator; and if none shall have come to his hands, the fact shall be so stated in the inventory.

Inventory to state what, if any, moneys of deceased have come to executor's hands. Debtor's liability to be used not discharged by being named executor.

§ 110. The naming of any person executor in a will shall not operate as a discharge of any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand becomes due.

Release by will of a debt due by person named executor not valid against creditors.

§ 111. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Inventory to be signed by appraisers and sworn to by executor or administrator.

§ 112. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath before the Probate Judge or the Clerk of the Court, that the inventory contains a true statement of all the estate of the deceased, which has come to his knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be endorsed upon, or annexed to the inventory.

Effect of neglecting to return inventory.

§ 113. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding two months, as the Court shall for reasonable cause allow, the Court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

Property coming to executor, &c., after return of inventory.

§ 114. Whenever property not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Executors and administrators—powers over real and personal estate.

§ 115. The executor or administrator; shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate, until the estate shall be settled, or until delivered over by order of the Probate Court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings, and fences thereon, which are under his control.

Debts, &c., first chargeable on personal estate, and if that insufficient, real estate may be sold.

§ 116. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased, and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold for that purpose, by the executor or administrator, in the manner prescribed by this Act.

Embezzling any part of property of deceased.

§ 117. If any person, before the granting of letters testamentary, or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Probate judge may cite person charged with embezzling deceased's property.

§ 118. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the Probate Judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of any money, goods, or chattels of the deceased; or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will of the deceased, the said Judge may cite such person to appear before the Probate Court, and may examine him on oath upon the matter of such complaint.

Penalty on person cited refusing to appear.

§ 119. If the person so cited refuse to appear and to submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the Court may, by warrant for that purpose, commit him to the County Jail, there to remain in close custody until he shall submit to the order of the Court; and all such interrogations and answers shall be in writing, and shall be signed by the party examined, and filed in the Probate Court.

Persons intrusted by executors, &c., with property of the deceased may be cited to account therefor.

§ 120. The Probate Judge, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such Court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the Court may proceed against him as provided in the preceding section.

CHAPTER V.

Of the Provision for the Support of the Family.

Widow and minor children of deceased may remain in homestead, &c.

§ 121. When a person shall die, leaving a widow, or a minor child or children, the widow, child, or children shall, until letters have been granted, and the inventory has been returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the Probate Judge.

Court to set apart property exempt from execution, for widow or minor children.

§ 122. Upon the return of the inventory, the Court shall set apart for the use of the widow, or minor child or children, all property which is by law exempt from execution, or so much of such property as may have belonged to the deceased.

§ 123. If the whole of the property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child or children, the Probate Court shall make such reasonable allowance out of the estate, as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

In certain cases, court may make allowance out of estate for widow and minor children.

§ 124. Any allowance made by the Court, in accordance with the provisions of the preceding section, shall be paid by the Administrator in preference to all other charges, except funeral charges and expenses of administration.

Such allowance to have priority over other claims.

§ 125. If there is no law in force exempting property from execution, the following shall be set apart for the use of the widow, or minor child or children, and shall not be subject to administration; 1. All spinning wheels, weaving looms, and stoves put up or kept for use: 2d. The family Bible, family pictures, and school-books and library, not exceeding in value two hundred dollars: 3. All sheep to the number of twenty, with three fleeces, and the yarn or cloth manufactured from the same, two cows, five swine, with the necessary food for them for six months, all provisions provided for family use, and necessary fuel for the use of the family for six months: 4. All the wearing apparel of the widow and children, and all household goods, furniture, and utensils, not exceeding in value seven hundred and fifty dollars: 5. The homestead, consisting of any quantity of land not exceeding twenty acres, and the dwelling-house thereon, with its appurtenances, not being included in any incorporated town or city; or, instead thereof, a quantity of land not exceeding one lot in any incorporated town or city, and the dwelling-house thereon, and its appurtenances, to be selected by the widow; or, if there be no widow, to be designated by the Probate Judge, and not to exceed in any case more than five thousand dollars in value.

Where no exemption law in force, certain property to be set apart for widow and minor children.

§ 126. When property shall have been set apart for the use of the family, in accordance with the provisions of this Chapter, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left also a minor child or children, the one half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

Distribution of such property among widow and children.

§ 127. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the Probate Court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration unless further estate be discovered.

Proceedings where value of estate does not exceed \$500.

§ 128. If the widow has a sufficient maintenance derived from her own property, the property so set apart shall belong wholly to the minor child or children.

Where widow has sufficient separate estate.

CHAPTER VI.

Of Claims against the Estate.

§ 129. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the Court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice.

Executor or administrator to advertise for claims.

§ 130. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator.

Copy notice, &c., to be filed.

Claims barred if not presented.

§ 131. If a claim be not presented within ten months after the date of the notice, it shall be barred for ever; *Provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute.

Claims to be verified by affidavit.

§ 132. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Allowance or rejection of claim to be endorsed thereon.

§ 133. When a claim, accompanied by the affidavit required in the preceding Section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the Probate Judge for his approval, who shall in the same manner endorse upon it his allowance or rejection.

Claims, when allowed, to be filed.

§ 134. Every claim which has been allowed by the executor or administrator shall be filed in the Probate Court, and be ranked amongst the acknowledged debts of the estate, to be paid in due course of administration.

Suits on rejected claims.

§ 135. When a claim is rejected either by the executor or administrator, or the Probate Judge, the holder shall bring suit in the proper Court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise the claim shall be for ever barred.

Claims barred by statute of limitations.

§ 136. No claim shall be allowed by any executor or administrator, or by the Probate Judge, which is barred by the statute of limitations.

No action on any claim until after presentment to executor, &c. Certain periods not to be included in limitation prescribed. Actions pending against deceased at time of his death.

§ 137. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

§ 138. The time during which there shall be a vacancy in the administration, shall not be included in any limitation herein prescribed.

§ 139. If an action be pending against the testator or intestate, at the time of his death, the plaintiff shall, in like manner, present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentment.

Allowance of claims in part.

§ 140. Whenever any claim shall be presented to any executor or administrator, or to the Probate Judge, and he shall be willing to allow the same in part, he shall state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

Costs in subsequent action on such claim.

Effect of judgment against executor, &c., on claim against estate.

§ 141. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the Probate Judge; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the Probate Court. No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Proceedings on judgment rendered against deceased in his lifetime.

§ 142. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator, as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; *Provided*, however, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Proviso.

Doubtful claims may be referred.

§ 143. If the executor or administrator doubt the correctness of any claim presented to him, he may

enter into an agreement in writing with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the Probate Judge. Upon filing the agreement and approval of the Probate Judge in the office of the clerk of the District Court for the county in which the letters testamentary or of administration were granted, the clerk shall, either in vacation or in term, enter a rule, referring the matter in controversy to the person so selected.

§ 144. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the Court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects; the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as if the reference had been made in an action in which such Court might by law direct a reference. The Court may set aside the referee, or appoint another in his place, or may set aside or confirm the report, and adjudge costs as in actions against executors and administrators; and the judgment of the Court thereupon shall be valid and effectual in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Proceedings on reference.

§ 145. When a judgment has been recovered, with costs, against any executor or administrator, the executor or administrator shall be individually liable for the costs; but they shall be allowed him in his administration account, unless it shall appear that the suit or proceeding in which the costs were taxed, shall have been prosecuted or resisted without just cause.

Judgment with costs against executor, &c.

§ 146. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection, to the Probate Judge, and its allowance by the Judge shall be sufficient evidence of its correctness.

Proceeding where executor, &c., is a creditor of the deceased.

§ 147. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors, as prescribed by this chapter, it shall be the duty of the Court to revoke his letters.

Effect of neglecting to advertise for claims.

§ 148. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate which shall have been presented to him when required by the Court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Statement of claims against the estate to be returned with inventory.

CHAPTER VII.

Sales of Property by Executors or Administrators.

§ 149. No sale of any property of an estate shall be valid unless made under the order of the Probate Court.

All sales must be under order of the court.

§ 150. At the term of the Court to which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowances made to the family of the deceased. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal property as shall be necessary. He shall make a similar application from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

On return of inventory, application may be made for order to sell property.

§ 151. If it appear that a sale is necessary, the Court shall order it to be made. In making such sales, the Court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specifically bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

Court may make order for sale.

§ 152. Sales of personal property shall be made at public auction, and after public notice given for at least ten days. The sale may be made either at the Court-house door, at the residence of the deceased, or at some other public place.

Sales of personal property to be by auction.

- Notice of sale to be given.** § 153. The notice shall be given by the Clerk by notices posted in three public places in the county, in which shall be specified the time and place of the sale.
- Application for order to sell to be by petition.** § 154. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary; and upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.
- When real estate may be sold.** § 155. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the Court.
- Petition for order to sell real estate.** § 156. To obtain such order, he shall present a petition to the Probate Court, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized; and the condition and value of the respective portions and lots; the names and ages of the devisees, if any, and of the heirs of the deceased; which petition shall be verified by the oath of the party presenting the same.
- Probate judge may order persons interested to show cause why sale should not be ordered.** § 157. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the Probate Judge shall thereupon make an order, directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the deceased as shall be necessary to pay such debts.
- Service of order to show cause.** § 158. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the Court shall order; *Provided*, however, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.
- Proviso.**
- Hearing of petition.** § 159. The Probate Judge, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale of all the parties interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate who may oppose the application.
- Guardians of minors to be appointed.** § 160. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served upon the guardian. If they have no such guardian, the Court shall, before proceeding to act upon the petition, appoint some disinterested person their guardian, for the sole purpose of appearing for them, and taking care of their interests in the proceedings.
- Executor, &c, and witnesses may be examined.** § 161. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the Probate Judge, in the same manner and with like effect as in other cases.
- Court may order sale of the whole estate where sale of part only necessary.** § 162. If it shall appear to the Court that it is necessary to sell a part of the real estate, and that, by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the Court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.
- Court may order sale of real estate.** § 163. If the Probate Judge shall be satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of the allowance to the family, and all valid claims against the deceased, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale authorizing the executor or administrator to sell the whole or so much and such part of the real estate described in the petition as he shall judge necessary or beneficial.

§ 164. The order shall specify the lands to be sold and the terms of sale, which may be either for cash or on a credit not exceeding six months, as the Court may direct. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts, the Court shall order that part descended to heirs to be sold before that so devised.

Order to specify lands to be sold, and terms of sale.

§ 165. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

Executor, &c., neglecting, any person interested may apply.

§ 166. Upon the making of such order, a certified copy of the order of sale shall be delivered by the Court to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

Copy order to be delivered to executor, &c.

§ 167. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the Court may direct, for three weeks successively next before such sale; in which notice the lands and tenements to be sold shall be described with common certainty.

Notice of time and place of sale—how given.

§ 168. Such sale shall be in the county where the lands are situated, at public auction, between the hours of nine o'clock in the morning and the setting of the sun the same day.

Where sale to take place.

§ 169. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

Duty of executor, &c., when sale made on credit.

§ 170. The executor or administrator making any sale of any real estate shall, at the next term of the Court thereafter, make a return of his proceedings to the Probate Judge, who shall examine the proceedings and may examine the executor or administrator or any other person on oath touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place.

Return of proceedings relative to sale to be made.

§ 171. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard and may produce witnesses in support of his objections.

Objections may be filed to confirmation of sale.

§ 172. If it appear to the Court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, the Court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

Court may confirm sale.

§ 173. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall contain and set forth at large the original order authorizing a sale, and the order confirming the same and directing the conveyance, and they shall be deemed to convey all the estate, right, and interest, in the premises of the testator or intestate at the time of his death.

Conveyance to purchaser.

§ 174. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the Court, that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made.

Proof of notice of sale to be given.

§ 175. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Sale may be postponed or adjourned.

§ 176. In case of the adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

Notice of adjournment to be given.

Real estate may be sold to pay legacies charged thereon.

§ 177. When a testator shall have given any legacy by a will that is effectual to pass or charge real estate, and his goods, chattels, rights, and credits shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this chapter in case of a sale for the payment of debts.

Certain debts and expenses to be paid pursuant to provisions, if any, of will.

§ 178. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

Sale under provisions of will without order of court.

§ 179. When such provision has been made, or any property directed by the will to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the Probate Court; but he shall be bound as an administrator to give notice of sale, and to return accounts thereof to the Court, and to proceed in making the sale in all respects as if it were made under the order of the Court, unless there are special directions given in the will, in which case he shall be governed by such directions.

Where provision by will insufficient.

§ 180. If the provision made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this Act.

Gifts by will to be subject to debts and testamentary expenses.

§ 181. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the Court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Where estate insufficient to pay debts and legacies in full, devisees and legatees to make contribution.

§ 182. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, and the Probate Court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

Deceased in possession of contract for the purchase of land, same may be sold.

§ 183. If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold on the application of his executor or administrator, in the same cases, and in the same manner, as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

Sale to be subject to all payments thereafter to become due, and not to be confirmed until purchaser gives bond.

§ 184. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the Probate Judge, until the purchaser shall execute a bond to the executor and administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the Probate Judge shall approve.

Bond—how conditioned.

§ 185. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment to purchaser.

§ 186. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs, and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the lands sold, at the time of the sale; and such purchaser shall have the same rights and remedies against the vender of such land as the deceased would have had if he were living.

§ 187. When any sale is made by an executor or administrator pursuant to the provisions of this chapter, of land subject to any mortgage or lien which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage, and the residue in due course of administration.

Proceeds of sales of real estate to be applied to the payment of the mortgages or liens, if any, thereon.

§ 188. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall be first paid out of the proceeds.

After paying expenses of sale.

§ 189. If there shall be any neglect or misconduct in the proceedings of the executor in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise as the case may require.

Misconduct of executor, &c., in relation to the sale.

§ 190. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

Penalty on executor, &c., for fraudulently selling real estate of testator, &c.

§ 191. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

Limitation of actions by heirs.

§ 192. The preceding section shall not apply to minors, or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

Last section not to apply to certain cases.

§ 193. Whenever a sale has been made by an executor or administrator of any property of the estate real or personal, it shall be his duty to return to the Probate Court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglect to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Account of sales to be returned to probate court.

§ 194. No executor or administrator shall directly or indirectly purchase any property of the estate he represented.

Executor, &c., cannot be a purchaser.

CHAPTER VIII.

Of the Powers and Duties of the Executor and Administrator, and of the Management of the Estate.

§ 195. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased.

Executor, &c., to take possession of estate and collect debts.

§ 196. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contract, may be maintained by and against executors and administrators in all cases, in which the same might have been maintained by or against their respective testators or intestates.

What actions may be maintained against executors.

§ 197. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in their lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime.

What actions may be maintained by executors.

§ 198. Any person, or his personal representatives, shall have action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or conveyed to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Who may have action against executor, &c.

§ 199. When there was any partnership existing between the testator or intestate, at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership and to settle its business, but the interest of the deceased shall be included in the inventory and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of his testator or intestate. Upon

Rights and duties of surviving partner of deceased.

the application of the executor or administrator, the Probate Court may, whenever it may appear necessary, order the surviving partner to render an account; and, in case of neglect or refusal, may, after notice, compel it by attachment. And the executor or administrator may maintain against him any action which his testator or intestate could have maintained.

Action on bond of former executor, &c.

§ 200. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Who to be made parties in actions against executors.

§ 201. In actions brought by or against executors, it shall not be necessary to join those as parties to whom letters shall not have been issued and who have not qualified.

Executor, &c., may compound debts due testator.

§ 202. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the Probate Judge, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects.

When executor, &c., may sue for property conveyed by testator in his lifetime.

§ 203. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Executor, &c., may require to be indemnified before bringing such action.

§ 204. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the Probate Judge shall direct.

Disposal of estate, if recovered.

§ 205. All real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the Probate Court, and the proceeds of all goods, chattels, rights, and credits so recovered shall be appropriated in payment to the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER IX.

Of the Conveyance of Real Estate by Executors and Administrators in certain cases.

Order on executor, &c., to convey in cases where deceased compellable to make conveyance.

§ 206. When any person who is bound by contract in writing to convey any real estate, shall die before making the conveyance, the Probate Court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

Petition to be presented for the purpose, and time and place of hearing petition to be appointed.

§ 207. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the Probate Judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the Court, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least four successive weeks before such hearing, in such newspaper in this State as he may designate.

Court to proceed and hear petition.

§ 208. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the Court shall proceed to a hearing, and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the Court may examine on oath the petitioner and all others who may be produced before him for that purpose.

§ 209. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the Probate Judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

May make decree for executor, &c., to convey.

§ 210. Any person interested may appeal from such decree to the District Court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the Recorder in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Appeal from such decree.

§ 211. If upon a hearing in the Probate Court as hereinbefore provided, the Probate Judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time thereafter proceed in the District Court to enforce a specific performance.

Court may dismiss petition without prejudice to a suit for specific performance.

§ 212. Every conveyance made in pursuance of a decree of the Probate Court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living and then executed the conveyance.

Effect of conveyance, if decreed and made.

§ 213. A copy of the decree for a conveyance made by the Probate Court, and duly certified and recorded in the office of the Recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Certified copy decree for conveyance—evidence.

§ 214. The recording of any decree, as provided in the preceding section, shall not prevent the Court making such decree from enforcing the same by any proper process.

Decree may be enforced after being recorded.

§ 215. If the person to whom the conveyance was to be made shall die before the commencement of proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

Proceedings where party to whom conveyance decreed to be made dies before conveyance executed.

CHAPTER X.

Of Accounts to be rendered by Executors and Administrators, and of the Payment of Debts.

§ 216. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor, &c., not liable on any promise to pay debts of testator, unless promise in writing and signed by him.

§ 217. Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased which may come to his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Executor chargeable for all estate which may come to his possession, &c.

§ 218. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement; and if any shall be sold for less than the appraisement, he shall not be responsible for the loss, if the sale has been fairly made.

He is not to profit by increase nor lose by decrease of value of estate.

Not accountable for debts due deceased.

To be allowed all necessary expenses and be paid for his services.

Not to purchase any claim against the estate, and to charge only what he actually pays. Commission instead of other compensation.

Proviso.

Executor, &c., to make exhibit on oath of moneys received, &c.

Executor, &c., failing to make exhibit to be cited to appear. Petition that executor, &c., be required to appear.

Citation may issue requiring executor, &c., to make exhibit.

Exhibit, when rendered, may be contested.

Executor, &c., may be attached for neglecting to render exhibit.

Executor, &c., to render a full account at expiration of one year after appointment.

§ 219. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

§ 220. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services, such fees as the law provides; but where the deceased shall, by his will, make some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the Probate Court, renounce all claim for compensation provided by the will.

§ 221. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

§ 222. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of fifteen per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of ten per cent.; for all above that sum, at the rate of six per cent.; and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the Probate Judge shall deem just and reasonable, for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, the total amount of such allowances shall not exceed the amount of commissions allowed by this section.

§ 223. At the third term of the Court after his appointment, and thereafter at any time when required by the Court, either upon its own motion, or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the Court, an exhibit, under oath, showing the amount of moneys received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

§ 224. If the executor or administrator fail to render an exhibit at the third term of the Court, it shall be the duty of the Judge to cause a citation to be issued requiring him to appear and render it.

§ 225. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the Probate Judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

§ 226. If the Judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear, at some day to be named in the citation, which shall be during a term of the Court, and render an exhibit as prayed for.

§ 227. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing, contest any account or statement therein contained. The Court may examine the executor or administrator, or any other person, on oath, and if satisfied that the executor or administrator has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

§ 228. If any executor or administrator neglect or refuse to appear and render an exhibit, after having been duly cited, an attachment may be issued against him, or his letters may be revoked, in the discretion of the Court.

§ 229. Every executor or administrator shall render a full account of his administration, upon the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the Judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

§ 230. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the Probate Court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Executor, &c., whose authority has been revoked may be cited to render an account.

§ 231. If the executor or administrator resides out of the county, or absconds or conceals himself, so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed, when the attachment has been executed, his letters shall be revoked.

Punishment on executor, &c., for not rendering an account.

§ 232. In rendering his account, the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid; which vouchers shall be filed and remain in the Court, and he may be examined, on oath, touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

Executor, &c., to produce vouchers for all payments.

§ 233. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, and to whom the payment was made, and if such oath be uncontradicted; but such allowances, in the whole, shall not exceed five hundred dollars for payments in behalf of any one estate.

Expenditures under § 230, which may be vouched for by his own oath.

§ 234. When the account is rendered for settlement, notice thereof shall be given by the Clerk, by causing notices to be posted up in three public places in the county. The notice shall set forth the name of the estate, and of the executor or administrator, and the day appointed for the settlement of the account, which shall be on some day of a term of the Court.

Notice of rendering account to be given.

§ 235. On the day appointed, or on any subsequent day to which the hearing may be adjourned by the Court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Exceptions to accounts may be filed.

§ 236. If there be any minor interested in the estate, who has no legally appointed guardian, the Court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account, as any other person having an interest might contest it, and who shall be allowed by the Court for his services a reasonable compensation.

Court may appoint guardian to contest accounts for minor.

§ 237. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the Court may appoint one or more Auditors to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to such Auditors, to be paid out of the estate of the deceased.

Auditors may be appointed to examine and report on the accounts.

§ 238. The settlement of the account, and the allowance thereof by the Court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their right to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease. And in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Settlement and allowance of accounts by court to be conclusive.

Persons under disabilities.

§ 239. The account shall not be allowed by the Court until it be first proved that notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the Court, and shall be conclusive evidence of the fact.

Accounts not to be allowed until after due proof of notice.

§ 240. The debts of the estate shall be paid in the following order: 1st. Funeral expenses. 2d. The expenses of the last sickness. 3d. Debts having a preference by the laws of the United States. 4th. Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date. 5th. All other demands against the estate.

Order in which debts are to be paid.

§ 241. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

Preference to mortgage—how far to extend.

Where estate insufficient to pay all the debts of any one class.

§ 242. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

Funeral expenses, and expenses of last sickness, and allowance to family, may be paid without order of court.

§ 243. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, nor any legacy, until, as prescribed in this Act, the payment has been ordered by the Court.

On settlement of executor's accounts at end of year, court to make an order for payment of debts.

§ 244. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required in this chapter, the Court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the Court shall specify in the decree the sum to be paid to each creditor.

Claims not due, and contingent and disputed claims.

§ 245. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to, if the claim were due or established, or absolute, shall be paid into the Court, where it shall remain to be paid over to the party when he shall become entitled thereto, or if he fail to establish his claim, to be paid over or distributed as the circumstances of the estate require: *Provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Proviso.

§ 246. Whenever a decree shall be made by the Probate Court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the District Court in favor of each creditor, and the same proceedings may be had under such execution as if it had been issued from the District Court. The executor or administrator shall also be liable on his bond to each creditor.

After decree for payment of creditors, executor, &c. to be personally liable.

Creditor whose claim is not included in the order for payment not entitled to contribution from those who have received payment.

§ 247. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give the notice to the creditors as prescribed by this Act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: *Provided*, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Proviso.

After payment of debts, court may order payment of legacies.

§ 248. If the whole of the debts shall have been paid by the first distribution, the Court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled. But if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

Executor's, &c., final account.

§ 249. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all the debts due by the estate, the executor or administrator shall render a final account, and pay a settlement of his administration.

Neglecting to render a final account.

§ 250. If he neglect to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

Petition by heir or devisee for delivery of estate to which he is entitled.

CHAPTER XI.

Of the Partition and Distribution of Estates.

§ 251. At any time subsequent to the third term of the Probate Court, after the issuance of letters

testamentary or of administration, any heir, devisee, or legatee, may present his petition to the Court, praying that the legacy or share of the estate to which he is entitled may be delivered to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate.

§ 252. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Notice to be given of such application.

§ 253. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee may make a similar application for himself.

Application may be resisted.

§ 254. If at the hearing it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them without injury to the creditors of the estate, the Court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, each one of them shall first execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the Probate Judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate.

Court may grant prayer of petition.

Proviso.

§ 255. Such decree may order the executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

What decree may order.

§ 256. If in the execution of such decree any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Partition, when necessary, to be made as after prescribed. Costs of proceedings to be paid by petitioner.

§ 257. The costs of the proceedings authorized by the preceding sections shall be paid by the applicant, or if there be more than one, shall be apportioned equally amongst them.

§ 258. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the Court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the Court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Proceedings to require payment of bonds given by devisee, &c.

§ 259. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the Court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

Distribution of residuary estate.

§ 260. In the decree, the Court shall name the persons, and the proportion or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

Decree for such distribution—what to order.

§ 261. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required, in regard to an application for the sale of land by an executor or administrator. The Court may order such further notice to be given as it may deem proper.

Application for decree, and notice thereof.

§ 262. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the Probate Judge, who shall be duly sworn to the faithful discharge of their duties; and the court shall issue a warrant to them for that purpose.

Partition—how made.

§ 263. If the real estate shall lie in different counties, the Probate Court may, if it shall judge proper, appoint different commissioners for each county; and in such case, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the Probate Court, make division of such real estate, wherever situated, within this State.

Where estate lies in different counties.

On whose application partition and distribution may be ordered.

§ 264. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who reside in this State, or their guardians, and to the agents, attorneys, or guardians, if there be any in this State, of such as reside out of the State, either personally or by public notice, as the Probate Court shall direct.

Partition after conveyance of their shares by the original heirs, &c.

§ 265. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Several shares to be set out by metes and bounds.

§ 266. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

Proceedings where real estate cannot be divided without prejudice.

§ 267. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the Probate Court may assign the whole to one or more of the parties entitled to shares therein who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger: *Provided*, the party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners, appointed by the Probate Court, and sworn for that purpose.

Where premises of greater value than either parties' shares, yet cannot be divided without injury.

§ 268. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section: *Provided*, the party so accepting it shall pay, or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the Court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

When estate cannot be divided, it may be sold, and proceeds divided.

§ 269. When it cannot otherwise be fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and, if the report be confirmed, the Court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

Partition of real estate of deceased.

§ 270. When partition of real estate among heirs or devisees shall be required, and such real estate shall be in common and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made and established by the Probate Court, shall be binding upon all the persons interested.

Before any partition is made, guardians to be appointed for all minors and insane persons.

§ 271. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided, and some discreet person shall be appointed to act as agent for such parties as reside out of the State, and notice of the appointment of such agents shall be given to the commissioners in their warrant, and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Commissioners appointed to make partition are to report to court.

§ 272. The commissioners shall make report of their proceedings to the Probate Court in writing, and the Court may, for sufficient reasons, set aside such report and commit the same to the same commissioners or appoint others, and the report, when finally accepted and established, shall be recorded in the records of the Probate Court, and a copy thereof, attested by the clerk under the seal of the Court, shall be recorded in the office of the Recorder of the county where the lands lie.

§ 273. When the Probate Court shall make a decree, assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition be made.

When not necessary to appoint commissioners.

§ 274. All questions as to advancement made, or alleged to be made, by the deceased to any heirs, may be heard and determined by the Probate Court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the Probate Court, or in case of appeal, of the District or Supreme Court, shall be binding on all persons interested in the estate.

Questions as to advancement to be determined by probate court.

§ 275. When any estate shall be assigned by decree of the Court, or distributed by commissioners as provided in this chapter, to any person residing out of this State, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the Court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

Agent to be appointed to take charge of share of parties absent from state, &c.

§ 276. Such agent shall give a bond to the Judge of Probate, to be approved by him, faithfully to manage and account for such estate before he shall be authorized to receive the same, and the Court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Such agent to give a bond.

§ 277. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the Court, and the proceeds, deducting the expenses of the sale, to be allowed by the Court, shall be paid into the State Treasury. When the payment is made, the agent shall take from the Treasurer duplicate receipts, one of which he shall file in the office of the Comptroller, and the other in the Probate Court.

Proceedings where such estate remains unclaimed.

§ 278. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding section, and may be sued thereon by any person interested.

Liability of agent.

§ 279. When any person shall appear and claim the money paid into the Treasury, the Probate Court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and on presentation of the certificate to the Comptroller, he shall draw his warrant on the Treasurer for the amount.

Proceedings on claim of proceeds of unclaimed estate sold.

§ 280. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the Court all the property of the estate, to the parties entitled, the Court shall make a decree, discharging him from all liability to be incurred thereafter.

Executor, &c.—when discharged of all liability.

§ 281. The final settlement of an estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be subsequently discovered, or should it become necessary or proper from any cause that letters should be again issued.

Final settlement not to prevent subsequent issuance of letters of administration.

CHAPTER XII.

Removal of Executors and Administrators in certain cases.

§ 282. Whenever the Probate Judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or has become incompetent to act, it shall be his duty, by an order entered upon the minutes of the Court, to suspend the powers of such executor or administrator until the matter can be investigated.

Probate judge may suspend powers of executor, &c.

§ 283. During the suspension of the powers of the executor or administrator under the authority of the preceding section, the Probate Judge may, if the condition of the estate requires it, appoint a special

Special administrator may be appointed during such suspension.

administrator to take charge of the effects of the estate, who shall give bond and account as other special administrators are required to do.

Executor, &c., to be notified of suspension and cited to show cause why his letters should not be revoked. Court may revoke letters, &c. At hearing, any person may file allegations.

§ 284. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if appearing, the Court be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew as the case may require.

§ 285. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the Court.

Absconding executor, &c.—how notified, &c.

§ 286. If the executor or administrator has absconded, or conceals himself, or has removed from the county, notice may be given him of the pendency of the proceedings, by publication in such manner as the Court may direct; and the Court may proceed upon such notice as if the citation had been personally served.

Attendance of executor, &c., may be compelled by attachment.

§ 287. In the proceedings authorized by the five preceding sections of this chapter, for the removal of an executor or administrator, the Court may compel his attendance by attachment, and may compel him to answer questions on oath touching his administration, and upon his refusal so to do, may commit him until he obey.

CHAPTER XIII.

Miscellaneous Provisions.

Orders and decrees of probate court to be entered on minutes.

§ 288. All orders and decrees made by the Probate Court, during its terms, shall be entered at length in the minute book of the Court, and also all orders which the Probate Judge is empowered to make out of term time, and which are by this Act specially required to be so entered. Upon the close of each term the Judge shall sign the minutes of his proceedings.

Personal notice—how to be given.

§ 289. Whenever personal notice is required by this Act to be given to any party to a proceeding in the Probate Court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the Court, signed by the Clerk, and under the seal of the Court, directed to the Sheriff of the proper county, and requiring him to cite such person to appear before the Court at a term to be named in the citation. In the body of the citation shall be briefly stated the nature or character of the proceeding.

Service of citation.

§ 290. The officer to whom the citation is directed shall serve it by delivering a copy to the person named therein, or to each of them, if there be more than one, and shall return the original to the Court according to its direction, endorsing thereon the time and manner of service.

Within what time to be served and returned.

§ 291. When no other time is specially prescribed, the citation shall be served and returned at least five days before the return day thereof.

Clerk of probate court may administer oaths and issue citations and subpoenas.

§ 292. Unless otherwise specially prescribed, the Clerk of the Probate Court shall have power to administer all oaths necessary and proper to be taken touching any matter pending in the Probate Court, or in any manner connected with any proceedings of which the Court has jurisdiction, and he shall have power to issue citations and subpoenas, upon the application of any party, without the order of the Judge, except in those cases in which such order is especially required by law for the issuance of a citation.

Writ and process to be signed and (except subpoenas) sealed. Testimony may be taken by commission.

§ 293. All writs and processes issued from the Probate Court shall be signed by the Clerk and authenticated with the seal of the Court, except subpoenas, which need not be under seal.

§ 294. Testimony may be taken under commission from the Probate Court, in like manner as under commission issued from the District Court.

Appeals from decision of probate court—when allowed.

§ 295. Appeals shall be allowed from the decisions of the Probate Court to the District Court of the same county, in the following cases: 1st. On all decrees admitting any will to probate; 2d. On all orders setting apart property or making allowances for the widow, or child or children; 3d. On all

orders for the sale or conveyance of real estate ; 4th. On all settlements of executors and administrators ; 5th. On all orders directing the payment of debts or legacies, or the distribution of the estate among heirs, legatees, or distributees ; 6th. On all orders revoking letters testamentary or of administration.

§ 296. Any person interested in or affected by the decision of the Probate Court, may appeal therefrom by giving notice in open Court, during the term at which the decision complained of is made, an entry of which notice shall be made on the minutes.

Notice of appeal in open court.

§ 297. The appeal shall be deemed waived, unless the appellant shall, within twenty days after the decision complained of is made, file in the Court the bond of himself or some other person, in a sum and with security to be approved by the Probate Judge, conditioned that he will prosecute the appeal, and pay any debt and all damages and costs which may be adjudged against him. The bond shall be payable to the State of California, and upon any breach of the condition thereof may be sued upon by any one or more of the parties interested, in his or their own names ; but the appeal of any executor or administrator shall be complete and effectual without any bond being filed.

When appeal to be deemed waived.

§ 298. The appeal shall not be a supersedeas in any other matter relating to the administration of the estate, except that upon which the appeal is specially taken. When the appeal is taken and perfected, the Clerk shall deposit in the office of the District Court all the original papers in his office relating to the subject matter of the appeal.

Appeal to be a supersedeas only of the matter upon which appeal taken.

§ 299. Upon the filing of the papers in the District Court, that Court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the Probate Court.

District court to be possessed of cause on papers being filed.

§ 300. Issues of fact joined in the Probate Court shall be tried by the District Court on appeal, as herein provided, and in no other manner.

Issue of fact in probate court—how tried.

§ 301. When judgment upon an appeal from the Probate Court has been rendered by the District Court, the Clerk shall return into the Probate Court all the original papers, together with a certified transcript of the judgment or decree of the District Court, and the Probate Court shall proceed according to such judgment or decree, and shall carry the same into effect.

On judgment by appellate court, clerk to return papers to court below.

§ 302. In all cases in which it is not otherwise specially prescribed by law, the Probate Court, or the District Court on appeal, may award costs to any party, in its discretion, to be paid by any other party or parties, or to be paid out of the estate which is the subject of controversy, as justice shall require.

Costs may be awarded.

§ 303. When costs are awarded to one party, to be paid by another, the said Courts respectively may issue execution therefor.

Execution for costs.

CHAPTER XIV.

Public Administrators.

§ 304. Each Probate Court may, by an order entered on its minutes, appoint a Public Administrator for the County, who shall hold office for one year, and until his successor is qualified.

Public administrator may be appointed.

§ 305. Before entering on the duties of his office, he shall take the oath required by the Constitution, and enter into bond to the State of California, in a sum to be fixed by the Probate Court, and which shall not be less than ten thousand dollars, with two or more sureties, approved by the Probate Judge, and conditioned that he will faithfully discharge all the duties of his office ; and the Court may, from time to time, as occasion may require, demand additional security ; and if the same be not given within five days after such demand, may remove the Administrator and appoint another.

To take oath of office and give bond.

§ 306. The oath and bond shall be filed in the Probate Court, and copies thereof, certified by the Clerk, under the seal of the Court, shall be evidence.

Oath and bond to be filed. Certified copies evidence. Suits on such bond.

§ 307. Any person injured by the breach of such bond, may sue upon the same in the name of the State, for his own use.

§ 308. He shall receive the same compensation for his services as may be allowed by law to executors and administrators, and the Court may, for special reasons, allow a higher compensation.

Compensation to public administrator.

Misdemeanor in office.

§ 309. For any wilful misdemeanor in office, he may be indicted and fined, in any sum not exceeding two thousand dollars.

Public administrator—when to take charge of estates of deceased persons.

§ 310. It shall be the duty of the Public Administrator to take into his charge and custody the estate of all deceased persons in his county, in the following cases: 1. When a stranger dies intestate in the county, without relations, or dies leaving a will, and the executor named is absent, or fails to qualify; 2. When persons die intestate, without any known heirs, and administration is not applied for by some responsible person; 3. When persons unknown die, or are found dead in the county; 4. When money, property, papers, or other estate, are left in a situation exposed to loss or damage, and no other person administers upon the same; 5. When any estate of any person who has died elsewhere, is left in the county, liable to be wasted, injured, or lost, or is not in the lawful custody of some responsible person; 6. When, from any other good cause, the Probate Court shall order him to take possession of any estate to prevent its being injured, wasted, purloined, or lost.

To make inventory of all estates taken possession of by him.

§ 311. He shall make a perfect inventory of all such estate taken into his possession, and administer and account for the same, as near as circumstances will permit, according to the law prescribing the duties of administrators, subject to the control and direction of the Probate Court.

On grant of administration to any other person, public administrator to deliver up estate, &c.

§ 312. If, at any time, letters testamentary or of administration be regularly granted on such estate to any other person, he shall, under the order of the Probate Court, account for, pay and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession.

All civil officers to inform public administrator of estates subject to his control.

§ 313. It shall be the duty of all civil officers to inform the Public Administrator of all property and estate known to them, which is liable to loss, injury, or waste, and which by law ought to be in the possession of the Public Administrator.

Public administrator to institute suits.

§ 314. The Public Administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of the person deceased.

Person charged with embezzling property to which public administrator entitled may be cited.

§ 315. If the Public Administrator shall complain to the Probate Judge on oath that any person has concealed, embezzled, or disposed of, or has in his possession any money, goods, property, or effects, to the possession of which said administrator is entitled in his official capacity, the Judge may cite such person to appear before the Probate Court, and may examine him on oath touching the matter of such complaint.

Persons cited refusing to appear, &c., may be committed to jail.

§ 316. If the person so cited refuse to appear and to submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the Court may, by warrant for that purpose, commit him to the County Jail, there to remain in close custody until he shall submit to the order of the Court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the Probate Court.

Public administrator may be ordered to account, &c.

§ 317. The Probate Court may at any time order the Public Administrator to account for and deliver all the money and property of any estate in his hands to the heirs, or to the executor or administrator regularly appointed.

Chap. 130.

AN ACT concerning Licenses.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Certain license taxes to be assessed and paid into county treasury.

§ 1. There shall be assessed and paid into the County Treasury for county expenditures, the following license taxes:

1st. For each license to vend goods, wares, and merchandise, of either foreign or domestic growth or

manufacture, other than spirituous, malt, or vinous liquors, in a less quantity than one pint, to be drunk at the place where sold, not less than twenty dollars, nor more than two hundred and fifty dollars, for one year, or with same proportion for any less time, according to the amount of business done, as near as may be, to be judged of by the Court of Sessions.

2d. For each license to vend by retail, in a less quantity than one pint, to be drunk at the place where sold, any brandy, gin, rum, whiskey, muskal, or any other spirituous or distilled liquors, or any vinous or fermented liquors, or the mixture of any such spirituous, vinous, or fermented liquors, a sum of not less than fifty dollars, nor more than one thousand dollars, for one year, or with same proportion for any less time. The Court of Sessions of each county may, in their discretion, grant licenses to retail spirituous, vinous, or fermented liquors, in a less quantity than one pint, to be drunk at the place where sold, and charge for such license, as such Court may think proper, not less than fifty dollars, nor more than one thousand dollars, for one year.

3d. For all other business or occupations enumerated in this Act, and not prohibited by law, such sum may be charged as the Court may think proper. Each travelling merchant, hawker, and pedlar shall be charged as other merchants, in proportion to their business, as near as may be, to be judged of by such Court: *Provided*, that no such license be required to be taken out by any person having no fixed place of trade for trading in provisions and tools in the mines of this State.

4th. For each caravan, menagerie, or other collection of animals, and for each show of any figures, and for each circus or theatre, rope or wire dancing, or sleight of hand, exhibited for reward, not less than ten, nor more than one hundred dollars, for each day's exhibition or performance.

5th. For each license to carry on and exercise the business of a stock or exchange broker, in buying or selling stocks, bank notes, gold dust, bullion, gold or silver coin, or dealing in promissory notes, bonds, or bills of exchange, not less than one hundred dollars, nor more than five thousand dollars; and this section is intended to include all insurance offices or companies in this State, or agencies of insurance companies in other States, and transacting business in this State, and saving institutions dealing in the business aforesaid.

6th. For each license to vend wooden, brass, or composition clocks, not less than fifty dollars, nor more than five hundred dollars.

§ 2. The Court of Sessions of the respective counties shall determine the sum to be charged for any license herein specified, for any time less than one year, in a ratable proportion, and no license shall be granted for a longer period than one year, nor less than two months; said Court shall grant all applications for license provided for in this Act, at any regular session of said Court.

§ 3. If such Court shall not be in session when application for license is made, the County Treasurer shall determine, and receive the sum to be charged as aforesaid.

§ 4. The tax for license as aforesaid shall be paid to the County Treasurer, and his receipt filed with the County Auditor, who shall thereupon issue a license in proper form.

§ 5. Every person who shall transact or carry on any business above specified, without first procuring the license required, for each and every such offence shall be liable to an action in the name of the State, in any Court of competent jurisdiction, for the amount of such tax, and when recovered, the sum shall be paid into the County Treasury, and it is hereby made the duty of the County Attorney to prosecute the suits provided for in this section.

§ 6. It shall be the duty of the County Auditor and Treasurer, to see that licenses are procured and paid for by those who should obtain the same, and on neglect or refusal by any such person, to cause suit, as aforesaid, to be instituted by the County Attorney, immediately after such person shall commence the business or exhibition for which such licenses are required, and such Auditor and Treasurer shall be competent witnesses in any such suit.

§ 7. Nothing herein contained shall be construed to prevent any city or town council, or authority, from taxing any business or exhibition specified in this Act, for corporate purposes.

Sessions to determine charge for license for less than one year.

Time for which license may be granted. County treasurer may determine charges.

Such tax to be paid to county treasurer.

Penalty for carrying on business without a license.

Duty of county auditor and treasurer to see that licenses obtained and paid for.

Not to prevent city or town council from levying taxes.

Vending spirits, &c., without a license a misdemeanor.

§ 8. Every person who shall vend, by wholesale or retail, any spirituous, vinous, or malt liquors, within any County of this State, without first obtaining a license so to do, as required by the first section of this Act, shall be deemed guilty of a misdemeanor, and upon conviction in any Court of competent jurisdiction, be fined for each offence, not less than ten nor more than one hundred dollars.

Chap. 131.

AN ACT concerning the County of Marin and the other unorganized Counties of this State.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

County of Marin declared organized. Seat of justice. Terms of district court.

§ 1. The County of Marin, with the boundaries prescribed by law, is hereby declared to be organized, and the seat of justice of said County is hereby fixed at the town of San Rafael. A regular term of the District Court shall be held in said county on the third Monday of September, A. D. 1850, and regular terms of the District Court shall be held in said county on the third Mondays of March, and the third Monday of September in each succeeding year, and the county officers elected for said county upon the first days of April are declared duly elected, subject to all legal objections.

Election of county officers confirmed.

Sheriff of county to which other county attached may serve process in such attached county.

§ 2. The Sheriff of any county to which any other county is attached for judicial purposes is hereby authorized, until such county become organized according to law, to serve any writ or legal process upon a resident of such attached county, with the same force and effect, as if such resident were a resident of the county in and for which the Sheriff was elected.

County assessors to assess state tax on property in such attached counties.

Residents and owners of property in such attached counties to pay state, poll, and military exemption tax, &c.

§ 3. The Assessor of any county to which any other county or counties may be attached by law, is hereby authorized and directed to assess the State Tax upon all the real and personal property situate in such county or counties, with the same force and effect as though such property were owned within the county for which such assessor was elected, and every person residing in or owning property in any county so attached, shall pay the same state, poll, and military exemption tax, as if he resided, or his property was situated in the organized county to which such county is attached, and in case of non-payment shall be subject to the same fines, penalties, and liabilities, as if he resided within such organized county.

Powers of district courts over such attached counties.

§ 4. The District Court held in any county, to which any other county may be attached for judicial purposes, shall have jurisdiction over such attached county, and over all persons and things within such county, with the same force and effect in all respects as if such attached county formed a part of the county to which it is attached.

Powers of county court, court of sessions, and probate court, in such attached counties.

The County Court, the Court of Sessions, and the Probate Court of any county to which any other county may be attached, shall each have the same jurisdiction over all persons and things in the county so attached, as though such county formed a part of the county for which such courts were organized, and the force and effect of any judgment obtained in such cases over all persons and things in such county so attached, shall be the same as if they were situated in the county for which any such court is held.

Such attached counties may be divided into townships. Justices and constables may be elected. Appeals from such justices.

§ 5. The County Judge of the county to which any other county is attached for judicial purposes, may divide such county into such number of townships as he thinks proper, in which townships Justices of the Peace and Constables may be elected in the same manner as in the organized counties, and appeals may be taken from such Justices of the Peace to the County Judge of the county to which such county is attached, with the same force, effect, and validity, as if such Justices of the Peace were officers of such county.

Counties—how organized.

§ 6. Whenever any unorganized county desires to become organized according to law, the District Judge of the district in which it is situated may, on the petition of a majority of the electors of said county, in number not less than one hundred, cause the proper officers of the county to which

such county is attached by law, to give notice as required by law, of the time, place, and manner, of an election for county officers, which election shall be conducted in the same manner as is provided for organized counties, which elections shall be valid, and the officers so elected shall hold office until their successors are elected at the next county election.

Chap. 132.

AN ACT for the relief of persons imprisoned on Civil Process.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

Persons imprisoned in civil suits to be discharged. To give notice of application for discharge.

§ 2. Such person shall cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the Judge of the District Court of the County in which his person may be confined; or, in case of his absence or inability to act, to the Judge of the County Court of the County in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment. In the county of San Francisco, the application may be made to a Judge of the Superior Court of the City of San Francisco.

Application in county of San Francisco.

§ 3. Such notice shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application, in cases where the plaintiff, his agent or attorney, lives within twenty miles of the place of hearing; and one day shall be added for every additional twenty miles that such person may reside from the place of hearing.

Notice—when to be served on plaintiff.

§ 4. At the time and place specified in the notice, such person shall be taken before such Judge, who shall examine him under oath concerning his estate, and property, and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, and such Judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Examination as to property of applicant.

§ 5. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry; and they shall, if required by him, be proposed and answered in writing; and the answer shall be signed and sworn to by the prisoner.

Plaintiff may examine applicant.

§ 6. If, upon the examination, the Judge shall be satisfied that the prisoner is entitled to his discharge, such Judge shall administer to him the following oath, to wit: "I do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors: so help me God."

Applicant before discharge to take oath.

§ 7. After administering the oath, the Judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer, upon the service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

After taking oath order for discharge may issue.

§ 8. If such Judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Application refused may be renewed.

§ 9. The prisoner, after being so discharged, shall be for ever exempted from arrest or imprisonment for the same debt, unless he shall be convicted of having wilfully sworn falsely upon his examination before the Judge, or in taking the oath before prescribed.

Effect of discharge.

§ 10. The judgment against any prisoner who is discharged as aforesaid, shall remain in full force against any estate, which may then or at any time afterwards belong to him, and the plaintiff may take

Judgment to remain in force against property.

out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

Plaintiff give a discharge.

§ 11. The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Creditor of imprisoned debtor to advance money for his support.

§ 12. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, shall advance to the jailor, within twenty-four hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which he may be imprisoned, and in case the money should not be so advanced, or if, during the time the prisoner may be in confinement, the money should be expended in the support of such prisoner, and the creditor should neglect for twenty-four hours to advance such further sum as might be necessary for his support, the jailor shall forthwith discharge such prisoner from custody; and such discharge shall have the same effect as a discharge by order of the creditor.

Chap. 133.

AN ACT for the Government and Protection of Indians.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Jurisdiction of complaints by and against Indians. Indians to be permitted to reside on lands now occupied by them. Proviso.

§ 1. Justices of the Peace shall have jurisdiction in all cases of complaints by, for, or against Indians, in their respective Townships in this State.

§ 2. Persons and proprietors of lands on which Indians are residing, shall permit such Indians peaceably to reside on such lands, unmolested in the pursuit of their usual avocations for the maintenance of themselves and families: *Provided*, the white person or proprietor in possession of such lands may apply to a Justice of the Peace in the Township where the Indians reside, to set off to such Indians a certain amount of land, and, on such application, the Justice shall set off a sufficient amount of land for the necessary wants of such Indians, including the site of their village or residence, if they so prefer it; and in no case shall such selection be made to the prejudice of such Indians, nor shall they be forced to abandon their homes or villages where they have resided for a number of years; and either party feeling themselves aggrieved, can appeal to the County Court from the decision of the Justice: and then divided, a record shall be made of the lands so set off in the Court so dividing them, and the Indians shall be permitted to remain thereon until otherwise provided for.

Appeal.

Right of custody and control of Indian children during their minority.

§ 3. Any person having or hereafter obtaining a minor Indian, male or female, from the parents or relations of such Indian minor, and wishing to keep it, such person shall go before a Justice of the Peace in his Township, with the parents or friends of the child, and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the child from its parents or friends, shall enter on record, in a book kept for that purpose, the sex and probable age of the child, and shall give to such person a certificate, authorizing him or her to have the care, custody, control, and earnings of such minor, until he or she obtain the age of majority. Every male Indian shall be deemed to have attained his majority at eighteen, and the female at fifteen years.

At what age to attain majority.

Penalty for improper treatment of Indian child by person having the custody thereof.

§ 4. Any person having a minor Indian in his care, as described in the foregoing Section of this Act, who shall neglect to clothe and suitably feed such minor Indian, or shall inhumanly treat him or her, on conviction thereof shall be subject to a fine not less than ten dollars, at the discretion of a Court or Jury; and the Justice of the Peace, in his discretion, may place the minor Indian in the care of some other person, giving him the same rights and liabilities that the former master of said minor was entitled and subject to.

Hiring of Indians—how effected.

§ 5. Any person wishing to hire an Indian, shall go before a Justice of the Peace with the Indian, and make such contract as the Justice may approve, and the Justice shall file such contract in writing

in his office, and all contracts so made shall be binding between the parties ; but no contract between a white man and an Indian, for labor, shall otherwise be obligatory on the part of an Indian.

§ 6. Complaints may be made before a Justice of the Peace, by white persons or Indians ; but in no case shall a white man be convicted of any offence upon the testimony of an Indian, or Indians. And in all cases it shall be discretionary with the Court or jury after hearing the complaint of an Indian.

§ 7. If any person forcibly conveys any Indian from his home, or compels him to work, or perform any service against his will, in this State, except as provided in this Act, he or they shall, on conviction, be fined in any sum not less than fifty dollars, at the discretion of the Court or jury.

§ 8. It shall be the duty of the Justices of the Peace, once in six months in every year, to make a full and correct statement to the Court of Sessions of their county, of all moneys received for fines imposed on Indians, and all fees allowed for services rendered under the provisions of this Act ; and said Justices shall pay over to the County Treasurer of their respective counties, all money they may have received for fines and not appropriated, or fees for services rendered under this Act ; and the Treasurer shall keep a correct statement of all money so received, which shall be termed the " Indian Fund " of the county. The Treasurer shall pay out any money of said funds in his hands, on a certificate of a Justice of the Peace of his county, for fees and expenditures incurred in carrying out the provisions of this law.

§ 9. It shall be the duty of Justices of the Peace, in their respective townships, as well as all other peace officers in this State, to instruct the Indians in their neighborhood in the laws which relate to them, giving them such advice as they may deem necessary and proper ; and if any tribe or village of Indians refuse or neglect to obey the laws, the Justice of the Peace may punish the guilty chiefs or principal men by reprimand or fine, or otherwise reasonably chastise them.

§ 10. If any person or persons shall set the prairie on fire, or refuse to use proper exertions to extinguish the fire when the prairies are burning, such person or persons shall be subject to fine or punishment, as a Court may adjudge proper.

§ 11. If any Indian shall commit an unlawful offence against a white person, such person shall not inflict punishment for such offence, but may, without process, take the Indian before a Justice of the Peace, and on conviction, the Indian shall be punished according to the provisions of this Act.

§ 12. In all cases of trial between a white man and an Indian, either party may require a jury.

§ 13. Justices may require the chiefs and influential men of any village to apprehend and bring before them or him any Indian charged or suspected of an offence.

§ 14. When an Indian is convicted of an offence before a Justice of the Peace punishable by fine, any white person may, by consent of the Justice, give bond for said Indian, conditioned for the payment of said fine and costs, and in such case the Indian shall be compelled to work for the person so bailing, until he has discharged or cancelled the fine assessed against him : *Provided*, the person bailing shall treat the Indian humanely, and clothe and feed him properly : the allowance given for such labor shall be fixed by the Court, when the bond is taken.

§ 15. If any person in this State shall sell, give, or furnish to any Indian, male or female, any intoxicating liquors (except when administered in sickness), for good cause shown, he, she, or they so offending shall, on conviction thereof, be fined not less than twenty dollars for each offence, or be imprisoned not less than five days, or fined and imprisoned, as the Court may determine.

§ 16. An Indian convicted of stealing horses, mules, cattle, or any valuable thing, shall be subject to receive any number of lashes not exceeding twenty-five, or shall be subject to a fine not exceeding two hundred dollars, at the discretion of the Court or Jury.

§ 17. When an Indian is sentenced to be whipped, the Justice may appoint a white man, or an Indian at his discretion, to execute the sentence in his presence, and shall not permit unnecessary cruelty in the execution of the sentence.

§ 18. All fines, forfeitures, penalties recovered under or by this Act, shall be paid into the treasury of the county, to the credit of the Indian Fund as provided in Section Eight.

Complaints by white persons or Indians.
No conviction on testimony of Indian.
Penalty for abduction of Indians or forcing them to work.

Justices to report to sessions moneys received for fines of Indians, and all fees received, and pay over same.

Indian fund.

Indians to be instructed in laws relating to them.
Indians refusing to obey laws may be punished.

Setting fire to prairie or not aiding to extinguish it when on fire.

Offences by Indians against white persons.

Jury trial may be demanded.
Chiefs may be required to apprehend Indian charged with an offence.
Indians sentenced to pay fine may be compelled to work out fine and costs.

Penalty for furnishing intoxicating liquors to Indians.

Punishment of Indians convicted of stealing.

Sentence of whipping—how executed.

All fines, &c., to be paid into treasury.

Fee to Justice
for confirming
contracts with
Indians.

§ 19. All white persons making application to a Justice of the Peace, for confirmation of a contract with or in relation to an Indian, shall pay the fee, which shall not exceed two dollars for each contract determined and filed as provided in this Act, and for all other services, such fees as are allowed for similar services under other laws of this State. *Provided*, the application fee for hiring Indians, or keeping minors, and fees and expenses for setting off lands to Indians, shall be paid by the white person applying.

Able bodied
Indians begging,
&c., to be hired
out to work.

§ 20. Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant, as above set forth, he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by the provisions of this Act, regulating guardians and minors, during the time which he has been so hired. The money received for his hire, shall, after deducting the costs, and the necessary expense for clothing for said Indian, which may have been purchased by his employer, be, if he be without a family, paid into the County Treasury, to the credit of the Indian fund. But if he have a family, the same shall be appropriated for their use and benefit: *Provided*, that any such vagrant, when arrested, and before judgment, may relieve himself by giving to such Justice, Mayor, or Recorder, a bond, with good security, conditioned that he will, for the next twelve months, conduct himself with good behavior, and betake to some honest employment for support.

Application of
money received
for his hire.

Proviso.

Chap. 134.

AN ACT to fix the Compensation of County Judges and Associate Justices of the Court of Sessions.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Salaries of
county judges.

§ 1. The County Judges of the several counties in this State, shall receive for their services, annually, the following sums :

- 1st. Of the County of San Francisco, \$6,000.
- 2d. Of the County of Sacramento, \$5,000.
- 3d. Of the counties of Eldorado, Tuolumne, Santa Clara, Contra Costa, and Calaveras, each \$4,000.
- 4th. Of the Counties of Sutter, Yuba, Mariposa, Santa Cruz, Monterey, and San Joaquin, each \$3,000.
- 5th. Of the Counties of Los Angeles and Solano, each \$2,500.
- 6th. Of the Counties of Sonoma and Napa, each \$2,000.
- 7th. Of the Counties of Santa Barbara, Marin, Mendocino, Colusi, Trinity, and San Diego, each \$1,500.
- 8th. Of the Counties of Butte and Shasta, each \$2,000.
- 9th. Of the County of San Luis Obispo, \$1,000.

Salaries—how
paid.

§ 2. The salary of each County Judge shall be paid out of the County Treasury, in quarterly payments, to be made on the first days of January, April, July, and October, of each year.

§ 3. The Associate Justices of the Court of Sessions of each county, shall each be allowed six dollars for every day's actual attendance at the terms of the Court, to be paid out of the County Treasury. The County Judge of their county shall certify as to the number of days of their attendance at each term, and his certificate shall be sufficient authority for the County Auditor to audit a claim and draw a warrant on the Treasurer for the amount.

Compensation to associate justices of court of sessions.

Chap. 135.

AN ACT concerning Persons in Custody under Sentence of Imprisonment.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. It shall be lawful for the Court of Sessions of any County in which there may be any person in custody, under sentence of imprisonment, whether in the State Prison or County Jail, to cause such person to labor on any public work within the limits of the County, for the whole or any portion of the term for which he is sentenced.

Persons imprisoned may be set to labor on public works.

§ 2. It shall be lawful for the Court of Sessions of any County in which there may be any person in custody, under sentence of imprisonment, as aforesaid, when thereto requested by the Court of Sessions of any other County, or by the proper authorities of any incorporated town or city within the State, to cause such person to be delivered over for the whole or any portion of the term of his imprisonment, to the Court of Sessions or incorporated authorities so applying, who shall enjoy the same power in regard to the prisoner so delivered over, as the Court of Sessions from whom such prisoner was received.

Persons imprisoned in one county may be delivered over to court of sessions of any other county.

§ 3. The Court of Sessions, or proper authorities of any incorporated town or city, as the case may be, shall take precautions to prevent the escape of all prisoners whom they may cause to labor on any public work, as above set forth; and are authorized to employ all such overseers, and to use all such means as may be necessary to that end. The overseers in charge of such prisoners shall have, in regard to the same, all the powers of jailors, and shall be subject to the same responsibilities, and be in like manner amenable to the supervision of the Grand Jury.

Precautions to prevent escape of prisoners so set to labor.

§ 4. Every prisoner transferred in accordance with the provisions of this Act, for the whole of the term of his imprisonment, shall, at the expiration of such term, be discharged at the place in which he may happen to be. It shall be the duty of the Court of Sessions of any County, or proper authorities of any incorporated town or city, to whom any prisoner has been transferred for a portion only of the term of his imprisonment, to cause such prisoner, on the expiration of such portion of the term aforesaid, to be returned to the authorities from whom he was received. If such prisoner is not so returned, the overseer or other agent in whose charge the prisoner may be, shall, from the moment of the expiration of the term for which such prisoner was transferred, become the overseer or agent of the authorities to whom such prisoner ought to have been returned, in the same manner, and with the same responsibilities, as if he had been originally appointed by said authorities.

Discharge of prisoners transferred for whole term of imprisonment.

For part of term.

§ 5. In all cases in which prisoners shall be employed, as above provided, in laboring on any public work, it shall be the duty of the County or corporation for the benefit of which they are so employed, to provide them with food and clothing, and lodging sufficient for their health and comfort, in as ample a manner as is required in the "Act concerning Crimes and Punishments."

Food, clothing, and lodging, to be provided for prisoners set to work.

§ 6. Upon the presentation of a written order from the Court of Sessions, or other authorities empowered by this Act to cause prisoners to labor on any public work, it shall be the duty of all Sheriffs and their deputies, jailors, overseers, and others having the custody of such prisoners, to deliver the same into the charge of the person in said order named, and authorized to receive them.

Sheriffs to deliver prisoners pursuant to order of sessions.

Chap. 136.

AN ACT to take the Sense of the People of California upon the Subject of the Permanent Location of the Seat of Government.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Certain propositions to be submitted by proclamation at next general election.

Separate ballot box.

Ballots to be endorsed "State Capital."

Where more than one proposition.

Informal ballots not to be rejected. Proviso.

Returns by judges and inspectors of elections.

Surveyor general to examine different localities proffered, and report thereon.

To examine certain other lands.

§ 1. It shall be the duty of the Governor, by Proclamation, to submit, at the next General Election, the accompanying propositions, and all others which may hereafter be submitted to him, within thirty days after the close of this session of the Legislature, to the People of California for their consideration and choice. And it shall be the duty of the Judges and Inspectors of Election, at that time, to provide a separate box, in which shall be deposited the ballots upon that subject.

§ 2. Said ballots shall be endorsed upon the outside, "State Capital," and upon the inside shall be printed or written the name of the person whose proposition each voter may wish to be adopted, or the name of the place which the elector depositing the same shall desire for the location of the seat of government. And if there shall be more than one proposition in reference to the same town, or city, or place, then the name of the person or persons whose proposition shall be chosen by said elector, shall be also designated upon said ballot; but no ballot shall be rejected or thrown out for want of formality or non-compliance with this Act: *Provided*, it is such as shall be intelligible to a majority of the Judges or Inspectors of the poll where the same is deposited.

§ 3. It shall be the duty of the Judges and Inspectors of the said Election to make correct returns thereof, and of all the propositions voted for, and the number of votes given for each, to the Sheriffs of their respective counties, as soon as the same can be made up; and the said Sheriffs shall remit said returns, forthwith, to the Secretary of State, who shall lay the same before the next Legislature as soon as convened, for its consideration.

§ 4. The Surveyor General shall, before the next session of the Legislature, visit and examine the different locations proffered for the seat of government, and report the peculiarities of each location, the natural advantages, and all matters of interest in reference to its position for the Capital of this State. He shall also examine the lands between the cities of San José and San Francisco, along the road running between the said cities, and ascertain if a plot or plots of land, four miles square, can be obtained for laying out a city, as the future seat of government, and report upon the same, as upon the location submitted to the people; which report shall be made to the next Legislature immediately after its commencement.

Chap. 137.

AN ACT to regulate proceedings against Debtors by Attachment.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Creditors may proceed by attachment.

Proceedings preliminary to issuing attachment.

§ 1. Any creditor shall be entitled to proceed, by attachment in the District Court, against the property of his debtor, in the manner provided in this Act.

§ 2. Before any writ of attachment shall be issued, the plaintiff, his agent or attorney, shall take and subscribe an affidavit in writing that the defendant is indebted to the plaintiff in the sum of two hundred dollars or over, specifying the amount of such indebtedness as near as may be, over and above all legal

set-offs, and that the sum is due upon contract, express or implied, and that the deponent knows, or has good reason to believe, either: 1st. That the defendant has absconded, or is about to abscond from this State, or that he is concealed therein to the injury of his creditors; or, 2d. That the defendant has removed, or is about to remove any of his property out of this State, with intent to defraud his creditors; or, 3d. That he fraudulently contracted the debt, or incurred the obligation, respecting which the suit is brought; or, 4th. That the defendant is a non-resident of the State; or, 5th. That the defendant has fraudulently conveyed, disposed of, or concealed his property, or a part of it, or is about fraudulently to convey, dispose of, or conceal the same, or a part of it, with intent to defraud his creditors.

§ 3. No writ of attachment shall be issued under the provisions of this Act in the District Court, unless the amount stated in such oath or affidavit as due to the plaintiff, over and above legal set-offs, shall exceed the sum of two hundred dollars.

§ 4. At the time of filing the affidavit, and before the issuance of any writ of attachment, the plaintiff, or some responsible person in his behalf, shall execute a bond with sufficient surety, in a sum at least double the amount of the demand sworn to, payable to the defendant, and conditioned that the plaintiff shall pay to the defendant all damages that he may incur, by reason of the wrongful suing out of the writ of attachment.

§ 5. The Clerk shall judge of the sufficiency of the penalty, and the surety of the bond, and shall endorse his approval thereon, and file the same before any writ of attachment shall issue.

§ 6. If, at any time pending an action in which an attachment has been sued out, it shall appear to the Court that bond given is insufficient from any cause, the Court may, on notice given, require another bond, and such further surety as shall be necessary, five days' previous notice having been given of the motion for the order. If the plaintiff shall fail to comply with the order within five days after the same shall be made, the attachment shall be dismissed at his costs.

§ 7. In any action brought on the bond, for wrongfully suing out the attachment, the defendant shall be bound to show not only that the debt existed, but that the facts and circumstances of the case justified the issuance of the writ, and the defendant in the attachment may bring suit on the bond, without waiting the result of the action against him.

§ 8. When the affidavit has been made, and the bond given, the Clerk shall issue the writ of attachment. The writ may be issued either at the time of the filing of the complaint, or at any time while the action is pending. It may be made returnable at such time as the plaintiff may designate; if no time be designated by the plaintiff, it shall be made returnable to the first day of the next term of the Court, unless it be issued within ten days thereof, in which case it shall be returnable to the first day of the second term. It shall be the duty of the officer, however, when he has levied upon sufficient property, to return it forthwith, or whether levied or not, to return it whenever directed by the plaintiff or his attorney. Whenever the writ has been returned without a sufficient levy having been made, another may be issued to the same county, without further bond or affidavit.

§ 9. The writ shall be signed by the Clerk, and sealed with the seal of the Court, and shall command the Sheriff or other officer to whom it may be directed, to attach so much of the lands, tenements, goods, chattels, moneys, and effects of the defendant not exempt from execution, wheresoever the same may be found within the county, as will be sufficient to satisfy the plaintiff's demand, and shall safely keep the same to satisfy any judgment that may be recovered by the plaintiff in the attachment. The writ may be issued to several counties at the same time.

§ 10. The Sheriff or other officer to whom the writ may be directed shall execute it, by levying upon so much of the lands, tenements, goods, chattels, moneys, and effects of the defendant wheresoever the same may be found in the county, as will be sufficient to satisfy the demand and costs.

§ 11. In attaching real estate, or any right or interest in land, it shall not be necessary that the officer should enter upon the land, or be within view of it.

§ 12. The attachment shall bind the goods and chattels so attached, from the time they were attached.

Attachment not to issue for less than \$200.

Plaintiff to give bond.

Clerk to judge of sufficiency of bond, &c.

Another bond may be required pending the action.

Action on bond given by plaintiff, &c.

When clerk to issue attachment.

Form of attachment.

May issue to several counties.

How executed.

Real estate—how attached.

Goods, &c., bound from time of issue.

Real estate
bond from time
of filing copy.

§ 13. Real estate shall be bound, and the attachment shall be a lien thereon, from the time when a certified copy of the attachment, with a description of such real estate, shall be deposited in the Recorder's office of the county where it is situated.

Time of receipt
to be noted on
copy.

§ 14. Each Recorder shall note on such certified copy the day, hour, and minute when he received it, and shall also enter in a book to be kept by him for that purpose, the names of the parties in the writ, designating who is plaintiff and who defendant, and the time when the land was attached, and the time when such copy was deposited.

When attach-
ment may issue
for debt not due.

§ 15. Attachment may issue, although the debt or demand of the plaintiff be not due, when it is shown by the affidavit: 1st, That the defendant is about to abscond from the State, or that he is concealed therein, to the injury of his creditors: or, 2d, That the defendant is about to remove any of his property out of the State, or that he is about fraudulently to convey, dispose of, or conceal the same, with intent to defraud his creditors. In this case no judgment shall be rendered until the debt becomes due, but the attachment shall give a lien as in other cases.

Attached prop-
erty to remain
in hands of
officer unless
defendant give
security.

§ 16. When property has been attached, it shall remain in the hands of the officer serving the attachment, unless the defendant or any other person in whose possession such property may have been found shall, before judgment in the suit, deliver to the officer a bond, executed to him by two or more sufficient securities, either with or without such defendant or other person, to the satisfaction of such officer, as hereinafter provided.

Bond to be given
by defendant.

§ 17. The bond may be in a penalty double the amount specified in the affidavit of the amount due to the plaintiff, conditioned for the payment of any judgment which may be recovered by the plaintiff in the suit commenced by such attachment, within twenty days after such judgment shall have been rendered, or in a penalty double the value of the property, to be determined by the officer, and conditioned that such property shall be produced to satisfy any execution that may be issued on any judgment to be recovered by the plaintiff on the attachment.

On delivery of
such bond,
property to be
returned
Return of writ.

§ 18. Upon the execution and delivery of such bond, the property attached shall be delivered by the officer to the defendant, or person in whose possession the same shall have been found.

§ 19. The sheriff shall return the writ according to its direction, or as hereinbefore prescribed, endorsing thereon a certificate showing in what manner he has executed it.

Proceedings in
action if sum-
mons personally
served, &c.

§ 20. If a summons has been personally served on the defendant, or if the defendant shall appear in the suit, the same proceedings may be had in the action in all respects, as if no attachment had been issued.

Where summons
not personally
served.

§ 21. If no summons has been personally served, but service thereof is made by publication, a notice shall also be published in the same manner as the summons, which shall state the nature of the action, the names of the parties, the time when property was levied upon by virtue of the writ of attachment, a description of the property levied upon, and the time when the writ is returnable. Until such publication has been made, no judgment shall be entered, directing the property attached to be sold.

Sheriff to state
in his return if
any bond given.
Bond to be
returned and
filed.

§ 22. If any bond shall have been given to the Sheriff, or other officer serving the writ, he shall state the fact in his return to the attachment, and shall return and file such bond forthwith, and if the bond shall be given after the return of the writ, and before judgment, the Sheriff or other officer shall immediately file the same in the Clerk's office to which the writ was returned, and give notice thereof to the plaintiff, or his attorney.

Judgment for
plaintiff may
direct sale of
property
attached.

§ 23. When the summons has been personally served, or when it has been served by publication, and publication shall also have been made of the notice as hereinbefore required, if judgment be rendered for the plaintiff, it shall direct that the property attached and remaining in the hands of the officer, or so much thereof as may be necessary, shall first be sold to pay the debt, and execution shall be issued accordingly.

Judgment for
plaintiff where
bond given to
pay judgment.

§ 24. If a bond shall have been given to the officer, as hereinbefore provided, conditioned for the payment of the judgment, and judgment be rendered in favor of the plaintiff, it shall not be necessary to issue any execution upon such judgment; but if the same remain unpaid for twenty days, the plaintiff may sue on the bond in his own name, and recover the whole amount of the judgment.

§ 25. If a bond shall have been given to the officer as hereinbefore provided, conditioned for the forthcoming of the property, and judgment be rendered in favor of the plaintiff, if the property be not delivered within twenty days after the judgment, plaintiff may sue on the bond in his own name and recover the full value of the property attached, or so much thereof as shall be sufficient to satisfy his judgment, with interest and costs.

Judgment for plaintiff where bond given for forthcoming of property.

§ 26. Whenever any of the property taken in attachment shall consist of perishable property, the Court may make an order directing such property to be sold, and the money arising from the sale to be brought into Court, to abide the order of the Court.

Perishable property taken in attachment may be sold.

§ 27. Upon such order for a sale being made, the officer having the property shall advertise and sell the same, in like manner that personal property is required to be advertised and sold on execution, and shall deposit the proceeds thereof with the clerk, to whose office the attachment is required to be returned.

On order for sale officer to advertise and sell.

§ 28. If the plaintiff recover judgment, the Court may order the money to be paid to the plaintiff; but if judgment be rendered against the plaintiff, or the suit be discontinued, or the attachment dismissed, the Court shall order the money to be paid to the defendant or person entitled thereto.

Disposition of proceeds of sale after judgment.

§ 29. Whenever judgment shall be rendered against the plaintiff in attachment, the Court shall, upon the request of defendant, empanel a jury, which shall proceed to assess the damages sustained by the defendant by reason of the taking, detention, or sale of any property attached under the provisions of this Act, and the Court shall render judgment thereon against the plaintiff: *Provided*, the defendant shall not have previously recovered damages in an action against the plaintiff for wrongfully suing out the attachment.

On judgment for defendant, his damages are to be assessed.

Provido.

§ 30. When two or more persons are jointly indebted as joint obligors, partners, or otherwise, the attachment may be issued against the separate or joint estates, or property of such joint debtors, or any of them, and the same proceedings shall be had as hereinbefore prescribed.

Proceedings against joint debtors.

§ 31. If the plaintiff, or any one in his behalf, shall make an affidavit, stating that he verily believes that any person (naming him) has money, property, credits, or effects in his possession belonging to the defendant, or is indebted to the defendant, and deliver the affidavit to the officer having the writ, the officer, if he cannot attach such property and get possession thereof, shall serve the writ and affidavit upon such person, by giving him a copy thereof, with a written notice that he appear in Court at the return of the writ. If the writ be returned before the return day named therein, he may be required upon five days' notice to appear at an earlier day.

Property in possession of third party may be attached, or such third party notified to appear.

§ 32. From the day of such service, the person so notified as garnishee, shall stand liable to the plaintiff in attachment, to the amount of the property, moneys, and credits in his hands, and debts due, or to become due, from him to said defendant, and shall attend the Court in accordance with such notice, and answer under oath, all questions put to him touching the property, credits, and effects of the defendant in said garnishee's possession, or within his knowledge, and as to all debts then, or to become due from him to the defendant.

From time of notice such person to be liable to plaintiff for amount of property in his hands of defendant's.

§ 33. If such garnishee do not appear in Court as hereinbefore required, the Court may compel his attendance by attachment, and if appearing, he shall neglect or refuse to answer all proper questions put to him, he may be punished by fine or imprisonment, or both, at the discretion of the Court, and the Court may also render a judgment against him for the amount of the plaintiff's demand, when the same shall be ascertained. But the garnishee shall not be required to appear in person and answer in any Court held out of the county in which he resides; in such case, he shall be bound within thirty days after notice, to file his answer under oath in the Court from which the writ is issued. The time of answering may be enlarged by the Court, or where it has expired, further time may be given. If the plaintiff be dissatisfied with the answer of the garnishee, he may propound interrogatories to him, and take his answer thereto under commission as in the case of a witness, and upon the answer so taken, the same proceedings may be had as if they were made in open Court.

Garnishee not appearing may be attached, and punishment for not answering.

But need not appear in person out of county of residence.

Interrogatories may be propounded.

When garnishee to recover judgment against plaintiff.

§ 34. If upon the answer of the garnishee, no issue is made up between the plaintiff and garnishee as hereinafter provided, or it shall appear from the answer that the garnishee had no property or effects of the defendant, and was not indebted to him at the time he was notified, or that he delivered up to the officer at that time all of the property of the defendant in his possession, or paid to the officer the amount of his indebtedness to the defendant, then such garnishee shall recover judgment against the plaintiff for his fees for travel and attendance, which shall be the same as those allowed to witnesses.

Issue between plaintiff and garnishee.

§ 35. If the answer of the garnishee shall not be satisfactory to the plaintiff, an issue shall be made up between the plaintiff and garnishee, which shall be for trial after the plaintiff shall have obtained judgment against the defendant, and in case no judgment shall be obtained, the garnishee shall recover costs as above stated. All issues between the plaintiff and garnishee shall be tried and judgment thereon rendered, and costs awarded, and execution issued in the same manner and with the like effect as in other actions, except that the judgment against the garnishee shall not be for a greater amount than that claimed by the plaintiff, or that for which judgment has been rendered against the defendant. In case the answer of the garnishee shall be satisfactory to the plaintiff, and it shall appear by it that he was indebted to the defendant, or had in possession the property and effects of the defendant, the Court, after judgment shall have been rendered against the defendant, shall render judgment against the garnishee according to the merits of the case.

How issue to be tried.

Judgment against garnishee.

Officer to be indemnified in cases of doubtful ownership.

§ 36. If in any case where an officer has a writ of attachment against property, there is any reasonable doubt as to the ownership of the property, or as to its liability so to be taken on the attachment, the officer may require sufficient security to indemnify him for attaching such property.

Claimants of property, &c., attached may interplead

§ 37. Any person claiming property, money, effects, or credits attached, may interplead in the cause, and issues may be made upon the same, and shall be tried in like manner as other issues, and without unnecessary delay; and no judgment shall be rendered against the garnishee, or other person in whose hands the same may be, until such interpleader shall be determined: costs may be adjudged in such cases, as in ordinary actions.

Application to set aside writ.

§ 38. At any time before judgment has been rendered against the defendant in the attachment, he may apply to the Judge of the Court in which the action is pending, to set aside the writ, having given at least two days' notice of the application to the opposite party.

Order to set aside writ as irregular, and effect thereof.

§ 39. At the hearing, either party may introduce testimony. If it appear that the writ is irregular, or has been sued out without probable cause, an order shall be made to set aside and release the property attached, if any. The order shall terminate all proceedings upon the attachment, but the action may be continued as if no attachment had been issued.

Justices of the peace may issue attachments, &c.

§ 40. Justices of the Peace shall have power to issue writs of attachment, when the amount sworn to does not exceed two hundred dollars. The writ may be issued, and the same proceedings had thereon, as are prescribed by this Act, in conformity, however, with the provisions of the "Act to regulate proceedings in Courts of Justices of the Peace in Civil Cases," so far as such provisions can be made applicable. When issued by a Justice, the writ shall be directed to the Constable, or to any other person authorized to execute process. When the citation has not been personally served on the defendant, no judgment shall be entered until notice of the attachment has been published in the manner prescribed by this Act.

Chap. 138.

AN ACT to regulate Fees of Office.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Fees to be allowed.

§ 1. For the services mentioned in this Act, rendered by the several officers herein named, the following fees shall be allowed:

Fees in the office of Secretary of State.

§ 2. For a copy of any Act or Resolution of the Legislature, or of any other record or paper kept in the office of the Secretary of State, furnished to any private person on request, fifty cents for each folio.

For copy of any act, &c., of legislature.

For a certificate and seal thereto, two dollars.

Fees of Notaries Public.

§ 3. For drawing and copying of protest, of the non-payment of a promissory note or bill of exchange, or of the non-acceptance of such bill in the cases where by law such protest is necessary, but in no other case, five dollars.

For protesting notes or bills, &c.

For drawing and copy of every other protest, eight dollars.

For drawing copy and serving every notice of non-payment of a note, or non-acceptance of a bill, one dollar.

For drawing any affidavit, or other paper or proceeding for which provision is not herein made, for each folio, one dollar, and for copying the same, for each folio, fifty cents.

For taking the acknowledgments of deeds or conveyances, and for other services authorized by law, the same fees as are allowed to other officers for similar services.

For administering an oath or affirmation, one dollar.

§ 4. Fees of Commissioners to take testimony, for each folio, one dollar.

For each oath administered and certificate, two dollars.

For taking testimony and administering oaths.

Fees of the Clerk of the Supreme Court.

§ 5. For filing the papers sent at any one time from the Inferior Court, ten dollars.

For filing papers, &c.

For drawing and issuing any process of the Court, two dollars.

For entering a motion, rule, or order, two dollars.

For entering a judgment, for the first folio, five dollars.

And for each subsequent folio after the first, one dollar.

Each certificate given on request, relative to any matter or cause, two dollars.

For a certified copy of any record or paper, for each folio, fifty cents.

For entering satisfaction on the record, five dollars.

For entering each cause in the calendar and making a copy thereof for the Bar, two dollars.

For every remittitur, or mandate, to be sent to the Court below, for each folio, one dollar.

For searching records and files in his office, one dollar; but no charge shall be made against suitors or attorneys for such search.

For filing any single paper, one dollar.

Fees of Probate Judge.

§ 6. For an order granting letters of administration, when not contested, two dollars.

For grant of letters of administration, &c.

And when contested or opposed, four dollars.

Hearing any complaint, or an application for the appointment of a guardian, one dollar.

Appointing a guardian, two dollars.

And when one guardian shall be appointed for more than one person at the same time, for each person after the first, for whom such guardian shall be appointed, one dollar.

Decree for probate of a will, when not contested, three dollars.

And when contested, five dollars.

Decree for settling an estate, two dollars.

Partition of real estate, four dollars.

Order for distribution, two dollars.

Examining and allowing an inventory, for each folio fifty cents.

Administering an oath to an executor or other person, and certifying the same when necessary, one dollar.

Examining and allowing accounts of executors or administrators, for the first folio, one dollar.

And for each additional folio, fifty cents.

Order to appraise or divide an estate, one dollar.

Approving a bond, one dollar.

Approving securities of executors or others, one dollar.

Order for allowance to a widow or to children, one dollar.

Appointment of agent on partition of real estate, one dollar.

Order for sale of property, or for publication of any notice, or any other ordinary order in proceedings before him, where no other provision is expressly made, one dollar.

Extending the time for settling an estate, or examining and allowing a claim against an estate, to be paid by the claimant, one dollar.

Granting reference of accounts of executors or administrators, or allowing report thereon, two dollars.

Disallowing application for letters of administration, or a probate of a will, to be paid by the party applying, four dollars.

Proportioning an insolvent estate among creditors, four dollars.

Fees of County Recorder.

For filing deeds,
&c.

§ 7. For filing, entering, and recording any deed, or other instrument, to be paid when the same is left for record, for each folio, seventy-five cents.

For copies of any records or papers when required, for each folio, fifty cents.

For recording any deed or other paper in any other than the English language, for each folio, one dollar.

For every entry of a discharge of a mortgage in the margin of the record, one dollar.

For filing every other paper, and making an entry thereof when necessary, one dollar.

Searching records and files in his office, one dollar.

Taking acknowledgment of a deed or other instrument, for each certificate, where there is but one signature, two dollars.

Where there is more than one, for each additional signature, one dollar.

The Recorder in each county shall have the same power as a Judge, or Notary Public, to take and certify the acknowledgment or proof of deeds or other instruments to be recorded, and his certificate shall have the same effect.

Fees of the County Clerk as Clerk of the District Court.

For issuing pro-
cess, &c.

§ 8. For issuing any writ or process under seal, two dollars.

For any writ or process not under seal, including subpoena, one dollar.

For filing each paper, fifty cents.

Entering an appearance, discontinuance, non-suit, or default, one dollar.

Entering every motion, rule, or order, one dollar.

Every certificate under seal, two dollars, and not under seal, one dollar.

But not to be allowed for certifying any paper to be a copy, for the copying of which he shall be paid.

Calling and swearing a jury, two dollars.

Swearing each witness, fifty cents.

Entering each cause in a calendar for the Court, and making a copy thereof for the Bar, one dollar.

Entering every cause without process, two dollars.

Receiving and entering a verdict, one dollar.

Entering every final judgment, for the first folio, four dollars ; and for every subsequent folio, one dollar.

Entering satisfaction of a judgment, three dollars.

For a copy of any record or paper, for each folio, fifty cents.

For searching the records and files in his office, one dollar.

But no charge shall be made against suitors and attorneys.

For administering an oath, and certifying the same, one dollar.

For issuing commission to take testimony, three dollars.

For taking down the testimony of witnesses on a trial, for each folio, fifty cents.

Fees of the County Clerk as Clerk of the Probate Court.

§ 9. For issuing letters testamentary, or of administration or guardianship, three dollars ; appointment of Appraisers or Commissioners, one dollar. For issuing letters testamentary, &c.

Each notice required to be given by posting up notices, three dollars.

Each notice required to be given by publication, five dollars.

For all other services, the same fees which are allowed him as Clerk of the District Court for similar services.

Fees of the County Clerk as Clerk of the County Court.

§ 10. For filing all the papers sent at one time from a Justice's Court, three dollars. For filing papers, &c.

For other services, the same fees as are allowed in the District Court for similar services.

Fees of Sheriffs.

§ 11. For serving a summons, or any other process by which a suit or proceeding shall be commenced in any Court of Record, on each defendant, three dollars. For serving summons, &c.

For travelling in making such service, per mile, fifty cents, in going only, to be computed in all cases from the Court House of the County.

For taking a bond or undertaking in any case in which he is authorized to take the same, three dollars.

For a certified copy thereof, when requested, two dollars.

For a copy of any writ, process, or other paper, when demanded or required by law, for each folio, fifty cents.

For serving any notice, suit, or proceeding, one dollar.

Serving a subpoena—for each witness summoned, one dollar, and fifty cents for each mile actually travelled in going only ; but where two or more witnesses live in the same direction, travelling fees shall be charged only for the most distant.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or for the delivery of personal property, five dollars.

Advertising property for sale on execution, or under any judgment or order of sale, three dollars.

For making the money upon an execution, for the first thousand dollars, five per cent. ; for all above one thousand dollars, three per cent.

The fees herein allowed for the levy of an execution, and for advertising, and for making or collecting the money on an execution, shall be collected from the defendant by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a deed pursuant to a sale of real estate, ten dollars, to be paid by the grantee, who shall also pay the fee for the acknowledgment of the deed.

Serving a writ of possession or of restitution ; putting any person entitled into the possession of premises and removing the occupant, five dollars ; and the same compensation for mileage as herein allowed on other writs.

Summoning a jury in any cause, five dollars; and for attending such jury, when required, two dollars.

Bringing up a prisoner on Habeas Corpus to testify or answer in any Court, or for examination as to the cause of his arrest and detention, five dollars; and for travelling each mile from the jail, fifty cents.

Attending before any officer with a prisoner, for the purpose of having him surrendered in exoneration of his bail, or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into his custody, in either case, five dollars.

For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, five dollars; with such further compensation for his trouble and expenses in taking possession of and preserving the same, as the officer issuing the warrant shall certify to be reasonable.

For selling any ship, boat, or vessel, or tackle, apparel, and furniture thereof so attached, and for advertising such sale, the same fees as for sales on execution. For any services which may be rendered by a Constable, the same fees as are allowed by law for such services to a Constable.

For attending the Supreme Court, for each day, six dollars; to be allowed by the Comptroller on the certificate of the Clerk, and paid out of the State Treasury.

Fees of Coroners.

For services as sheriff.

§ 12. For all services rendered by them when acting as Sheriff, the same fees as are allowed to Sheriffs for similar services.

Fees of Constables.

For serving process, &c.

§ 13. For serving a citation, summons, or other process by which a suit shall be commenced, three dollars.

On all sums made on execution to be charged against the defendant in the execution, five per cent.

For all other services, the same fees as are allowed to Sheriffs for similar services.

Fees of Justices of the Peace.

For filing papers, &c.

§ 14. For filing every paper required to be filed, twenty-five cents.

For issuing a citation, summons, or other process, by which a suit shall be commenced, one dollar.

For entering a cause upon his docket, fifty cents.

For a subpoena, to each witness, fifty cents.

Administering oath to witness, twenty-five cents.

Taking and certifying an oath, one dollar.

For issuing writ of attachment, three dollars.

Entering any order in a case, fifty cents.

Entering final judgment, two dollars.

For taking and approving any bond directed by law to be taken or approved by him, one dollar.

Swearing a Jury, one dollar.

Taking depositions, per folio, seventy-five cents.

For certified copy of judgment, or of any order or paper on file in his office, per folio, fifty cents.

Entering satisfaction of a judgment, one dollar.

Entering amicable suit without process, one dollar.

Transcript of judgment, one dollar.

Issuing commission to take testimony, one dollar.

Issuing a supersedeas to an execution, one dollar.

Making up transcript, and returning papers on appeal, three dollars.

Issuing a search warrant, two dollars.

Issuing an execution, one dollar.

For celebrating a marriage, and returning a certificate thereof to the Recorder, ten dollars.

For holding an inquisition in cases of forcible entry and detainer, five dollars.

Notwithstanding any authority conferred by any statute heretofore passed, no Justice of the Peace shall have power to take or certify an acknowledgment, or proof of any deed, or other instrument to be recorded.

Fees of Witnesses.

§ 15. Attending in any suit or proceeding, for each day, five dollars.

For attending.

And for each half day, three dollars.

For travelling, at the rate of fifty cents per mile in coming to the place of attendance, to be estimated from the residence of the witness; but this section shall not be construed as allowing any fees to witnesses in a criminal action. No person shall be obliged to attend as a witness in any civil action tried without the county in which he resides, nor within the county, unless his fees for attendance have been tendered to him, or he shall not have demanded the same.

For travelling.

Fees of Jurors.

§ 16. At the commencement of each term, the District and County Court held in each county, and the Superior Court of the city of San Francisco, respectively, shall cause to be entered on their minutes an order establishing the compensation to be allowed to Jurors in civil cases, tried at the term, which shall in no case exceed six dollars a day to each Juror.

To be fixed at commencement of each term.

§ 17. Upon the rendition of a verdict in each case, the Court shall assess the amount to be paid therein as a jury fee, and which shall be in proportion to the time occupied in the trial, so that as near as may be, the amount assessed on all the trials had each day, shall pay the fees of the jury for that day, at the rate established.

Upon rendition of verdict.

§ 18. The amount assessed in each case shall be paid into Court before the verdict is entered by the party in whose favor it is rendered, but shall be recovered by him as a part of his costs. If it be not paid within twenty-four hours, execution may issue therefor in the name of the Clerk, against either or both of the parties, as the Court may direct.

Amount of jury fees—when and by whom to be paid.

§ 19. The amount paid on each trial shall be distributed by the Clerk equally among the Jurors by whom the cause was tried.

Fees to be distributed by clerk.

Jury Trials.

§ 20. The Clerk of each of said Courts shall receive and pay out all moneys authorized to be collected by the provisions of this section, and shall keep in a book to be provided for the purpose an accurate account thereof, under the head of "Jury Fund," showing the amount assessed and received in each case, the amount paid to each juror, and the name of the juror, and the time when the money was so received and paid out. He shall give a receipt for all sums which may come to his hands, and shall take from each juror a receipt, which shall be filed and preserved.

Clerk to receive and pay moneys, and keep an account headed "jury fund."

To give receipts.

§ 21. In every jury trial before a Justice of the Peace, the party in whose favor the verdict is rendered, shall pay to the Justice six dollars, to be by him distributed to the jurors equally. The Justice shall not enter the verdict until the money is paid. The amount paid shall be included as costs to be recovered by the party paying.

Jury fees on trial before a justice.

§ 22. If in any trial before any Court, the jury be from any cause discharged without finding a verdict, the costs of the trial shall be paid by the plaintiff, but may be recovered back as costs if he afterwards obtain judgment. Until they are paid, no further proceedings shall be allowed in the action.

Fees where jury discharged without finding a verdict.

Miscellaneous Provisions.

§ 23. For all services required by law to be performed by any Clerk, Sheriff, or Coroner, for which no compensation is provided in this Act, such fees shall be allowed as shall from time to time be

Fees to clerks, sheriff, or coroners, for services where no compensation provided.

established by the Supreme Court, by general rules corresponding as near as may be with the rates herein specified.

Fees to county clerk for services in court of sessions.

§ 24. The Court of Sessions shall allow to the County Clerk for his services in said Court, when sitting for the transaction of county business, such compensation for his services as may be reasonable, which shall not be less than six dollars per day, during the time he is actually employed.

Secretary of state to account for fees.

§ 25. The Secretary of State shall keep an account of all fees received in his office, and shall settle and account for the same, with the Comptroller, once in every three months, and pay the amount into the State Treasury.

Fees to county judge as judge of probate.

§ 26. The fees allowed for services rendered by the County Judge as Judge of Probate, shall not be for his own use, but for the use of his county. The Clerk of the Probate Court shall be bound to collect them in the same manner as his own fees, and shall keep in a book provided for the purpose, a full and accurate account of them, which he shall settle once in each month with the County Auditor, and pay the amount in his hands into the County Treasury. The accounts of the Clerk shall be at all times open to inspection by any county officer, or by any party interested. The County Treasurer shall keep under a separate head, an account of all moneys paid into the treasury by the County Clerk as fees.

Table of fees to be published, and set up in office.

§ 27. Every officer whose fees are herein ascertained, shall publish and set up in his office fair tables of his fees, according to this Act, within six months after the passage thereof, in some conspicuous place for the inspection of all persons who have business in his office, upon pain of forfeiting for each day a sum not exceeding twenty dollars, which may be recovered by any person, by action before any Justice of the Peace of the same county.

Fees hereby allowed not to apply in cases where special provision made.

§ 28. The allowance of any fees by this Act shall not apply to any case where special provision is otherwise made by law for any particular service; but the fees for such service shall be such as are provided in the Act requiring the service, or providing the compensation therefor.

Fees—when payable.

§ 29. The fees allowed by this Act shall be payable at the time the service is rendered; and any officer, where it is not otherwise expressly provided by law, may refuse to perform any service in any suit or proceeding in which there are any fees due (criminal proceedings excepted) from the person applying, until such fees are paid.

Costs of publication.

§ 30. When by law any publication is required to be made by any officer of any writ, process, notice, order, or other paper, the costs of such publication shall be first tendered by the party for whom such process or order was granted, before the officer shall be compelled to make publication thereof.

Execution for fees remaining unpaid.

§ 31. If any clerk, sheriff, justice of the peace, or constable, shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor in his own name against the party from whom they are due, to be issued from the Court in which the action is pending.

Certain searches to be made without fee.

§ 32. The Secretary of State, Treasurer, Comptroller, and Attorney General, shall be authorized to require searches in the respective offices of each other, and in the offices of the Clerk of the Supreme Court, of the several District Courts, of the County Courts, or Recorders of Deeds, for any papers, records, or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom, without the payment of any fee or charge whatever.

"Folio" defined.

§ 33. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure, necessarily used, as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

Attorneys, &c.—when not entitled to fees as witnesses. On receipt of fees, account thereof to be delivered.

§ 34. No attorney or counsellor at law in any cause shall be allowed any fee for attending as a witness in such cause.

§ 35. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing, and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount so paid.

§ 36. No fee shall be charged by any officer for administering the oath of office.

§ 37. When a fee is allowed to one officer, the same fee shall be allowed to other officers for the performance of the same services, when such officers are by law authorized to perform such services, and the compensation is not specially fixed.

§ 38. The Attorney General, or any District Attorney, is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on the behalf of the State, without paying or tendering fees in advance; and any witness failing or neglecting to attend after being served with a subpoena, may be proceeded against, and shall be liable in the same manner as provided by law in other cases where fees have been tendered or paid.

§ 39. The Clerk of any Court at which any witness shall have attended on behalf of the State in a civil action, shall give to such witness a certificate of travel and attendance, which shall entitle him to receive the same from the County Treasury.

§ 40. The provisions of the two preceding sections of this Act shall extend to all actions and proceedings brought in the name of the Attorney General, or any other person or persons, for the benefit of the State.

No fee for administering oath of office. Fee allowed to one officer to be allowed to another performing same service. Witnesses on behalf of state must attend without payment of fees in advance.

Certificate of travel and attendance to such witnesses.

To what actions, &c., two preceding sections to apply.

Chap. 139.

AN ACT respecting Set-Offs.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. When any two or more persons are mutually indebted in any manner, and one of them commences an action against the other, one debt may be set-off against the other.

One debt may be set-off against another.

§ 2. In suits brought by executors and administrators, debts existing against their intestates or testators, and belonging to the defendant at the time of their death, may be set-off by the defendant in the same manner as if the action had been brought by and in the name of the deceased; but no demand against an executor or administrator in his individual capacity, shall be allowed as a set-off against any debt or damages sued for by such executor or administrator, in his representative capacity.

Set-off in suits by executors, &c.

§ 3. In all actions brought against one or more joint obligors or promissors, any debt or demand due from the plaintiff to the defendant in the action, or to all the obligors or promissors in the contract sued upon, may be set-off against the demand of the plaintiff.

Set-off in suits against joint obligors, &c.

§ 4. If the amount of the set-off be equal to the plaintiff's demand, the judgment shall be rendered for the defendant for costs; if it be less than the plaintiff's demand, the plaintiff shall have judgment for the residue only with costs; if there be found a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof, together with costs.

Amount of set-off equal to plaintiff's demand. Less than plaintiff's demand. Exceeding plaintiff's demand.

§ 5. Whenever a set-off is established in a suit brought by executors or administrators, exceeding the amount of the plaintiff's demand, the judgment shall be against them in their respective characters, and shall be evidence of a debt established: but no execution shall issue thereon.

Set-off exceeding plaintiff's demand in suits by executors.

§ 6. A defendant may set-off a claim against the plaintiff, which he has acquired, or which has become due after the commencement of the action; but in this case, if the set-off exceeds the plaintiff's demand, and he shall recover judgment therefor, he shall pay all costs.

In what cases defendant to pay costs where set-off exceeds plaintiff's demand.

§ 7. A set-off must be alleged with the same clearness and precision as would be necessary in stating the claim in a complaint, as a ground of action. If the answer of a defendant alleges a set-off, and it does not appear of record that it was withdrawn before the trial, the judgment shall be a bar between the parties, to any action thereon.

Set-off—how to be alleged. When allegation of set-off a bar to an action therefor.

Executions may be set-off at option of parties.

Executions—how set-off.

When such set-off not allowed.

When judgments may be set-off.

§ 8. Executions between the same parties may be set-off one against another, if required by either party, in the manner prescribed in the following Sections.

§ 9. When one of the executions is delivered to an officer to be served, the person who is the debtor therein may deliver his execution to the same officer, whether it be directed to the same or any other officer, and the officer shall apply it as far as it will extend to the satisfaction of the first execution; or, if such first execution shall be the smallest in amount, then to its entire satisfaction, and endorse on such execution the fact of such application; and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off.

§ 10. Such set-off shall not be allowed in the following cases: First. When the creditor in one of the executions is not in the same capacity and trust as the debtor in the other. Second. When the sum due on the first execution shall have been lawfully and in good faith assigned to another person, before the creditor in the second execution became entitled to the sum due thereon. Third. When there are several creditors in one execution, and the sum due on the other is due from a part of them only. Fourth. Where there are several debtors in one execution, and the sum due on the other is due to a part of them only.

§ 11. In any case in which executions may be set off, judgments may also be set off, by motion in the Court in which they were rendered; or, if rendered in different Courts, in either of them, reasonable notice of the motion having been first given.

Chap. 140.

AN ACT regulating Marriages.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Marriage a civil contract. Certain marriages incestuous and void.

§ 1. Marriage is considered in law as a civil contract, to which the consent of the parties is essential.

§ 2. All marriages between parents and children, including grand-parents and grand-children of every degree; between brothers and sisters of the one half as well as the whole blood; and between uncles and nieces, aunts and nephews, are declared to be incestuous, and absolutely void. This section shall extend to illegitimate as well as to legitimate children and relations.

Marriage with negroes or mulattoes. Contracting or solemnizing such marriages in fact a misdemeanor.

§ 3. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

§ 4. Whoever shall contract marriage in fact, contrary to the prohibitions in the two preceding sections, and whoever shall solemnize any such marriage, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine or imprisonment, or both, at the discretion of the jury which shall try the cause; or, if the conviction be by confession, at the discretion of the Court; the fine to be not less than one hundred nor more than ten thousand dollars, and the imprisonment to be not less than three months nor more than ten years.

Marriages contracted out of state.

§ 5. All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this State.

Who may perform marriage ceremony.

§ 6. Every Judge and Justice of the Peace, and every Clergyman of any denomination, or licensed Preacher of the Gospel, may perform the ceremony of marriage in this State.

When consent of parent necessary before marriage.

§ 7. No Judge, Justice of the Peace, Clergyman, Preacher of the Gospel, or other person, shall join in marriage any male under the age of twenty-one years, or female under the age of eighteen years, without the consent of the parent or guardian, or other person under whose care and government such minor may be. Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine not exceeding one thousand dollars.

§ 8. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized before him, and within three months transmit a certificate of every marriage (containing both Christian names and surnames) to the Recorder of the county in which the marriage took place; and any person refusing or neglecting to make such return within the above required time, shall forfeit for every offence the sum of one hundred dollars, to be recovered, with costs, by the Recorder.

Record of marriages to be kept and certificates transmitted to recorder.

§ 9. The Recorder shall record all such returns of marriages in a book to be kept for that purpose, within one month after receiving the same, for which he shall be allowed, for each entry, two dollars. If any Recorder shall neglect or refuse to record, within the said time, any return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who will prosecute for the same.

Returns of marriages to be recorded.

§ 10. The books of marriages to be kept by the respective Recorders, and copies of entries therein, certified by him under his official seal, shall be evidence in all courts.

Books of marriages, &c., to be evidence.

§ 11. If any person authorized to solemnize any marriage, shall wilfully make a false return of any marriage, or pretended marriage, to the Recorder, or if the Recorder shall wilfully make a false record of any return of a marriage, he shall be deemed guilty of a misdemeanor, and shall be punished by fine not less than one hundred nor more than ten thousand dollars, and by imprisonment of not less than three months nor more than ten years.

Making false entries or returns a misdemeanor.

Chap. 141.

AN ACT concerning *Forcible Entries and Unlawful Detainers.*

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. No person or persons shall hereafter make any entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases, not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Entry into lands—how may be made.

§ 2. Any Justice of the Peace shall have authority to inquire, as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Justices of the peace may inquire concerning forcible entries and unlawful detainers, and may order restitution.

§ 3. When any complaint shall be made in writing to any Justice of the Peace, of any such unlawful or forcible entry, or unlawful detainer, said Justice shall issue a summons, directed to the Sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said Justice on a day in such summons named, which shall not be less than ten days from the day of issuing such summons, and at the place therein mentioned.

Party complained against to be summoned to appear.

§ 4. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least two days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving such summons.

Service and return of summons.

§ 5. After the return of the summons, served as hereinbefore provided, and at the time and place appointed in said summons, the Justice shall proceed to hear and determine said complaint, unless either party shall demand a jury; in which case the Justice shall issue a venire for a jury in the same manner and upon the same terms as is in other cases provided for trial by jury in Justices' Courts, and such jury shall be sworn as in other cases.

Hearing of complaint.

Proceedings
where party
complained
of is absent from
the county.

§ 6. If, at the time of making of such complaint, it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the Justice before whom the same is made, to issue his summons, as hereinbefore provided, and the same may be served by leaving a certified copy thereof at the last and usual place of abode of such person or persons, not less than two days before the return day thereof, which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same, and the officer shall make a special return of the time and manner of serving said summons, and the suit shall thereafter proceed, the same as though a personal service were had of such summons.

Adjournment of
trial.

§ 7. The Justice may, at his discretion, adjourn any trial under this Act, not exceeding ten days, and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for want of some material witness, naming him, that he has made due exertion to obtain such witness, and believes, if an adjournment be allowed, he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said Justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

Testimony—
how taken.

§ 8. The testimony of any witness, which may be considered necessary by either party, may be taken in the same manner, and with the like effect, as is provided for the taking of testimony in other cases in Justices' Courts.

What complain-
ant required to
show on trial.

§ 9. On the trial, the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of a forcible entry, or was entitled to the possession of the premises at the time of a forcible holding over. The defendant may show in his defence that he, or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not then ended or determined, and such showing shall be a bar to the prosecution, and in no case when the title of land is necessarily involved, shall a Justice of the Peace have cognisance.

Proceedings on
judgment for
complainant.

§ 10. If upon the trial of any complaint under this Act, the Justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said Justice shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said Justice shall also award and issue a writ of restitution; but if the said Justice or the jury find that the person complained of is not guilty, the Justice shall tax the costs against the complainant, and issue execution therefor.

Where jury can-
not agree upon a
verdict.

§ 11. If the jury empannelled cannot agree upon a verdict, the Justice may, with the consent of the parties, discharge them, and issue a venire returnable forthwith, or at some other time agreed upon by the parties.

On verdict for
complainant,
damages for
waste, &c., to be
assessed, rent,
&c., ascertained
and trebled.

§ 12. In all cases of a verdict by the Justice or jury for the complainant, the damages shall be assessed as well for waste and injury committed upon the premises, as for the rents and profits during such detainer; and the verdict shall also find the monthly value of the rents and profits of the said premises: and the complainant shall be entitled to recover treble damages against the persons against whom judgment has been rendered, which damages shall be assessed by the Justice or jury, and when so assessed shall be trebled by said Justice, and entered as a judgment in the cause upon which execution may issue.

Proceedings
against tenants
holding over
after expiration
of their terms
and demand
of possession.

§ 13. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised, or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under

which he or she holds, or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days, in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant, that he or she shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, due and unpaid as aforesaid, upon complaint therefor to any Justice of the Peace of the proper County, the Justice shall proceed to hear, try, and determine the same, in the same manner as in other cases hereinbefore provided for, but shall impose no fine upon any such case mentioned in this section.

§ 14. The preceding section shall not extend to any person who has, or shall have continued in possession one year after the termination of the time for which the premises were demised, or leased, or let to him or her, or those under whom he or she holds possession, or to any person who continues in possession three years, quietly and peaceably.

The preceding section not to apply to certain cases.

§ 15. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or who, appearing, shall refuse to serve or give evidence in any prosecution instituted under this Act, shall forfeit and pay for every such default or refusal, to the use of the County, unless some reasonable cause be assigned, such fine not exceeding twenty dollars, as the said Justice shall think proper to impose, and execution may be issued therefor.

Penalty for not attending as juror or witness.

§ 16. If either party shall feel aggrieved by the verdict of the jury or decision of the Justice, he may appeal within ten days, as in other cases tried before Justices of the Peace, and he shall give bond with two or more sufficient sureties, to be approved by said Justice, conditioned to pay all costs of such appeal, and abide the order the Court may make therein, and pay all rent and other damages justly accruing during the pendency of such appeal.

Appeal—when and how to be taken.

§ 17. Upon the taking of such appeal, all further proceedings in the case shall be thereby stayed, and the Appellate Court shall issue all necessary writs and processes to carry out the provisions of this Act, according to the true intent and meaning thereof.

Effect of appeal.

§ 18. If a writ of restitution shall have been issued previous to the taking of the appeal, the Justice shall give the appellant a certificate of the allowance of such appeal, and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

Appeal to stay proceedings on writ of restitution.

§ 19. In all cases of appeal under this Act, the Appellate Court shall not dismiss or quash the proceedings for want of form, only provided the proceedings have been conducted substantially according to the provisions of this Act.

Proceedings on appeal not to be quashed for want of form.

§ 20. Amendments to the complaint, answer, or summons, in matters of form only, may be allowed by the Court at any time before final judgment, upon such terms as may be just, and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

Amendments.

§ 21. The following, or equivalent forms, may be used in proceedings under this Act, to wit:

SUMMONS.

The people of the State of California To the Sheriff or any constable of the County aforesaid:
Whereas A. B., of the County of _____ hath exhibited unto me a Justice of the Peace for said County, a complaint against C. D., of the County of _____ for that the said C. D., of the County of _____ on the _____ day of _____ A. D., at the County of _____ (here insert the substance of the complaint with sufficient certainty.) You are therefore commanded to summon the said C. D., if he be found in your County, to be and appear before me at my office (or stating the place) on the _____ day of _____ A. D. _____ then and there to make answer unto the complaint aforesaid. Given under my hand and seal, this _____ day of _____ A. D., _____ E. F., Justice of the Peace.

Form of summons.

WRIT OF RESTITUTION.

Form of writ of
restitution.

The People of the State of California To the Sheriff, or any constable of the County, aforesaid :
Whereas, A. B., of the County of _____ at a Court of Inquiry of an unlawful or forcible entry, or
unlawful detainer (as the case may be) held at my office (or state the place) in the County aforesaid,
on the _____ day of _____ A. D., _____ before me, a Justice of the Peace for the County
aforesaid, by the consideration of the Court, hath recovered judgment against C. D., to have
restitution of (here describe the premises, as in the complaint). You are therefore commanded that,
taking with you the force of the County, if necessary, you cause the said C. D. to be immediately
removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same ; and
you are also commanded that, of the goods and chattels of the said C. D., within said County, you
cause to be made the sum of _____ dollars for the said plaintiff, together with the costs of suit
endorsed thereon, and make return hereof within thirty days from this date. Given under my hand,
this _____ day of _____ A. D., _____ E. F., Justice of the Peace.

Chap. 142.

AN ACT to regulate proceedings in Civil Cases in the District Court, the Superior Court of the City
of San Francisco, and Supreme Court.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

CHAPTER I.

Of the form of Civil Actions.

Civil action.

§ 1. There shall be in this State, hereafter, but one form of action for the enforcement or protection
of private rights and the redress of private wrongs, which shall be denominated a civil action.

Plaintiff and
defendant.

§ 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as
the defendant.

Action on judg-
ment.

§ 3. No action shall be brought upon a judgment rendered in any court of this State between the
same parties, without leave of the court for good cause shown, or notice to the adverse party.

Crim. con. and
seduction.

§ 4. No action shall be maintained for criminal conversation or for seduction.

Trial of feigned
issue.

§ 5. When a question of fact not put in issue by the pleadings, is to be tried by a jury, an order for
the trial may be made, stating distinctly and plainly the question of fact to be tried, and such order shall
be the only authority necessary for a trial.

CHAPTER II.

*Of the parties to Civil Actions.*Party in interest
to be plaintiff.

§ 6. Every action must be prosecuted in the name of the real party in interest, except as otherwise
provided in this chapter.

Action by
assignee of
chase in action.

§ 7. In case of an assignment of a thing in action, the action by the assignee shall be without
prejudice to any set-off or other defence existing at the time of, or before notice of, the assignment ; but
this section shall not apply to a negotiable promissory note, or inland bill of exchange, transferred in
good faith and upon good consideration, before due.

Executors and
trustees.

§ 8. 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 suit is prosecuted.

- § 9. When a married woman is a party, her husband must be joined with her, except that—
- 1st. When the action concerns her separate property, she may sue alone.
 - 2d. When the action is between herself and her husband, she may sue or be sued alone.
- § 10. When an infant is a party, he must appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a Judge thereof, or by a County Judge.
- § 11. The guardian shall be appointed as follows :
- 1st. When the infant is plaintiff, upon the petition of the infant, if he be at the age of fourteen years ; or if under that age, upon the petition of some other party to the suit, or a relative or friend of the infant.
 - 2d. When the infant is defendant, upon the petition of the infant, if he be of the age of fourteen years, and apply at any time before the return day of the summons ; if he be under the age of fourteen, or neglect so to apply, then upon the petition of any other party to the action, or of a relative or friend of the infant.
- § 12. All persons having an interest in the subject of the action and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this chapter.
- § 13. 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.
- § 14. 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 as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint. When the question is one of a general or common 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.
- § 15. 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.
- § 16. No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, marriage, or other disability of a party, the Court on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action.
- § 17. The court may determine any controversy between the 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 contrary cannot be had without the presence of other parties, the court shall order them to be brought in.

Married woman
—when she may
sue without join-
ing husband.

Infant must
appear by
guardian.

Guardian—how
appointed.

Who may be
joined as
plaintiffs.

Who as defen-
dants.

Parties united in
interest—when
to be joined.

One or more may
sue or defend for
the whole.

Persons severally
liable may be
sued in same
action.

Action not to
abate by death,
&c.

Matters in con-
troversy affect-
ing persons not
before the court.

CHAPTER III.

Of the place of trial of Civil Actions.

- § 18. Actions for the following causes must be tried in the county in which the subject of the action or some part thereof is situated, subject to the power of the Court to change the place of trial in the cases provided by statute.
- 1st. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.
 - 2d. For the partition of real property.
 - 3d. For the enforcement of a mortgage of real property.
- § 19. Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the Court to change the place of trial in the cases provided by statute.

Local actions.

Other local
actions.

1st. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offence committed on a lake, river, or any other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed.

2d. Against a public officer or person especially appointed to execute his duties for an act done by him in virtue of his office, or against a person, who, by his command or in his aid, shall do anything touching the duties of such officer.

Transitory actions.

§ 20. In all other cases the action shall be tried in the county in which the parties, or any of them, shall reside at the commencement of the action, or if none of the parties reside in the State, the same may be tried in any county which the plaintiff shall designate in his complaint, subject however to the power of the court to change the place of trial in the cases provided by statute.

Demand of change of place of trial named in complaint.

§ 21. If the county designated for that purpose in the complaint be not the proper county, the action may notwithstanding be tried therein, unless the defendant shall, before the time for answering expire, demand in writing that the trial be had in the proper county.

CHAPTER IV.

Of the manner of commencing Civil Actions.

Actions in district court commenced by complaint.

§ 22. Civil Actions in the District Court shall be commenced by the filing of a complaint with the Clerk of the Court in which the action is brought, who shall endorse on it the day, month, and year, when he received it.

On complaint being filed, clerk to issue summons, &c.

§ 23. Upon the filing of the complaint, the Clerk shall issue and deliver to the plaintiff or his attorney on demand a summons directed to the defendant, together with a true copy of the complaint, the correctness of which shall be certified by the Clerk. If there are several defendants, there shall be a summons to each, accompanied with a copy of the complaint.

Summons to be signed by clerk. What to state.

§ 24. The summons and the certificate, as to the correctness of the copy, shall be signed by the Clerk, with his name of office, and authenticated with the seal of the Court. The summons shall state the Court in which the complaint is filed, and shall require the defendant to appear and answer the complaint within ten days after the summons shall have been served upon him, when the defendant is served with process in the county in which the suit is brought, or within thirty days after the service, when the defendant is served with process in any other county. When there are several defendants, and any one or more of them are served with process out of the county in which the suit is brought, all the defendants shall have thirty days to answer.

Notice of *lis pendens* in suits affecting real property.

§ 25. In an action affecting the title to real property, the plaintiff at the time of commencing the action, or at any time afterwards, may file with the Recorder of each county in which the property is situated, a notice of the pending of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property.

Service of summons.

§ 26. The summons shall be served by the Sheriff of the county where the defendant may be found, and shall be served by delivering a copy thereof, together with the copy of the complaint, as follows:

1st. If the suit be against a corporation, to the president, or other head of the corporation, secretary, cashier, or managing agent thereof.

2d. 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 State, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

3d. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian, and to the defendant personally.

4th. In all other cases to the defendant personally.

§ 27. When the person on whom the service is to be made, cannot after due diligence be found within the State, and that fact shall be shown by the Sheriff's return upon the summons, and also be proved by affidavit to the satisfaction of the Court, or that he is a non-resident of the State, and it shall appear by affidavit that a cause of action exists against the defendant, in respect to whom the service is to be made, or that he is a necessary or proper party to any action, the Court or Judge may grant an order that the same be made by publication of a summons. The order shall direct the publication to be made in some one or more newspapers, to be designated as most likely to give notice to the person to be served, and for such length of time as the circumstances of the case may require. 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 person to be served at his place of residence, unless it appears by affidavit that such residence is neither known to the party making the application, nor can with reasonable diligence be ascertained by him. If the summons shall not be personally served on a defendant, he or his representatives shall (except in actions for divorce) be allowed to defend after judgment, or at any time within one year after notice thereof, and within three years after its rendition, on such terms as shall be just; and if the defence be successful, and the judgment, or any part thereof, shall have been collected or otherwise enforced, such rendition may thereupon be compelled as the Court shall direct. In all cases where publication is made, the summons as published, shall state the time and place of the filing of the complaint, the nature of the action, with a brief statement of the complaint, and shall require the defendant to appear and answer at such time as shall be directed by the order. When the defendant is out of the State, the publication shall be once a month, for not less than six months.

Service by publication.

§ 28. When service has been made, the summons shall be returned to the proper Court, within the time in which the defendant is required to answer. If service is not made, the summons shall be returned within thirty days after its date, when it is placed in the hands of the Sheriff of the county in which it is issued, or within ninety days, if placed in the hands of any other Sheriff, or at such time as the plaintiff or his attorney may direct.

Return of summons.

§ 29. When a summons has been returned not served, the clerk shall at any time issue another on the application of the plaintiff or his attorney.

Summons returned not served.

§ 30. More than one summons may be issued at the same time; but in such case the plaintiff shall not recover the costs of more than one.

More than one summons may be issued.

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

Proceedings in actions against several defendants where summons not served on all.

1st. If the action be against several persons, jointly indebted upon a contract, he may proceed against the defendant, served in the same manner as if all had been served, unless the Court shall otherwise direct; or,

2d. In an action against defendants severally liable, he may proceed against the defendant or defendants, served in the same manner as if such defendant or defendants were the only parties proceeded against.

3d. 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.

§ 32. In the cases in which the service may be made by publication, the service shall be deemed complete at the expiration of the time prescribed by the order for publication.

Service by publication—when complete.

§ 33. Proof of the service of the summons, and of the complaint accompanying the same, shall be as follows:

Proof of service.

1st. If served by the Sheriff, his certificate thereof; or,

2d. In case of publication, the affidavit of the printer, or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post-office, if the same shall have been deposited.

3d. The written admission of the defendant. In case of actual service, the certificate shall state the time and place of the service.

When no summons need issue.

§ 34. If any defendant, in person or by attorney, shall endorse upon the complaint an acceptance of service, it shall be equivalent to actual service, and no summons need issue.

When court deemed to have acquired jurisdiction.

§ 35. From the time of the service of the summons in a civil action, 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.

CHAPTER V.

Of the Pleadings in Civil Actions.

Forms and rules of pleading to be as prescribed.

§ 36. The forms of pleadings in civil actions in the District Court, and the rules by which the sufficiency of the pleadings are to be determined, shall be as prescribed by this Act.

First pleading for plaintiff.
Complaint—what to contain.

§ 37. The first pleading on the part of the plaintiff is the complaint.

§ 38. The complaint shall contain—

1st. The title of the cause, specifying the name of the Court in which the action is brought, the names of the parties to the action, plaintiff and defendant, and their residence, if known.

2d. A statement of the facts constituting the cause of action in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

3d. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

Pleadings by defendant.

§ 39. The only pleading on the part of the defendant is either a demurrer or an answer; it must be filed within the time prescribed in the summons.

When defendant may demur.

§ 40. The defendant may demur to the complaint, when it shall appear upon the face thereof, either

1st. That the Court has no jurisdiction of the person of the defendant or the subject of the action; or,

2d. That the complainant has not legal capacity to sue; or,

3d. That there is another action pending between the same parties for the same cause; or,

4th. That there is a defect of parties, plaintiff or defendant; or,

5th. That several causes of action have been improperly united; or,

6th. That the complaint does not state facts sufficient to constitute a cause of action.

Demurrer to specify grounds of complaint.

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

Notice of amending complaint—answer after judgment by default.

§ 42. If the complaint be amended, a notice of the filing of the amended complaint shall be served on the defendant or his attorney, who must answer it within five days. On proof of the service, and there being no answer filed, the plaintiff may proceed to take judgment by default as in other cases.

Causes of demurrer not appearing on face of complaint.
Waiver of causes of demurrer.

§ 43. When any of the matters which are the causes of demurrer do not appear upon the face of the complaint, the objection may be taken by answer.

§ 44. If no such 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.

Answer—what to contain.

§ 45. The answer of the defendant shall contain—

1st. In respect to each allegation of the complaint controverted by the defendant, a general or specific denial thereof, or a denial thereof according to his information and belief, or of any knowledge thereof sufficient to form a belief.

2d. A statement of any new matter constituting a defence, in ordinary and concise language, without

repetition, and in such a manner as to enable a person of common understanding to know what is intended.

§ 46. The defendant may set forth by answer as many defences as he shall have; they shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished. May set forth several defences.

§ 47. When the defendant in his answer alleges on his part new facts, they shall be considered as denied by the plaintiff, except as to the signature of any instrument of writing on which the answer is founded. New facts in answer considered as denied by plaintiff. Exception.

§ 48. The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue, or may demur and answer at the same time. Defendant may demur and answer.

§ 49. ~~Shall answers and defences may be stricken out on motion.~~ Shall answers to be stricken out.

§ 50. When the answer shall contain new matter, the plaintiff may demur to the same for insufficiency, stating in his demurrer the grounds thereof, and he may also demur to one or more of several defences set up in the answer. Answer containing new matter may be demurred to.

§ 51. No other pleading shall be allowed than the complaint, answer, and demurrers. What pleadings allowed.

§ 52. Every pleading must be subscribed by the party or his attorney. Pleadings must be subscribed.

§ 53. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party within five days after a demand thereof in writing, a copy of the account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The Judge may order a further or a more particular bill. Items of account in pleadings.

§ 54. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, and with a view to substantial justice between the parties. Construction of pleadings.

§ 55. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and if no motion be made, it shall be the duty of the court to order it to be done. Irrelevant or redundant matter.

§ 56. 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 allegations be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction. Judgment—how pleaded.

§ 57. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing the performance; but it may be stated generally, that the party duly performed all the conditions on his part; and if such allegations be controverted, the party pleading shall be bound to establish on the trial the facts showing such performance. Conditions precedent—how pleaded.

§ 58. 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 approval, and the court shall thereupon take judicial notice thereof. Private statute—how referred to in a pleading.

§ 59. 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 the trial that it was so published or spoken. Complaint for libel and slander.

§ 60. 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 such actions.

§ 61. The plaintiff may unite several causes of action in the same complaint, when they all arise out of— Several causes of action in one complaint.

1st. Contracts, express or implied: or.

- 2d. Injuries with or without force to the person ; or,
- 3d. Injuries with or without force to property ; or,
- 4th. Injuries to character ; or,
- 5th. Claims to recover real property, with or without damages for withholding thereof, and the rents and profits of the same ; or,
- 6th. Claims to recover personal property, with or without damages for the withholding thereof ; or,
- 7th. Claims against a trustee by virtue of a contract or by operation of law.

But the cause of action so united must belong to one only of these classes, and must affect all the parties to the action, and must be separately stated.

Pleading founded on instrument in writing signed by adverse party.

§ 62. When any complaint or answer is founded on any instrument of writing which is alleged to have been signed by the party, the signature shall be considered as admitted, unless denied by such party on oath. If denied, it may be proved by any proper evidence.

Allegations of complaint not controverted taken as true. Variances between pleadings and proof.

§ 63. Every material allegation of the complaint not controverted by the answer, shall, for the purposes of the action, be taken as true.

§ 64: No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice in maintaining his action or defence 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.

Fact to be found according to evidence.

§ 65. 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.

Failure of proof.

§ 66. When, however, the allegation of the cause of action or defence 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.

Amendments of course.

§ 67. 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, or within five days after the answer to such pleading shall have been filed.

Amendments by the court.

§ 68. The court may at any time, in furtherance of justice and on such terms as may be proper, amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of the party, or a mistake in any other respect, or by inserting any other allegations material to the cause, or by conforming the pleading or proceeding to the facts proved. The court may likewise, in its discretion, allow an answer to be made, or other act to be done, after the time limited by this Act, or by an order enlarge such time, and may also at any time within one year after notice thereof, relieve a party from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding, and when any proceeding taken by a party fails to conform in any respect to the provisions of this Act, the Court shall have power to permit an amendment of such proceeding, so as to make it conformable to law.

Amendment of course after demurrer.

§ 69. After demurrer either party may amend any pleading demurred to of course and without costs, filing the same amended, and giving notice thereof within five days to the adverse party, who shall have five days to answer or demur thereto, if the pleading be a complaint, or three days to demur thereto if it be an answer ; but a party shall not so amend more than once. When a demurrer to a complaint is overruled, and there is no answer filed, the Court may, upon such terms as shall be just, allow the defendant to file an answer. If a demurrer to the answer be overruled, the facts alleged in the answer shall still be considered as denied. A demurrer only admits the facts for the sake of an argument.

Amendment after demurrer overruled.

Effect of demurrer as an admission.

Defendant may be sued in fictitious name.

§ 70. 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.

§ 71. The Court shall, in every stage of an action, disregard any error or defect in the pleading or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

Certain errors and defects to be disregarded.

§ 72. The plaintiff and defendant respectively may be allowed on motion to make a supplemental complaint or answer, alleging facts material to the case, occurring after the former complaint or answer, or of which the party was ignorant when this former pleading was made.

Supplemental complaint or answer.

CHAPTER VI.

Arrest and Bail.

§ 73. No person shall be arrested in a civil action except as prescribed by this Act; but this provision shall not apply to proceedings for contempt.

No arrest except as after prescribed.

§ 74. The defendant may be arrested as hereinafter described in the following cases:—

In what cases defendant may be arrested.

First. In an action for money received, or property embezzled, or fraudulently misapplied, by a public officer, or by an attorney or counsellor, 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.

Second. When the defendant has been guilty of a fraud in contracting the 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.

Third. 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.

§ 75. The order may be made when it shall appear to the Judge, by the affidavit of the plaintiff, or of any other person, that a sufficient cause of action exists, and that the case is one of those above mentioned.

Order of arrest when to be made.

§ 76. An order for the arrest of the defendant must be obtained from a Judge of the Court in which the action is brought, or from a County Judge.

By whom to be made.

§ 77. Before making the order, the Judge shall require a written undertaking on the part of the plaintiff, with sufficient sureties to the effect that if the order be wrongfully obtained, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be fixed by the Judge, and shall not be less than five hundred dollars.

Plaintiff to give undertaking.

§ 78. The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the Sheriff of the County where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time and place therein mentioned to the Court in which the action is pending.

At what stage of action order may be made, and its requirements.

§ 79. The affidavit and order of arrest shall be delivered to the Sheriff, who, upon arresting the defendant, shall deliver to him a copy thereof.

Affidavit and order to be delivered to sheriff and copies to defendant. Order—how executed.

§ 80. The Sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law, and may call the power of the County to his aid in the execution of the arrest as in case of process.

§ 81. 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 order of arrest as provided in this chapter.

Defendant—how he may be discharged.

§ 82. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupation, 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.

Bail—how given.

§ 83. At any time before a failure to comply with their undertaking, the bail may surrender the defendant in their exoneration or he may surrender himself to the Sheriff of the county where he was arrested in the following manner:—

Surrender in exoneration of bail.

1st. A certified copy of the undertaking of the bail shall be delivered to the Sheriff, who shall detain

the defendant in his custody thereon, as upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2d. Upon the production of a copy of the undertaking and Sheriff's certificate, a Judge of the Court or County Judge may, upon 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 such application, they shall be exonerated accordingly.

Bail may arrest defendant or empower another so to do.

§ 84. 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 endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Bail to be proceeded against by action.

§ 85. In case of failure to comply with the undertaking the bail may be proceeded against by action only.

How bail may be exonerated.

§ 86. The bail may be exonerated either by the death of the defendant or his imprisonment in a State Prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the Sheriff of the county where he was arrested 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.

Sheriff to file undertaking of bail, &c.

§ 87. Within the time limited for that purpose, the Sheriff shall file the order of arrest and the undertaking of the bail in the court in which the action is pending, with his return endorsed, and shall give notice in writing to the plaintiff or his attorney, that the order and undertaking are filed. The plaintiff, within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the Sheriff shall be exonerated from liability.

Plaintiff may serve notice of not accepting bail.

Notice of justification of bail.

§ 88. On the receipt of such notice the Sheriff 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 Court, or County Judge, or Justice of the Peace, at a specified time and place, the time not to be less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking in the form prescribed for that first given.

Qualification of bail.

§ 89. The qualification of bail must be as follows :

1st. Each of them must be a resident and householder, or freeholder within the State.

2d. They must each be worth the amount stated in the order of arrest, over and above the amount of their debts, and exclusive of property exempt from execution ; but the Judge, or a Justice of the Peace, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Bail—how to justify.

§ 90. For the purpose of justification each of the bail shall attend before the Judge or a Justice of the Peace, 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 or Justice of the Peace 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.

§ 91. If the Judge or Justice of the Peace find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Clerk, and the Sheriff shall thereupon be exonerated from liability.

Deposit in lieu of bail.

§ 92. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. The Sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

Sheriff to pay deposit into court, &c.

§ 93. The Sheriff shall, within four days after the deposit, pay the same into Court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff 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 Sheriff, to collect the sum deposited, as in other cases of delinquency.

§ 94. If money be deposited as above provided, bail may be given and justified, on notice at any time before judgment, and thereupon the judge, before justification is had, shall direct in the order of allowance that the money deposited be refunded to the defendant, and it shall be refunded accordingly.

If bail afterward^s given, deposit to be refunded.

§ 95. Where money shall be 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.

Deposit may be employed to satisfy judgment.

§ 96. 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 Sheriff shall himself be liable as bail; but he may discharge himself from such liability, by the giving and justification of bail, as provided in this chapter, at any time before process against the person of the defendant, to enforce an order or judgment in the action.

Sheriff liable as bail. Liability—how discharged.

§ 97. If a judgment be recovered against the Sheriff upon his liability as bail, and an execution be returned thereon unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the Sheriff, to collect the deficiency, as in other cases of delinquencies.

Proceedings against sheriff.

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

Bail taken on arrest liable to sheriff.

§ 99. A defendant arrested may, at any time before the justification of bail, apply to the judge of the Court in which the action is pending, to vacate the order of arrest or to reduce the amount of bail, reasonable notice of the application being first given to the plaintiff. No continuance of such an application for more than one day shall be granted to the plaintiff.

Defendant may move to vacate order of arrest or reduce amount of bail. Continuance of motion.

§ 100. At the hearing of the application the defendant may be discharged from custody, or his bail exonerated for any irregularity or defect in the proceedings; but the judge shall discharge him and exonerate his bail, unless the plaintiff show clearly not only that he has a sufficient cause of action against the defendant as alleged, but also that the facts and circumstances of the case justify the issuance of the order. At the hearing either party may introduce any proper testimony.

Hearing of motion for discharge and order on such motion.

§ 101. The recovery of a judgment in the action by the plaintiff against the defendant, shall not protect the plaintiff or the parties to the undertaking given to procure the order of arrest against the claim of the defendant for damages, for wrongfully obtaining such order. In any such action for damages against him, the plaintiff shall be bound to show not only that he had a good cause of action against the defendant, but also that the facts and circumstances of the case justified the issuance of the order.

Recovery of judgment by plaintiff no bar to action for wrongful arrest.

§ 102. A defendant who has been arrested may commence and maintain an action against the plaintiff for wrongfully obtaining the order for his arrest, or against the plaintiff and his sureties on the undertaking, without awaiting the decision of the plaintiff's action against him.

Action for wrongful arrest may be commenced pending action in which arrest made.

CHAPTER VII.

Claim and delivery of Personal Property.

§ 103. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this chapter.

Plaintiff may claim immediate delivery of personal property.

§ 104. An order for the delivery of the property must be obtained from a Judge of the Court in which the action is brought, or from the County Judge.

Order for delivery—from whom obtained.

§ 105. The order may be made where it shall appear from the affidavit of the plaintiff:—

Under what conditions order to be made.

1st. 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.

2d. That the property is wrongfully detained by the defendant.

3d. The alleged cause of the detention thereof, according to his best knowledge, information, and belief.

4th. 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,

5th. The actual value of the property.

Affidavit and order to be delivered to sheriff with an undertaking for return of goods, &c.

Proceedings by sheriff.

Exceptions to sureties and proceedings thereon.

How defendant may obtain a return of the property taken.

Justification of defendant's sureties.

Qualification of sureties.

Defendant may move to vacate order.

Power of sheriff when property concealed.

Sheriff to keep property taken.

§ 106. The affidavit, with the order of the Judge endorsed thereon, shall be delivered to the Sheriff, who, before executing it, shall require of the plaintiff a written undertaking, executed by one or more sufficient sureties approved by the Sheriff, 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 Sheriff shall, when the undertaking has been given, 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, order, 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.

§ 107. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the Sheriff 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 or arrest; and the Sheriff 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 justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

§ 108. At any time before the delivery of the property to the plaintiff, the defendant may, if he does except to the sureties of the plaintiff, require the return thereof upon giving to the Sheriff a written undertaking, with two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivering 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 notice to defendant, it shall be delivered to the plaintiff upon payment of fees and expenses.

§ 109. The defendant's sureties upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a Judge or Justice of the Peace, in the same manner as upon bail on arrest; upon such justification the Sheriff shall deliver the property to the defendant. The Sheriff shall be responsible for the defendant's sureties until they justify or until justification is completed or 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.

§ 110. The qualifications of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

§ 111. At any time before the delivery of the property to the plaintiff or its return to the defendant as prescribed in the preceding section, the defendant may apply to the Judge of the Court in which the action is pending to vacate the order, giving to the plaintiff one day's notice of the application.

§ 112. If the property or any part thereof be concealed in a building or inclosure, the Sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and shall take the property in his possession; and if necessary, he may call to his aid the power of the county.

§ 113. When the Sheriff shall have taken property as in the 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.

§ 114. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Sheriff, the Sheriff shall not be bound to keep the property, or to deliver it to the plaintiff, unless the plaintiff on demand shall indemnify him against such claim by an undertaking with two or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiffs, and freeholders or householders of the county; and no claim to such property by any other person than the defendant shall be valid against the Sheriff, unless made as aforesaid; and notwithstanding such claim when so made, he may retain the property a reasonable time to demand such indemnity.

Proceedings on claims by third parties.

§ 115. The Sheriff shall file the order and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

Sheriff to file order and affidavit, &c.

CHAPTER VIII.

Injunction.

§ 116. The writ of injunction as a provisional remedy is abolished, and an injunction by order is substituted therefor. The order may be made by the Court in which the action is brought or by a Judge thereof, or by a County Judge, in the cases provided in the next section, and when made by a Judge may be enforced as the order of the Court.

Writ of Injunction abolished: order substituted.

§ 117. When it shall appear 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 during the litigation, it shall appear that the defendant is doing or threatens, or is about to do, or is procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act; and when, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

Order—in what case granted.

§ 118. The injunction may be granted at the time of commencing the action, or at any time afterwards before judgment, upon its appearing satisfactorily to the Judge or Court, by the affidavit of the plaintiff or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

Injunction—when granted.

Copy affidavit to be served.

§ 119. An injunction shall not be allowed after the defendant shall have answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the Court or Judge granting or refusing the injunction.

Injunction after answer.

§ 120. The Court or Judge shall require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the Court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the Court shall direct.

Plaintiff to give undertaking.

§ 121. If the Court or Judge deem it proper that the defendant or any of several defendants shall be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted, and the defendant may in the meantime be restrained.

Order to show cause against granting injunction.

§ 122. An injunction to suspend the general and ordinary business of a corporation shall not be granted, except by the Judge of the Court in which the action is brought.

Suspending business of a corporation.

§ 123. If the injunction be granted by a County Judge without notice, the defendant, at any time before the trial, may apply, upon notice to a Judge of the Court of the county in which the action is brought, to vacate or modify the same. The application may be made upon the complaint and the

Motion to vacate.

affidavit upon which the injunction was granted, or upon affidavits on the part of the defendant, with or without the answer.

How opposed.

§ 124. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the injunction was granted.

CHAPTER IX.

Judgment after Failure to Answer.

Judgment by default.

§ 125. If the defendant fails to appear and file his answer within the time prescribed by law, the plaintiff may take judgment by default against him.

After demurrer.

§ 126. No judgment by default can be taken until all demurrers are disposed of.

Can only be granted on motion.

§ 127. The judgment shall only be granted on motion in open Court, of which no notice need be given to the defendant, and consists merely of a statement entered on the minutes of the Court, showing that the defendant has failed to appear.

When final.

§ 128. If three days after the judgment has been rendered the defendant neither appears nor files his answer, the judgment by default may be made final, upon proof by the plaintiff of his demand. This proof is required in all cases. No judgment by default can be made final except in open Court.

Where damages are to be assessed.

§ 129. When from the nature of the demand damages are to be assessed, the cause shall be submitted to a jury in the same manner as if the defendant had answered, and the Court shall enter judgment in conformity with the verdict. In cases where the demand is liquidated, a jury need not be summoned, but the Court shall render judgment.

Where demand liquidated.

Answer may be filed at any time before final judgment.

§ 130. If the defendant, before or on the day when final judgment was to have been rendered against him, appear and file his answer, the judgment, if taken, shall be set aside, and he may file an answer at any time before the judgment is made final.

CHAPTER X.

Issues and the Mode of Trial.

When issues arise.
Their kinds.

§ 131. 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:—

- 1st. Of law.
- 2d. Of fact.

When issue of law arises.
When issue of fact arises.

§ 132. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

§ 133. An issue of fact arises:—

- 1st. Upon a material allegation in the complaint controverted by the answer; or,
- 2d. Upon new matter in the answer, except an issue of law is joined therein.

Issues of law and fact in same action.

§ 134. Issues both of law and of fact may arise upon different parts of the pleading in the same action. In such cases the issues of law must be first tried, unless the Court otherwise direct.

Trial defined.

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

Issues—how tried.

§ 136. Whenever there shall be an issue of fact, it must be tried by a jury, unless a jury trial be waived. Issues of law must be tried by the Court.

Notice of trial.

§ 137. At any time after issue, either party may give notice of trial. The party giving notice shall furnish the clerk with a note of the issue containing the title of the action and the names of the attorneys, and the clerk shall thereupon enter the cause upon the calendar.

Issues upon calendar—how disposed of.

§ 138. The issues upon the calendar shall be disposed of in the following order, unless for the convenience of parties or the dispatch of business, the Court shall otherwise direct:—

- 1st. Issues of fact to be tried by a jury.
- 2d. Issues of fact to be tried by the Court.
- 3d. Issues of law.

CHAPTER XI.

Trial by Jury.

- § 139. Juries for the trial of civil actions in the District Court shall be formed in the same manner as they are required to be formed for the trial of criminal actions. Juries how formed in district court.
- § 140. Juries for the trial of civil actions in the Superior Court of the City of San Francisco, shall be formed in the manner prescribed in the succeeding sections of this chapter. In the superior court of San Francisco.
- § 141. On the first or any subsequent day of the term, the Superior Court shall, by an entry on the minutes, direct an order to be issued to the Sheriff of the county, to summon forty-eight persons to appear forthwith, or at such time as may be named. Order to sheriff to summon persons to act as jurors.
- § 142. The Clerk shall issue the order, and the Sheriff shall execute and return it at the time specified, with a list of the names of the persons so summoned. If he has been unable to summon the whole number in the time allowed, he shall return the order with the list of names summoned. Sheriff to execute and return order.
- § 143. The court may in its discretion enlarge the time of the return and direct the Sheriff to summon the whole number, or may proceed to empanel a jury or juries from the number summoned. Court may enlarge the time to return.
- § 144. Upon the return of the order, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the court shall proceed to empanel a jury or juries for the term. If any person summoned fails to attend, without reasonable excuse, the court may impose upon him a fine, not exceeding one hundred dollars, and may compel attendance by attachment. Empanelling jury.
Penalty for failing to attend.
- § 145. The Clerk shall prepare separate ballots containing the names of those in attendance, and deposit them in a box. He shall then draw from the box twelve names, and the persons drawn shall form a jury for the term. If the court so direct, he shall continue the drawing until a second jury is drawn. When two juries are drawn, the court may direct at what time they shall each attend. Jury to be drawn by ballot.
- § 146. If there be not enough of the persons summoned in attendance to form one, or if required, two juries, the court may direct others to be summoned before the drawing, or may direct the whole number present to be put upon the jury or juries, and the deficiency to be supplied from among the bystanders. Proceedings where insufficient number of persons summoned.
- § 147. The court may excuse any individual juror or jurors at any time and direct their places to be supplied from among the bystanders; and at the end of the first week of the term, or at any subsequent time, may discharge the whole jury; or if there be two in attendance, may discharge one or both of them. Court may excuse any juror.
- § 148. Whenever a jury is discharged, another may be formed in the manner hereinbefore prescribed, and shall serve so long as the court shall require. One jury discharged, another may be formed.
- § 149. At any time during the term, the court may have two juries in attendance, or if necessary, may direct a third to be formed, which shall be done in the manner hereinbefore prescribed. Court may have two or three juries in attendance.
- § 150. The qualifications of a juror shall be the same as those prescribed by law for a grand juror. Qualifications of jurors.
- § 151. Upon the trial of a civil action, either party may challenge four jurors peremptorily; all challenges for cause shall be determined by the court or judge. Right of challenge.
- § 152. Either party giving the notice may bring the issue to trial, and in the absence of the adverse party, unless the Court for good cause shown otherwise direct, may proceed with his case and take a dismissal of the complaint, or a verdict or judgment, as the case may require. Either party giving notice may bring issue to trial.
- § 153. 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. General verdict.
Special verdict.
- § 154. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claims 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 Verdict in action to recover specific personal property.

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 render either general or special verdict. When court may direct a special verdict in writing. Special verdict to be filed.

§ 155. 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 in writing 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, and may direct a written finding thereon. The special verdict or finding shall be filed with the Clerk and entered upon the minutes.

Special finding inconsistent with general verdict.

§ 156. Where 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 jury to assess amount of recovery.

§ 157. When a verdict shall be found for the plaintiff in an action for the recovery of money only, the jury shall also assess the amount of the recovery.

Entry on receipt of verdict.

§ 158. Upon receiving a verdict, the Court shall direct an entry to be made, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment to be rendered thereon, or an order that the case be reserved for argument or further consideration.

Judgment to be entered in conformity to verdict.

§ 159. Judgment shall be entered by the Clerk in conformity to the verdict, which shall be final after the expiration of four days, unless the Court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

CHAPTER XII.

Trial by the Court.

Trial by jury—how waived.

§ 160. 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:—

1. By failing to appear at the trial.
2. By written consent in person, or by attorney, filed with the Clerk.

3. By oral consent in open court entered on the minutes; but no issue of fact, in which damages are required to be assessed, shall be tried by the Court, unless upon an express waiver of a jury by the parties or their attorneys.

Trial of question of fact by the court.

§ 161. Upon a trial of a question of fact by the Court, its decision shall be given in writing, and filed with the Clerk within two days after the trial took place. Judgment upon the decision shall be entered as upon a verdict of a jury.

Exceptions may be taken by either party.

§ 162. Either party may except to a decision in a matter of law arising upon such trial, within five days after the judgment, in the same manner, and with the like effect as upon a trial by jury; and either party desiring a review upon the evidence appearing on trial, may, before entering on the trial, require the testimony to be taken down by the Clerk in writing, and certified as in other cases.

CHAPTER XIII.

Trial by Referees.

Issues may be referred by consent.

§ 163. All or any of the issues in the action, whether of fact or of law, or both, may be referred upon the written consent of the parties.

Court may order reference when parties do not consent.

§ 164. When the parties do not consent, the Court may, upon the application of either, or of its own motion, except when the investigation will require the decision of difficult questions of law, direct a reference in the following cases:

1. Where 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,
2. Where the taking of an account shall be necessary for the information of the Court before judgment, or for carrying a judgment or order into effect; or,

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

§ 165. The report of the referees upon the whole issue shall stand as the decision of the Court, and judgment may be entered thereon in the same manner as if the action had been tried by the Court, and their decision may be excepted to, and reviewed in like manner, or a rehearing may be granted by the Court in which the judgment is entered.

Report of referees to stand as decision of court.

§ 166. In all cases of reference the parties may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly. If the parties do not agree, the Court shall appoint one or more referees, not exceeding three, who shall be free from exception, and reside in the County where the action is to be tried.

Parties may agree on referee. Parties not agreeing, court to appoint referee.

CHAPTER XIV.

Manner of entering Judgment.

§ 167. 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 determine the ultimate rights of the parties on each side as between themselves. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment may be proper. The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to have the summons served on other defendants, or to proceed in the cause against the defendant or defendants served.

Judgment may be for or against any of the parties.

§ 168. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he has demanded in his complaint, but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Amount of relief to plaintiff.

§ 169. In an action to recover possession of personal property, judgment for the plaintiff may be for the possession or for the recovery of possession or the value thereof, in case a delivery cannot be had, and of damages for the detention. 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 cannot be had, and damages for taking and withholding the same.

Judgment in action to recover personal property.

§ 170. The Clerk shall keep among the records of the court a book for the entry of judgments, to be called the "Judgment Book."

Judgment book to be kept.

§ 171. The judgment shall be entered in the judgment book, and shall specify clearly the relief granted or other determination of the action; upon the expiration of four days the judgment shall be signed by the Judge, after which execution may issue.

Judgment—how entered.

CHAPTER XV.

The Execution.

§ 172. A judgment shall create no lien upon the property of the judgment debtor, unless a transcript thereof be filed for record in the office of the Recorder of Deeds. From the time of such filing the judgment shall bind all the real estate of the debtor within the county in which the transcript is so filed: *Provided*, that if no execution be issued on the judgment within six months, the lien shall be lost.

Judgment to create no lien until transcript filed.

When lien lost.

§ 173. The party in whose favor judgment shall be given may, at any time within five years after the entry of the judgment, proceed to enforce the same as provided by this Act.

Judgment—when it may be enforced.

§ 174. After the lapse of five years from the entry of judgment, an execution may be issued only by leave of the court, on motion, with notice to the adverse party. Such leave shall not be given unless it shall be established by the oath of the party or other proof that the judgment or some part thereof remains unsatisfied and due.

Issuing execution after lapse of five years.

§ 175. Where a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided by this Act. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against

Judgments—how enforced.

whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for a contempt.

Kinds of execution.

§ 176. 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.

To what sheriff to issue.

§ 177. When the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in this State. When it requires the delivery of real or personal property, it must be issued to the Sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

Execution against the person—when it may issue.

§ 178. If the action be one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county in the State, after the return of an execution against his property, unsatisfied in whole or in part.

Form of execution.

§ 179. The execution must be signed by the Clerk, and be under the seal of the Court. It must be directed to the Sheriff, or to the Coroner when the Sheriff is a party interested, and shall refer intelligibly to the judgment, stating the court, the names of the parties to the action, the date and amount of the judgment if it be for money, and the amount actually due thereon, and shall require the officer substantially as follows:—

1st. If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor, and if sufficient personal property cannot be found, out of his real property.

2d. If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor and commit him to the jail of the county until he shall pay the judgment or be discharged according to law.

3d. If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same (particularly describing it) to the party entitled thereto, and may at the same time require the officer to satisfy any costs, 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 therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of his real property.

When returnable.

§ 180. The execution shall be returnable at such time as the plaintiff or his attorney may direct, which shall not be less than forty days nor more than six months.

Lien on personal property.

§ 181. An execution shall create no lien, except upon personal property actually levied upon, and from the day the levy is made.

Execution docket.

§ 182. The Clerk shall keep an execution docket, in which he shall enter an abstract of all executions issued by him, setting forth the names of the parties, the character of the writ, the amount, if it be for money, the date of the judgment, with a reference to the page of the record on which it is entered, the date of the execution, the officer to whom it was issued, and the return made upon the execution.

Irregular executions may be set aside.

§ 183. Any execution issued irregularly or wrongfully, may be set aside by the Judge of the Court from which it issued, on motion and five days' notice thereof given to the opposite party or his attorney.

CHAPTER XVI.

Levy of Execution and Sale.

What property liable to execution.

§ 184. The following property shall be liable to be seized and sold upon execution:—

1st. All goods and chattels not exempt by law.

2d. The rights and shares of a defendant in the stock of any incorporated company or association.

3d. Any current gold or silver coin, or gold dust, which shall be returned by the officer as so much collected, without exposing the same to sale.

4th. All the real estate not exempted by law, whereof the defendant, or any person for his use, was seized on the day of the rendition of judgment or at any time thereafter.

§ 185. Upon the receipt of any execution, it shall be the duty of the officer to endorse thereon the year, month, day, and hour of the day when he received the same.

Time of receipt of execution to be endorsed by officer.
Goods and chattels in pledge.

§ 186. When goods and chattels shall be pledged for the payment of money, or the performance of any contract or agreement, the rights and interest in such goods of the person making such pledge may be sold on execution, and the purchaser shall acquire all the right and interest of the defendant, and shall be entitled to the possession of such goods and chattels on complying with the terms and conditions of the pledge.

§ 187. Any share or interest of a stockholder in any joint stock company may be levied upon or attached by leaving an attested copy of the writ with the officer or person who has at the time the custody of the books and papers of the company; and any share or interest so levied upon or attached, with all the dividends that shall thereafter accrue, shall be held and sold to satisfy the judgment in like manner as other property.

Shares in joint stock companies.

§ 188. If the officer having an execution or attachment against any such stockholder shall exhibit the writ to the officer of the company appointed to keep a record or account of the shares or interest of the stockholders therein, and shall request a certificate of the number of shares, or amount of interest held by the defendant, such officer of the company shall give such certificate to the person holding the writ; and if he shall refuse to do so, or if he give a false certificate, he shall be liable for double the amount of all damages sustained by reason of such refusal or false certificate, unless the judgment is satisfied by the original defendant.

Proceedings on execution or attachment against stockholders in joint-stock companies.

§ 189. The person against whom an execution for money is issued shall have the right to designate the property to be levied upon. If he does so, the officer shall levy upon such property and no other, if in his opinion it is sufficient; if it is not, then upon such additional property as shall be sufficient. If the defendant in execution cannot be found, or refuses to make any designation of property, the officer shall levy upon any of his property, as required by the writ.

Execution debtor may designate property to be levied upon.

§ 190. When personal property is levied upon, the defendant may retain possession thereof until the day of sale, by giving an undertaking in double the value of the property to the officer, with sufficient sureties, to be approved by him, for the delivery of the property to such officer at the time and place of sale to be named in the undertaking.

When property levied on may be left in custody of defendant.

§ 191. If the property be not delivered according to the undertaking, the officer may seize any property of the defendant which is subject to the execution, and sell it; if personal property, on three days' notice; if real estate, on ten days' notice, to satisfy the execution.

Property so left not delivered up.

§ 192. If the property be not delivered according to the undertaking, and the execution be returned unsatisfied in whole or in part, the plaintiff may, on any day of the next term of the Court, by motion and without notice, obtain judgment on the undertaking against the parties thereto, or any of them.

Judgment on undertaking to deliver up property.

§ 193. No sale of personal property shall be made by virtue of any execution, unless previous notice of such sale shall have been given five days successively, by posting up notices thereof in three public places in the county where the sale is to be had, specifying the time and place where the same is intended to be had and the property to be sold.

Notice of sale to be given.

§ 194. Sales of personal property under execution shall be made at some public place in the county where it is found, to be designated by the officer in his notice.

Where sales to take place.

§ 195. If in any case where an officer has an execution against property there is any reasonable doubt as to the ownership of such property, or as to its liability to be taken on the execution, the officer may require sufficient surety to indemnify him for levying upon such property.

Cases of doubtful ownership of property.

§ 196. No personal property shall be offered for sale, unless the same be present and within view of those attending the sale: *Provided*, that horses and cattle which may have the mark or brand of the defendant in the execution, may be sold without being present or in view of those attending. Such property shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price.

Personal property to be exhibited at sale. Proviso.

Real estate—
where to be sold.

§ 197. When real estate has been taken in execution, it shall be sold at the county seat of the county in which it is situated, and at the Court-house door, or at the door of the house in which the County Court is usually held.

Notice of sale.

Notice of such sale shall be given as follows :

1st. A written or printed notice thereof shall be posted up at least twenty days before the sale in these public places in the county. The notice shall intelligibly refer to the execution, and shall state the time and place of the sale, and describe the property to be sold with common certainty by metes and bounds, or by some other appropriate description.

2d. A copy of such notice shall be published for two successive weeks in some newspaper published in the county, if there be one.

Real estate—
how to be put up
for sale.

§ 198. When real estate, offered for sale by virtue of any execution, shall consist of any known lots, tracts, or parcels, the same shall be separately exposed for sale by the officer, and no more of any real estate shall be exposed to sale than shall appear to be necessary to satisfy the execution.

Penalty for sell-
ing without
notice.

§ 199. Any officer who shall sell any real estate without the previous notice herein required, or otherwise than in the manner prescribed, shall forfeit one thousand dollars to the party injured, in addition to any damages which such party may sustain ; but the omission of such officer to give notice of the sale, or the taking down or the defacing the notice, shall not affect the validity of any sale made to a purchaser in good faith, without notice of such omission or offence.

Sheriff or his
deputy not to be
a purchaser.

§ 200. No Sheriff or other officer to whom any execution shall be directed, nor the deputy of such Sheriff or officer holding any execution, and conducting any sale of property in pursuance thereof, shall directly or indirectly purchase any property whatever at any sale by virtue of such execution, and all purchases made by him, or them, or by any other person to his or their use, shall be void.

Sales to be at
auction, &c.

§ 201. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine o'clock in the forenoon and sunset of the same day. If the sale cannot be concluded on the day for which it is advertised, it may be continued from day to day until concluded.

When property
may be resold.

§ 202. If any purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer making the same may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer shall recover the amount of such loss with costs, by motion before any Court, or before any Justice of the Peace, if the same shall not exceed his jurisdiction, five days' notice of the motion having been given.

Proceedings
against pur-
chaser refusing
to complete.

§ 203. Such Court or Justice shall proceed in a summary manner and give judgment, and issue execution therefor forthwith, and the same proceedings shall be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

Extent of officer's
liability.

§ 204. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Delivery of prop-
erty to pur-
chaser.

§ 205. When the purchaser of any goods or chattels shall pay the purchase money, the officer selling the same shall deliver him the property, and if desired, shall execute an instrument of writing, drawn and delivered to him at the expense of the purchaser, setting forth the sale and payment of the purchase money, and conveying to the purchaser all the right, title, and interest which the debtor had in and to the property sold on the day the execution was levied.

Transfer of
shares of stock
by sheriff.

§ 206. When any right or shares of stock in any company or corporation shall be sold, the officer making the sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares, and shall also leave with the cashier, secretary, or chief clerk or other agent of such corporation or company, a copy of the execution and his return thereon, and the purchaser shall thereupon be entitled to all dividends and stocks, and the same privileges as a member of such company or corporation as such debtor was entitled to.

§ 207. The officer who shall sell any real estate or lease of lands and tenements for more than one year, shall make to the purchaser a deed, to be paid for by the purchaser, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order, or decree, and other particulars as recited in the execution, also a description of the property, the time, place, and manner of sale, which recital shall be received as evidence of the facts therein stated. The deed shall convey to the purchaser all the right, title, and interest, which the defendant had at the time of the filing of the transcript of the judgment in the Recorder's office; or, if it has not been filed, at the time of the levy of the execution; and shall be acknowledged by the officer as other conveyances of real estate.

Deed to purchaser of real estate.

§ 208. The Sheriff shall return every execution at the time therein directed, endorsing on it a certificate of his acts done under authority of the writ.

How sheriff to return writ.

§ 209. Whenever any Sheriff shall vacate his office, leaving any writ unexecuted, or any act unperformed in relation thereto, his successor shall have power to proceed in like manner as if such writ had been directed to himself.

Sheriff may execute writs directed to his predecessor.

§ 210. If any officer to whom any execution shall be delivered, shall refuse or neglect to execute or levy the same according to law, or shall neglect or refuse to make sale of property so levied upon, or shall make a false return to the writ, he shall be liable and bound to pay the whole amount of the execution; and if he shall not, on the return of the execution, or at the time the same ought to be returned, have the money which he shall have thus become liable to pay before the Court, and pay the same according to the requirement of the writ, the execution creditor may obtain judgment against him and the sureties on his bond, by motion in the court from which the writ issued, with damages thereon, five days' notice of the motion having been first given.

Penalty on sheriff for neglect of duty.

CHAPTER XVII.

Proceedings supplementary to the Execution.

§ 211. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, shall be returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a Judge of the Court, or a County Judge of the Court in which the debtor resides, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by a Judge of the Court, at a time and place specified in the order.

When judgment creditor entitled to an order to examine the judgment debtor.

§ 212. After the issuing of an execution against property, and upon proof by affidavit to the satisfaction of the Court, or a Judge thereof, or County Judge, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court or Judge may by an order require the judgment debtor to appear at a specified time and place, to answer concerning the same, and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment, as are provided upon the return of an execution.

Order for the examination of the judgment debtor.

§ 213. Instead of the order requiring the attendance of the judgment debtor, the judge may, if it appear to him that there is danger of the debtor's absconding, issue a warrant under his hand, requiring the Sheriff of any county where such debtor may be, to arrest him and bring him before such judge. Upon being brought before the judge, he may be examined on oath, and ordered to enter into an undertaking with sufficient surety that he will attend, from time to time, before the judge or referee, as he shall direct, during the pendency of the proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant under the hand of the judge.

Judgment debtor may be arrested in certain cases.

§ 214. Nothing in the three preceding sections shall authorize the examination of the debtor before a Judge of any other county than that in which the debtor resides, or in which he may be at the time the order is issued and served.

Judgment debtor can only be examined in county of his residence.

Debtors to judgment debtors may pay amount to sheriff.

§ 215. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the Sheriff's receipt shall be a sufficient discharge for the amount so paid.

Persons alleged to be indebted to judgment debtor may be examined.

§ 216. Upon an affidavit that any person, or corporation, or company, has property of any judgment debtor, or is indebted to him, the judge may by an order require such person, or corporation, or company, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The judge may also in his discretion require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

Attendance of witnesses.

§ 217. Witnesses may be required to appear and testify on any proceedings under this chapter, in the same manner as upon the trial of an issue.

Party or witness may be required to attend before judge or referee. Examinations to be made on oath.

§ 218. The party or witness may be required to attend before the judge, or before a referee appointed by the Court or judge; and if before a referee, the examination shall be taken before him, and certified to the judge. All examinations before a judge or referee under this chapter, shall be on oath, except that when a company or corporation answers, the answer shall be on the oath of a member or officer thereof.

Judge may order property to be applied to satisfy judgment.

§ 219. The Judge may order any property of the judgment debtor not exempted from execution in the hands either of himself or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Receiver may be appointed.

§ 220. The Judge may also by order appoint a receiver of the property of the judgment debtor, and may also by order forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith.

Alleged debtors to judgment debtor denying indebtedness, &c.

§ 221. If it appear that a person, company, or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt shall be recoverable only in an action against such person, company, or corporation, by the receiver; but the Judge may by order forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution; but such order may be modified or dissolved by the Judge granting the same at any time on such security as he shall direct.

Reference as to facts.

§ 222. The Judge may in his discretion order a reference to a referee agreed upon or appointed by him, to report the evidence of the facts.

Witnesses' fees to party examined.

§ 223. The Judge may allow to the judgment creditor or to any party so examined (whether a party to the action or not), witnesses' fees and disbursements, and a fixed sum in addition, not exceeding in all thirty dollars as costs.

Disobeying order.

§ 224. If any person, party, or witness, disobey an order of the Judge or referee duly served, such person, party, or witness, may be punished by the Judge as for a contempt.

CHAPTER XVII.

Of the Costs in Civil Actions.

Compensation of attorneys—how fixed.

§ 225. The measure of the compensation of attorneys shall be left to the agreement express or implied of the parties.

Costs of course to plaintiff.

§ 226. Costs shall be allowed of course to the plaintiff upon a recovery in the following cases:—

1st. In an action for the recovery of real property, or when a claim of title to real property arises on the proceedings or is certified by the Court to have come in question upon the trial.

2d. In an action to recover the possession of personal property.

3d. In an action for the recovery of money, unless where it is otherwise expressly provided by law; but in an action for assault, battery, false imprisonment, libel, slander, or malicious prosecution, if the plaintiff recover less than fifty dollars, he shall recover no costs.

§ 227. Costs shall be allowed of course to the defendant in the actions mentioned in the last section, unless the plaintiff be entitled to costs therein. Costs of course to defendant.

§ 228. In other actions, and on all motions or other proceedings, where it is not otherwise expressly provided, costs may be allowed in the discretion of the Court. Costs in discretion of court.

§ 229. Where there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the Court may award costs to such of the defendants as have judgment in their favor, or any of them. Costs of separate defences.

§ 230. The term "costs" as used in this Act, shall be construed to include all fees of officers, jurors, and witnesses, and all disbursements for any necessary publication of any order or process. Costs defined.

CHAPTER XIX.

Depositions and Testimony taken under Commissions.

§ 231. The District Judge of each district may appoint for each county in his district, any number of commissioners to take testimony, not exceeding three, who shall hold office for one year. Before proceeding to act they shall take and subscribe the oath of office and file it in the Court. Commissioners to take testimony to be appointed.

§ 232. The commissioners shall severally have power to issue subpoenas to witnesses and to enforce their attendance by attachment, to administer all necessary oaths, and to take and certify the depositions of witnesses or their answers to interrogatories. Powers of commissioners.

§ 233. Any party to an action may take the deposition of a witness within the county in which the action is pending, by giving reasonable notice to the opposite party or his attorney, of the time and place at which the witness will be examined before a commissioner. The notice shall state the title of the cause in which the evidence of the witness will be used, and the name of the commissioner. Either party may take the deposition of a witness within the county.

§ 234. Upon the application of any person to one of the commissioners, he shall subpoena any witness within the county to appear before him at a time and place to be fixed by the subpoena, and may compel attendance by attachment. The Sheriff of the county shall execute and return any subpoena or attachment issued to him by a commissioner in the same manner as if it was issued by the court. Commissioners to issue subpoena.
Sheriff to serve same.

§ 235. Upon the appearance of the witness, the commissioner, upon being satisfied that reasonable notice has been given to the opposite party or his counsel to attend, shall proceed to take the deposition of the witness, who, after being duly sworn, may be examined and cross-examined by the parties or their counsel in the same manner as if examined on a trial in open court. The deposition when completed shall be read over to the witness and signed by him. The commissioner shall then certify to the deposition, and within five days shall file it in the court in which the action is pending. The Clerk who receives it, shall endorse the time of its filing and the name of the commissioner by whom it was delivered to him. Commissioner to take deposition of witness and file same.

§ 236. The deposition of a witness taken in the manner prescribed in the preceding section, shall only be used in evidence on the trial when the witness is a female, or when it is shown by the party offering it to the satisfaction of the court:— When such deposition may be read on the trial.

- 1st. That the witness is without the county in which the action is pending ; or,
- 2d. That he is from sickness or infirmity unable to attend in person ; or,
- 3d. That he is dead.

§ 237. When any party to an action desires to take the testimony of a witness residing out of the county in which the action is pending, he may file his interrogatories in writing propounded to the witness, and serve upon the opposite party or his attorney a notice that such interrogatories have been filed. The notice shall state the name and residence of the witness, and the title of the action in which the answers will be used. A copy thereof shall be served by the Sheriff, who shall return and file in court the original notice with his certificate endorsed thereon, showing the time and manner of service. Taking testimony of witness out of the county.

§ 238. Within five days after the service of the notice, the opposite party may file cross-interrogatories to the witness. Cross-interrogatories.

- Commission to issue.** § 239. Upon the expiration of five days after the service of the notice, the party desiring to take the testimony of the witness may obtain from the Clerk a commission directed generally to the County Judge of the county in which the witness is alleged to reside, or any commissioner or notary public or other officer thereof, competent by law to take the answers of a witness to interrogatories. The commission shall be under the hand of the Clerk and seal of the court, and shall empower the officer to take his answers to the interrogatories and cross-interrogatories, if any, a copy of which certified by the Clerk shall be attached to the commission.
- Commission—how executed.** § 240. The commission may be executed by any officer authorized to execute it, into whose hands it may be delivered.
- Testimony—how taken.** § 241. When the witness appears before the commissioner, he shall, the witness having been first duly sworn, proceed to take and reduce to writing his answers to each interrogatory and cross-interrogatory; when completed, the answers shall be read over to the witness, and corrected if necessary, subscribed by him, and certified by the commissioner under his hand and seal, if he have one.
- Commission—how returned.** § 242. The commissioner shall then seal up the commission, interrogatories, and cross-interrogatories and answers, in an envelope, writing his name across the seal, and direct and forward the package to the Clerk of the court from which the commission issued, endorsing on the envelope the style of the action in which the testimony is taken.
- Opening commission.** § 243. When the package has been received by the Clerk, it may be opened by him at the request of either party, or his attorney, an endorsement of such request being made by the Clerk.
- Certificate of commissioner evidence.** § 244. The certificate of the officer taking any deposition or answers under the provisions of this chapter, shall be presumptive evidence of the facts stated in the certificate.
- Testimony of witness residing out of the state.** § 245. When a witness resides out of the State, his testimony may be taken by filing interrogatories in the same manner as is herein provided for taking the answers of a witness who resides in another county, except that the commission shall be addressed to, and may be executed by, any commissioner to take acknowledgments of deeds, appointed under the authority of this State, or any Notary Public, or any Judge or Clerk of any Court of Record of any one of the United States, or any foreign State or country.
- Proceedings to perpetuate testimony.** § 246. Where there is no action pending, but where any person desires to perpetuate the testimony of a witness, he may file interrogatories in the District Court of any county in which any person to be affected by the testimony resides, or is found, and may have notice served on such person, and may proceed in all respects as is provided in this chapter in regard to the taking of the answers of a witness out of the court. When executed, the commission shall be returned to and remain filed in the court from which it issued. In any action in any Court of this State, between the person filing the interrogatories and any person to whom notice has been given or prescribed in this chapter, the testimony of the witness so examined may be used in evidence subject to the same exceptions which might be made if the answers were taken in an action pending at the time: *Provided*, that the witness be not at the time of the trial a resident of the county in which the action is tried.
- Proviso.** § 247. Depositions and answers to interrogatories when admitted to be read in evidence, shall be subject to all exceptions and objections which might be made if the witness were personally present at the trial; but when any deposition or answer shall have been filed three days before the trial, notice in writing shall be filed of all exceptions thereto, before the trial is commenced, or the exceptions shall not be heard.
- Exceptions to depositions admitted to be read in evidence.** § 248. Every person acting in this State as a commissioner to take depositions or answers, shall be entitled to the following fees for his services: For each certificate two dollars: for taking depositions or answers, for each folio, one dollar.
- Fees to commissioners.** § 249. Where depositions or answers are taken in any action, but are not admitted or used on a trial, the party taking them shall not recover the costs thereof.
- No costs allowed for depositions not read.** § 250. No female shall be required to attend any court as a witness, nor shall any person be required to attend as a witness any court held out of the county in which he resides.
- Attendance of female witnesses and non-residents.**

CHAPTER XX.

New Trials.

- § 251. The court may revise their judgment by granting a new trial in the cases hereafter provided. Court may grant new trial.
- § 252. The party who believes himself aggrieved by the judgment against him, may, within four judicial days after such judgment has been rendered, pray for a new trial, which must be granted if there be good ground for the same. Motion for new trial—when to be made.
- § 253. The party demanding a new trial must set forth the grounds on which he rests his demand, and the same must be filed, entered on the records of the court, and notified to the adverse party, in order that he may answer within the delay prescribed for answering. Grounds of application must be set forth.
- § 254. A new trial shall be granted :— When new trial shall be granted.
- 1st. If the judgment appear clearly contrary to law and evidence.
- 2d. If the party has discovered, since the trial, evidence important to the cause which he could not with due diligence have obtained before.
- 3d. If the cause has been tried by a jury, and it be shown that the jury has been bribed or has behaved improperly, so that impartial justice has not been done in the cause.
- 4th. New trials may be granted without motion in the sound discretion of the court.
- § 255. If a new trial be prayed for on the ground of new evidence having been discovered, or on account of bribery or misconduct of the jury, or of the adverse party, the party praying for the new trial must, on filing his motion, annex to the same his affidavit of the facts alleged in proof of the bribery or misconduct of the jury, or his having discovered the evidence material to his suit since judgment was rendered, although he had before used his utmost diligence to procure the necessary testimony. This affidavit must be filed in the records. New trial on ground of newly discovered evidence.
- § 256. It is not necessary that the party should make an affidavit, when the motion for a new trial is made on the ground that the judgment is contrary to law and evidence. When affidavit unnecessary.
- § 257. The court shall decide summarily on such applications. If a new trial be granted, the cause shall again be placed on the calendar, and on the new trial the parties shall not be precluded from producing new proof, on the ground of the same not having been offered on the first trial. Court to decide summarily on applications.

CHAPTER XXI.

Appeals.

- § 258. In all cases in which an appeal lies from the District Court to the Supreme Court, the appeal may be taken by any person interested at any time within two years after the judgment is rendered. No appeal shall lie from any but a final judgment. Appeals to supreme court—within what time.
- § 259. The appeal shall be made by serving on the adverse party or his attorney, and filing with the clerk of the court in which the judgment is entered, a notice stating the appeal. The Judge who tried or heard the cause, or one of the Justices of the Supreme Court, may order a stay of the proceedings upon the judgment until the expiration of the time allowed for preparing and filing a statement of facts. At the time of filing the notice, the appellant shall pay to the clerk his fees for making up the transcript of the record in the case. Until his fees are paid, the clerk shall not be bound to receive or file the notice. Appeal only from final judgment. Appeal—how made.
- § 260. To render an appeal effectual, a written undertaking must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages that may be awarded against him on the appeal, not exceeding five hundred dollars, or that sum must be deposited in the District Court to abide the event of the appeal; but such undertaking or deposit may be waived by a written consent on the part of the respondent. Undertaking to be given.
- § 261. If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to Stay of execution on judgment directing payment of money.

which the judgment shall be affirmed, if it be affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal.

On judgment directing execution of deed, &c.

§ 262. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited in the court in which the judgment is entered, to abide the judgment of the Supreme Court.

On judgment directing any other act.

§ 263. If the judgment or order appealed from direct the performance of any act other than the payment of money or the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by appeal, unless a written undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the District Judge or one of the Justices of the Supreme Court shall, on notice to the respondent of at least one day, direct, that the appellant will obey the judgment or order of the Supreme Court upon the appeal.

Qualification of sureties.

§ 264. The sureties must be residents of the county in which the judgment is rendered, and each must be worth of property within the county the amount specified in the undertaking, or the whole number of sureties, if more than two, must be worth of such property in the aggregate double such amount. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they have the qualifications required by this section.

Undertaking, &c., to be filed.

§ 265. The undertaking upon an appeal, and the affidavit accompanying it, must be filed in the court in which the judgment appealed from was entered.

On appeal being perfected, proceedings in court below stayed.

§ 266. Whenever an appeal shall be perfected, as provided in Sections Two Hundred and Sixty-one, Two Hundred and Sixty-two, and Two Hundred and Sixty-three, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, and upon execution or process to enforce it.

Exception to sureties on appeal, &c.

§ 267. The respondent may except to the sufficiency of the sureties on the appeal within five days after notice of the appeal, by serving a notice of exception on the adverse party or his attorney, and unless such sureties, or other sureties to a new undertaking, justify before the Judge or Clerk of the Court below, or a County Judge, or one of the Justices of the Supreme Court, within five days after such notice of exception, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than one day.

Sureties—how to justify.

§ 268. For the purpose of justification, each of the sureties shall attend before the Judge at the time and place mentioned in the notice of justification, and may be examined on oath on the part of the respondent touching his sufficiency, in such manner as the Judge, in his discretion, may think proper.

Allowance of sureties.

§ 269. If the Judge or Clerk find the sureties sufficient, he shall make a certificate of the allowance of them, and such certificate, together with their examination, shall be filed in the Court.

Amendment of proceedings on appeal.

§ 270. When a party shall give, in the manner prescribed in this Act, in good faith, notice of appeal from a judgment, and has omitted, or shall omit, through mistake, to do any other act necessary to perfect the appeal, or to stay proceedings, the Supreme Court, and each of the Justices thereof, in vacation, may permit an amendment upon such terms as shall be just.

On trial, clerk may be required to take down testimony.

§ 271. On the trial in the Court below, any party may require the Clerk to take down a testimony in writing; when so taken down, it shall serve as a statement of facts, unless the parties afterwards agree to one.

When testimony has not been taken down, statement of facts to be prepared.

§ 272. When the testimony has not been taken down, a statement of facts proved on the trial, or of the testimony given, may be prepared by the appellant, and a copy thereof served on the adverse party, or his attorney, within five days after the trial. The respondent may, within three days thereafter, prepare amendments thereto, and serve a copy on the appellant, who may then, within two days, serve the opposite party with a notice to appear, within not more than four nor less than two days, before the Judge who tried the cause, to have the statement and amendments settled; and such Judge shall thereupon settle and correct the same as he shall deem to consist with the truth of the facts, and cause it to be filed in the proper office.

§ 273. If the appellant shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit within the several times above limited—the one party to propose amendments, the other to notify an appearance before the Judge,—they shall respectively be deemed, the former to have agreed to the statement as proposed, and the latter to have agreed to the amendments as proposed.

Waiver of right to make statement, &c.

§ 274. The several periods of time, above limited, may be enlarged, upon good cause shown, by the Judge before whom the cause was tried, or by one of the Justices of the Supreme Court.

Time may be enlarged.

§ 275. As soon as an appeal has been taken and perfected, as prescribed by this Chapter, and so soon as a statement of facts has been filed, or the time has expired within which it can be filed, the Clerk of the Court from whose judgment the appeal is taken, shall make up a full and complete transcript of the record of the cause, which shall comprise the judgment, and all orders of the Court, all the pleadings, and the papers connected therewith, the testimony if taken down, or statement of facts if there be one, and all other papers filed in the cause which shall be necessary to present the whole cause clearly to the Appellate Court; and he shall certify the same under his hand and the seal of his Court to be a full and accurate transcript of the record.

Return of proceedings to appellate court.

§ 276. It shall be the duty of the Clerk to file the transcript of the record with the Clerk of the Supreme Court at the earliest day practicable. The Supreme Court, on motion, if the record be shown by affidavit to be incomplete, may require the Clerk of the Court below to certify the same more fully.

Such return to be filed. Amended return.

§ 277. The hearing of appeals shall be noticed for the first day of term, by a notice of at least four days, and may be noticed and brought on by either party. The party giving such notice shall, at least two days before the first day of term, file with the Clerk a note of issue containing the title of the cause, the date of the judgment appealed from, together with the names of the respective attorneys of the parties. The Clerk shall make up a calendar of the causes for argument, according to the respective dates specified in the notes of issue.

Noticing appeal for hearing.

Note of issue.

Calendar.

§ 278. At the opening of the argument in the Supreme Court, each party shall furnish each of the Justices, the Reporter, and the adverse party, with a note of the points or questions intended to be made, with references to the authorities intended to be cited. No other papers whatever shall be required to be furnished.

Points to be furnished.

§ 279. The Supreme Court may reverse, affirm, or modify any judgment, order, or determination, appealed from in whole or in part, and as to any or all of the parties, may grant new trials, and render such judgment as substantial justice shall require, without regard to formal or technical defects, errors, or imperfections, not affecting the very right and justice of the case. The Court shall review any intermediate order involving the merits and necessarily affecting the judgment. When from the character of the record no tangible point is presented for determination, the Court may remand the cause for a new trial in the Court below.

Power of court on appeal.

§ 280. After an appeal shall have been heard and determined, the judgment or order of the Supreme Court therein, and all things concerning the same, shall be remitted to the District Court of the proper county, and thereupon such further proceedings shall be had in that Court as may be necessary to carry such judgment or order into effect.

Remittitur of proceedings.

§ 281. The opinion of the Supreme Court shall always be given in writing, and shall be filed and preserved in the Court.

Supreme court to give opinion in writing.

§ 282. If the judgment of the Court below be affirmed, it shall be with costs; if reversed, the appellant shall recover his costs from the respondent. If a new trial be ordered, costs shall be allowed in the discretion of the Court.

Costs of appeal.

§ 283. When the judgment of the Supreme Court is remitted to the Court below, the clerk of the Supreme Court shall certify the costs of the appeal, setting forth each item thereof.

Clerk to certify costs of appeal.

§ 284. If a party appeal from a judgment against him for money, and the Supreme Court be satisfied that the appeal was taken merely for delay, upon an affirmance of the judgment, such Court may

Damages in addition to costs.

give judgment against the appellant for twenty per cent. damages upon the amount of the judgment of the Court below.

Judgment on undertaking of appellant.

§ 285. If any appellant fails to comply with the conditions of his undertaking given by the appeal, within twenty days after the judgment of the Supreme Court has been remitted to the Court below, and after a copy of the judgment has been served upon him, judgment in the Court below may be obtained by the respondent against the parties in the undertaking by motion, upon ten days' notice thereof, or the respondent may maintain an action against the parties.

CHAPTER XXII.

Miscellaneous Provisions.

All decisions may be excepted.

§ 286. All decisions of the Court on any point of law arising in the cause (except final judgments) may be excepted to.

Party excepting to draw bill of exceptions.

§ 287. The party excepting to a decision of the Court must draw a bill of exceptions, in which the question on which the decision has been given, and all facts necessary to a clear understanding of the same, shall be concisely set forth.

Settling bill of exceptions.

§ 288. The bill of exceptions must be exhibited to the adverse party, who may object to any error in the statement therein contained. It shall then be presented to the Court, who, after correcting it, if erroneous, shall sign the same, and direct the clerk to file it among the records of the suit.

Bill of exceptions to be presented for signature, &c.

§ 289. No bill of exceptions shall be signed by the Judge, unless it is presented to him within five days after the rendition of final judgment. No more than two days shall be allowed to the Court for the consideration of the same. Upon the trial, either party may present to the Court written instructions, and ask that they be given to the jury. If correct and pertinent, they shall be given; if not, refused.

Endorsement on written charge.

§ 290. Upon each charge so presented, the Court shall endorse its decision. If part be given and part refused, the Court shall distinguish, showing by the endorsement what part of the instruction was given and what refused.

Instructions to be filed, &c.

§ 291. The instructions shall then be filed, and shall form part of the record of the cause; and as to all questions of law presented therein, and the decision of the Court on each, shall be deemed a bill of exceptions.

Submission of controversy without suit.

§ 292. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a statement of the facts upon which the controversy depends, and present a submission of the same to any Court which would have jurisdiction if the action had been brought. But it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties. The Court shall thereupon hear and determine the same at a general term, and render judgment thereon as if the action were depending.

Judgment by confession.

§ 293. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability, on behalf of the defendant or both, in the following manner:—

1st. A statement in writing must be made by the defendant, for the amount of which judgment may be entered, and authorize the entry of judgment thereon.

2d. If it be for money due or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due or to become due.

3d. If it be for the purpose of securing the plaintiff against liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

Inspection and admission of documents.

§ 294. Either party may exhibit to the other or to his attorney at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party or his attorney fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove the same, and it be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party

refusing the admission, unless it appear to the Court that there were good reason for the refusal. The Court before which an action is pending, or a Judge thereof, may in their discretion and upon due notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents, in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the Court on motion may exclude the paper from being given in evidence, or punish the party refusing, or both.

§ 295. No action to obtain discovery under oath in aid of the prosecution or defence of another action shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except as herein prescribed.

Action to obtain discovery not allowed.

§ 296. A party to an action may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify either at the trial, or conditionally, or upon commission.

Party to action may be examined as a witness.

§ 297. The examination, instead of being had at the trial, may be had at any time before the trial, at the option of the party claiming it, before a Judge of the Court, a commissioner, or other officer authorized to take the testimony of a witness. A notice shall be given to the party to be examined, and any other adverse party, of at least five days, unless for good cause shown the Judge order otherwise. But such party shall not be compelled to attend in any other county than that of his residence.

Party may be examined before the trial.

§ 298. The party to be examined may be compelled to attend in the same manner as a witness, and the examination shall be taken and filed by the officer or person taking the same, and may be read by either party on the trial.

Party compellible to attend in like manner as witness.

§ 299. The examination of the party thus taken may be rebutted by adverse testimony.

Testimony may be rebutted. Penalty for refusing to attend.

§ 300. If a party refuse to attend and testify as herein provided, he may be punished as for a contempt, and his complaint or answer may be stricken out.

§ 301. A party examined by an adverse party, as herein provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or discharge, when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf, in respect to such new matter, and shall be so received.

When party may be examined on his own behalf

§ 302. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner and subject to the same rules as if he were named as a party.

Party for whose benefit action prosecuted may be examined.

§ 303. A party may be examined on behalf of his co-plaintiff or co-defendant; but the examination thus taken shall not be used on behalf of the party examined; and whenever one of several plaintiffs or defendants who are joint contractors, or who are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer themselves as witnesses to the same cause of action or defence, and shall be so received.

Co-plaintiff or co-defendant may be examined

§ 304. No person offered as a witness shall be excluded by reason of his interest in the event of the action.

Interest not to exclude a witness.

§ 305. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended, nor to any assignor of a thing in action, assigned for the purpose of making him a witness.

Last section—when not to apply.

§ 306. No black, or mulatto person, or Indian, shall be permitted to give evidence in any action to which a white person is a party, in any Court of this State. Every person who shall have one eighth part or more of negro blood, shall be deemed a mulatto; and every person who shall have one half Indian blood, shall be deemed an Indian.

When black, mulatto, or Indian, not to give evidence.

§ 307. The time within which an act is done, as herein provided, shall be computed by excluding the first day and including the last; if the last day be Sunday, it shall be excluded.

Computation of time.

Laws of other states, &c., evidence.

§ 308. Printed copies in volumes of statutes, code, or other written law, enacted by any other State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the Courts and judicial tribunals of such State, Territory, or Government, shall be admitted by the Courts and officers of this State on all occasions as presumptive evidence of such laws. The written or common law of any other State or Territory, or foreign government, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their Courts, may also be admitted as presumptive evidence of such law.

Parties to proceedings to enforce a mortgage.

§ 309. In proceedings to enforce a mortgage, it shall not be necessary to make other incumbrances parties, but the creditor may maintain his action against the mortgager alone, alleging in his complaint the existence of the debt and of the mortgage, and praying a sale of the property mortgaged.

Judgment to enforce a mortgage.

§ 310. The judgment by which a mortgage is enforced shall be, that the property mortgaged be sold for the satisfaction of the debt; and that if the proceeds be insufficient to pay the debt, execution shall be issued for the residue.

Order for sale of mortgaged property.

§ 311. Upon this judgment an order of sale shall issue, and the mortgaged property shall be sold in the same manner as if it was sold under execution.

Chap. 143.

AN ACT prescribing the mode of appointing Auctioneers, and defining their duties.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Court of sessions may appoint auctioneers.

§ 1. The Court of Sessions of the Several Counties in this State shall be, and are hereby authorized to appoint as many Auctioneers within their respective Counties, as they may deem proper, to continue in office not more than one year nor less than six months.

Who may be appointed an auctioneer.

§ 2. No person shall be appointed an auctioneer, unless he possess the qualification of an elector of the State, and shall, at the same time of applying for such appointment, designate in writing signed by him, such store, or house, or stand, where he will prosecute the business of Auctioneer, and shall also name the partner or partners engaged with him in business, and shall file the same in the Court of Sessions; and the certificate of appointment shall designate the house, or store, or stand specified by the applicant, and shall only authorize the transaction of auction business at the place designated, except goods sold in packages as imported, household furniture, and such bulky articles as are usually sold in warehouses, or in public streets, or in wharves.

Person appointed to execute bond.

§ 3. No person appointed to the office of Auctioneer shall execute the duties of such office, until he shall have executed a bond, payable to the State of California, in the penal sum of twenty thousand dollars, conditioned for the faithful discharge of all duties imposed on him by law, with two or more sufficient sureties, to the acceptance of said Court of Sessions, and take the oath prescribed by the Constitution of this State, to be endorsed on the certificate of his appointment.

Bonds to be filed.

§ 4. All auctioneers' bonds shall be filed in the office of the County Clerk, in the County where said auctioneer was appointed, after which time he shall be authorized to transact business.

Notice of appointment to be transmitted to comptroller.

§ 5. Every County Clerk of this State shall, without delay, transmit notice to the Comptroller of State, stating the name of the auctioneer and his sureties, and the day on which said bond was filed in his office.

Auction duties.

§ 6. All goods, wares, and merchandise, and every other species of personal property, which shall at any time be exposed to sale at public auction, or be sold by auctioneers on commission, at private sale, within this State, with the exceptions hereinafter specified, shall be subject, each and every time they shall be struck off, to duties at the following rates, namely: 1st. All wines and ardent spirits, foreign

or domestic, and all brewed or malt liquors, at the rate of two dollars on every hundred dollars. 2d. All tobacco and cigars, at the rate of two dollars on every hundred dollars. 3d. All other goods, wares and merchandise, and effects, sold in packages, bales, trunks, or casks, as imported, at the rate of one dollar and fifty cents on every one hundred dollars. 4th. All other goods, wares, merchandise and effects, at the rate of one dollar on every one hundred dollars. 5th. On all sales of real estate, fifty cents on every one hundred dollars.

§ 7. The duties shall be calculated on the sums for which the goods so exposed to sale shall be respectively struck off; and shall in all cases be paid by the person making the sale. How duties to be calculated.

§ 8. Goods sold at auction shall in all cases be struck off to the highest bidder, and when the auctioneer or owner, or any person employed by them, or either of them, shall be such bidder, they shall be subject to the same duties as if struck off to any other person; but this section shall not be construed to render valid any sale that would otherwise be deemed fraudulent and void. Goods to be sold to highest bidder.

§ 9. All articles, except those hereinafter specified, which shall be sold on commission by an auctioneer, by a copartner or clerk of an auctioneer, or by a person in any way connected in the auction business, or in auction sales, shall be liable to the duties heretofore enumerated in this Act. Articles sold on commission subject to auction duty.

§ 10. No auction duties shall be payable upon the following goods and articles: 1st. If they shall belong to this State or to the United States. 2d. If they shall be sold under any legal process of any Court, or under a seizure by any public officer, for or on account of any forfeiture or penalty. 3d. If they shall belong to the estate of a deceased person, and be sold by any executor, administrator, or by some person by them duly authorized, or by order or decree of any Judge of Probate. Auction duties not payable on certain goods.

§ 11. Every person who shall sell, or attempt to sell at public auction, any goods or effects, without having first obtained a certificate of appointment, taken the oath, and filed the bond as in this Act required, shall be deemed guilty of a misdemeanor, and upon conviction in any Court of competent jurisdiction, for each offence be fined in any sum not less than fifty nor more than five hundred dollars. Penalty on unqualified person selling at auction.

§ 12. No auctioneer shall demand or receive a higher compensation for his services than a commission of five per cent., unless by virtue of a previous written agreement between him and the owner, agent, or consignee of the goods or effects to be sold. The commission on sales of real estate shall never exceed one half of one per cent.; but by private agreement in writing, any rate of commission may be fixed on between the auctioneer and owner of the real estate to be sold. Compensation to auctioneer.

§ 13. Each auctioneer shall keep a book, in which he shall enter a memorandum of all sales, showing the name of the owner or owners of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book shall at all times be open for the inspection of any person or persons interested therein. Auctioneers to keep a memorandum of all sales.

§ 14. Every auctioneer appointed and qualified under the provisions of this Act, shall make out in writing, a quarterly account, dated on the first Monday of April, July, October, and January, in the year for which he is appointed, and shall therein state minutely and particularly, 1st. The sums for which any goods or effects shall have been sold, at every auction held by him, or in his behalf, from the time of his entering into such bond, or the date of his last quarterly account. 2d. The days on which sales were made, and the amount of each day's sale; the amount of all private sales on commissions; the days on which sales were made, and the amount thereof. 3d. The amount of the duties chargeable under the provisions of this Act, on all sales, public and private, specified in the account, which shall be subscribed by such auctioneer, who shall make oath to the correctness thereof, before some person authorized by law to administer oaths. To render an account quarterly.

§ 15. It shall be the duty of the auctioneer forthwith, after making out and verifying the account of his sales as provided in the foregoing section, to exhibit the same to the Treasurer of his County, and pay to the Treasurer the amount of duties chargeable thereon, and take his receipt therefor, which he shall immediately file with the Auditor of the County, and take his receipt for the same; and said Treasurer shall, at the time, take and preserve an abstract of such account. And pay duties.

§ 16. Said auctioneer shall, so soon as he has paid to the County Treasurer the amount of duties Account to be transmitted to comptroller

chargeable on said account, cause the same to be transmitted to the Comptroller of State, who shall thereupon charge the County Treasurer with the amount of duties specified in said account.

Where auctioneer has made no sale, he is to make an affidavit of the fact.

§ 17. Every auctioneer, who, within the time limited for his accounting, shall have made no sales, public or private, of goods or effects liable to auction duties, shall make and subscribe an affidavit of those facts, before some person competent to administer oaths, and file the same with the Treasurer of his County, who shall forthwith transmit a certified copy of the same to the Comptroller of State.

County treasurer to pay moneys to comptroller.

§ 18. Every County Treasurer shall, at all times, hold himself in readiness to pay to the Treasurer of State, on his order, countersigned by the Comptroller, all moneys in his hands, derived from auction sales to the date of such order, less his lawful commission for receiving and paying over said sum or sums of money; and all sums of money not paid over on the order of the Treasurer of the State, as above provided, shall be paid into the State Treasury by the County Treasurer, at the time and in the manner of other State revenues.

Auction duties to go to general fund.

§ 19. All money paid into the State Treasury, arising from auction sales under the provisions of this Act, shall constitute a part of the general fund.

Per centage to county treasurers.

§ 20. As a compensation for receiving and paying over money derived from auction sales, County Treasurers shall receive three per centum on the amount thus collected and paid into the State Treasury.

Penalty on auctioneer failing to comply with act.

§ 21. Every auctioneer who shall fail to comply with any of the duties enjoined on him by this Act, shall be deemed guilty of a misdemeanor, and, on conviction in any Court of competent jurisdiction, be fined for each offence, not less than fifty nor more than one thousand dollars, and shall be liable on his official bond, in a civil suit, for any damages sustained by any person injured by his official misconduct.

Commencement of act.

§ 22. This Act shall take effect from and after the Third Monday of April, 1850.

Chap. 144.

AN ACT authorizing a Loan of Money to pay the immediate demands on the Treasury until a permanent fund can be raised for that purpose.

Passed January 5, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Treasurer to receive proposals for loan of \$200,000.

§ 1. The Treasurer of the State shall be, and is hereby, authorized and empowered to receive proposals in writing, until the twenty-fifth day of January, 1850, at 12 o'clock M. of that day, from any and all persons to loan to this State a sum of money not exceeding two hundred thousand dollars, for a term not more than twelve nor less than six years, payable at the pleasure of the State, at any time after six years.

Proposals to be opened, and certain selected.

§ 2. It shall be the duty of the Treasurer, any time after noon of said twenty-fifth day of January, 1850, to open any and all propositions, filed with him for said loan, in the presence of the Chairman of the Finance Committee of the Senate, and Chairman of the Committee of Ways and Means of the Assembly, and said Treasurer and the Chairmen of the said Committees shall proceed to select from all of said bids, such one or more as they may deem most reasonable and best calculated to secure said loan; *Provided*, however, that said Treasurer and Committee-men shall lay all such proposals before the Legislature for their approval.

Proviso.

Treasurer to prepare and execute bonds.

§ 3. If the Legislature shall decide to accept, or instruct the Treasurer to accept, any such offer, for any part or the whole of said loan of the said sum of money, it shall be the duty of the Treasurer of the State, and he is hereby authorized and required to prepare and execute bonds in such form as he may deem proper, for such amounts as may be agreed on between himself and the lenders, in sums not less

than five thousand dollars, and made payable to the lender or lenders at the time stipulated by the parties, and bearing such rate of interest as may be contracted for by the parties, and approved of by the Legislature, payable quarter yearly out of any money in Treasury not otherwise appropriated; said bonds shall be signed by the Governor, and countersigned by the Treasurer, and shall be delivered to the successful bidder of said loan whenever the money so loaned shall be paid into the Treasury, and to the amount only of such payment, and at such time after the contract for the loan is made as the Treasurer shall choose to call for it; and if the lender shall fail, on such call, to pay into the Treasury the amount so agreed to be loaned, his contract for said loan shall be forfeited or not at the pleasure of the Legislature.

Bonds to be signed by governor and treasurer.

Contract for loan forfeited.

§ 4. For the payment of the interest according to the stipulations of this Act, and the ultimate redemption of the principal of the loan hereby created and authorized, the revenues present and prospective, and faith of the State, are irrevocably pledged.

Revenues and faith of state pledged for payment of loan, &c.

§ 5. This Act shall be in force from and after its passage, and a certified copy thereof filed in the office of Secretary of State.

Commencement of act.

Chap. 145.

AN ACT in relation to Money of Accounts of this State.

Passed April 4, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. The money of account of this State shall be the dollar, cent, and mill; and all accounts in the Public Offices and other public accounts, and all proceedings in Courts, shall be kept and had in conformity to this regulation.

Money of account to be dollar, cent, and mill.

§ 2. Nothing contained in the preceding section shall vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument expressed in any other money of account, but the same shall be reduced to dollars or parts of dollars as hereinbefore directed, in any suit thereupon.

Accounts made in other money not vitiated.

§ 3. In all judgments and decrees rendered by any Court of Justice for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed as near as may be in dollars and cents, rejecting smaller fractions, and no judgment or other proceedings shall be considered erroneous for such omission.

Judgments, &c., to be computed in dollars and cents.

Chap. 146.

AN ACT explanatory of an Act entitled "An Act concerning the Revenue Funds, Expenditures, and Property of the State, and management thereof:"

Passed April 18, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

That so much of the Act entitled "An Act concerning the revenue funds, expenditures, and property of the State, and management thereof," approved February 20th, 1850, as relates to the compensation of the Lieutenant Governor, be, and the same is hereby construed, so as to adapt the meaning and language of the fifteenth section of the schedule of the Constitution.

Chapter 16 construed.



JOINT RESOLUTIONS
OF THE
SENATE AND ASSEMBLY.

Joint Resolution of Thanks to Captain John A. Sutter.

Resolved (the Assembly concurring), That the People of the State of California, through their Representatives in Senate and Assembly, do hereby tender their most cordial thanks to Captain John A. Sutter, for his benevolence and humanity in rendering assistance to the immigrants to this country.

Resolved, That the President of the Senate be hereby requested to transmit to Captain Sutter a copy of these resolutions.

JOHN BIGLER,
Speaker pro tem. of the House of Assembly.

JOHN McDOUGAL,
Lieutenant Governor and President of the Senate.

Approved January 24, 1850.

PETER H. BURNETT,
Governor of California.

Joint Resolution, authorizing the Governor to employ a Private Secretary.

Resolved, by the Senate (the House of Assembly concurring), That the Governor be, and is hereby authorized, to employ a Private Secretary, to be paid such compensation as may be provided by law, out of any fund not otherwise appropriated.

JOHN BIGLER,
Speaker pro tem. of the House of Assembly.

JOHN McDOUGAL,
Lieutenant Governor and President of the Senate.

Approved January 31, 1850.

PETER H. BURNETT.

A Joint Resolution, classifying the Justices of the Supreme Court.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

§ 1. That the Justices of the Supreme Court shall be classified as follows, viz.—S. C. Hastings, Chief Justice, shall go out of office at the end of two years, from the first day of January, eighteen hundred and fifty; Henry A. Lyons shall go out of office at the end of four years, from the same day, and for the last two years shall be Chief Justice; Nathaniel Bennett shall serve six years, from the same day.

§ 2. This Act shall be in force from and after its passage, and a certified copy thereof filed in the office of Secretary of State.

JOHN BIGLER,

Speaker pro tem. of the House of Assembly.

JOHN McDOUGAL,

Lieutenant Governor and President of the Senate.

Approved February 1, 1850.

PETER H. BURNETT.

A Joint Resolution in relation to the Washington Monument in the City of Washington, District of Columbia.

Be it Resolved, by the people of the State of California, represented in Senate and Assembly, That the Governor be, and he is hereby authorized and requested, to cause to be procured, and prepared in the manner prescribed by the Washington Monument Association, a block of California marble, cinnabar, gold quartz, or granite, of suitable dimensions, with the word "California" chiselled on its face, and that he cause the same to be forwarded to the Managers of the Washington Monument Association in the said City of Washington, District of Columbia, to constitute a portion of the monument now being erected in that city to the memory of George Washington.

Be it further Resolved, That all expenses incurred by the Governor in carrying the foregoing resolution into effect, shall be paid out of any money in the Treasury not otherwise appropriated, for which amount the Governor is hereby authorized to draw on the Treasurer.

JOHN BIGLER,

Speaker of the House of Assembly.

JOHN McDOUGAL,

Lieutenant Governor and President of the Senate.

Approved February 9, 1850.

PETER H. BURNETT.

A Joint Resolution in relation to the pay of Chaplains of the Legislature.

Resolved, by the Senate and Assembly, That the sum of sixteen dollars per day, for each and every day's attendance, be allowed to the Clergymen of this place, who have opened the daily sessions of the Legislature with prayer, according to the invitation given by each House to the Clergy of this City, by resolution.

JOHN BIGLER,
Speaker of the House of Assembly.

E. KIRBY CHAMBERLIN,
President of the Senate pro tem.

Approved February 28th, 1850.

PETER H. BURNETT.

Joint Resolution instructing the Secretary of State to furnish copies of laws to State Translator.

Resolved (the Senate concurring therein), That the Secretary of State be requested to furnish, without delay, copies of all laws of a general character passed by this Legislature, and filed in his office, to the Translator employed by the State.

JOHN BIGLER,
Speaker of the House of Assembly.

E. KIRBY CHAMBERLIN,
President of the Senate pro tem.

Approved March 2d, 1850.

PETER H. BURNETT.

Joint Resolution in regard to the Mails.

Whereas, a large portion of the inhabitants of this State are far distant from the seat of government, and have no regular and direct means of communication with their representatives, and believing that the people desire to be in communication with their Representatives, and be advised of the proceedings of their Legislature :

Therefore, be it Resolved (the Senate concurring), That Colonel Allen, the United States Mail Agent, be and is hereby requested to establish mail routes between the Cities of Sacramento and Stockton, and the principal towns in the mining region, so that the mail may depart from said cities, and returning arrive from said towns semi-weekly ; and that he be further requested to appoint some suitable person in each of said towns, to act as Postmaster to their respective towns.

Resolved, That the Speaker of this House be requested to forward to Colonel Allen, at San Francisco, a copy of these Resolutions.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
Lieutenant Governor and President of the Senate.

Joint Resolution instructing our Senators, and requesting our Representatives, in reference to Mails.

Whereas serious delays, losses, and inconveniences to the People of the State of California have constantly occurred during the entire last summer, in consequence of the most reprehensible manner in which the Mails from and to the States have been managed, which losses and delays affect the People, not only of California, but of the Union, and

Whereas the causes which operate so seriously pertain either to the management of the Post Office Department on both sides of the Continent, or to the Mail Contractors engaged in the Pacific Mail Steamer Line, or probably to both,

Therefore, be it resolved (the Assembly concurring), That to submit longer to a grievance of such magnitude, while there is a source of reform to appeal to, which is competent to right the wrong, would not only be criminal in ourselves as the Representatives of the People of California, but unjust to the People of the other States, who are taxed to keep up a branch of the public service which is rather a nuisance than an advantage to the Government.

Therefore, be it further resolved, That our Senators in Congress be instructed, and our Representatives requested, to urge upon the proper branches of the General Government, to the utmost of their influence and resources, for the speedy and radical reform of the manner in which the Public Mails are conveyed from this State to the Atlantic States, as well as from those States to California.

Resolved, That reform is emphatically called for, not only in the manner of transporting the Mails on both sides of the Continent, and especially in the manner of their transit across the Isthmus of Panama, but it is needed as imperatively in the distributing office at San Francisco; while owing to the miserable accommodations that are afforded for the delivery of all mail matter, and the niggardly economy that has prevented the incumbents of that office from providing such assistance as the duties of that office and the wants of the People demand, the delays and losses involved by the Steamers are but repeated and increased, reaching in their effects the People of nearly all portions of the State, whose dependence for their Mail facilities is mainly upon the prompt and correct distribution of all matter at that point.

Resolved, That a considerable reduction in the rates of letter postage from the Atlantic to the Pacific sides of the Continent is imperiously demanded by the interests of the People of California; in contrast with the rates of postage on the other side, those taxed upon all matter coming to or going from California, are oppressive, unreasonable, and unjust, much higher even than the rates exacted from the People of several European States, under the recently arranged "Postal Treaty" of the Government of the United States with Foreign Governments.

JOHN BIGLER,
Speaker pro tem. of the Assembly.

JOHN McDOUGAL,
Lieutenant Governor and President of the Senate.

Joint Resolution in relation to the immediate Publication of the General Laws.

Resolved (the Assembly concurring), That a committee of three from each House be appointed, whose duty it shall be to designate what laws of a general character, and how many numbers of each, shall be *immediately* published under the Act providing for the early publication of the laws.

GEORGE B. TINGLEY,
Speaker of the Assembly.

E. KIRBY CHAMBERLIN,
President pro tempore of the Senate.

A Joint Resolution permitting Chief Justice Hastings to visit Oregon or Panama.

Resolved (the Senate concurring), That Chief Justice Hastings have permission to visit Oregon or Panama during the present year; *Provided*, such visit be made without detriment to his judicial duties.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
President of the Senate.

Joint Resolutions in relation to a National Railroad from the Pacific Ocean to the Mississippi River.

1st. *Be it Resolved*, by the Senate and Assembly of the State of California, that our Senators in Congress be instructed, and our Representatives requested, to urge upon Congress the importance of authorizing, as soon as practicable, the construction of a National Railroad from the Pacific Ocean to the Mississippi River.

2d. *Resolved*, That they be further instructed and requested to urge upon the National Government, with a view to facilitate the accomplishment of the great work contemplated in the first resolution, the immediate organization of an efficient Engineer Corps, to make complete surveys and exploration of the several routes which have been recommended to public notice as practicable for the line of said road.

3d. *Resolved*, That his Excellency the Governor be requested to forward to each of our Senators and Representatives in Congress, a certified copy of the foregoing Joint Resolutions.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
President of the Senate.

Joint Resolution in relation to the appointment of additional Translators.

WHEREAS there exists at present an urgent necessity for the translation of the laws into Spanish, and it being impracticable for one Translator to perform said duty in the time required :

Therefore, Resolved, by the Senate (the Assembly concurring), That the President of the Senate, and Speaker of the Assembly, be authorized to employ such additional number of Translators as in their judgment may be necessary : *Provided*, that such additional Translators shall be first approved by the Committee on Examination.

JOHN BIGLER,
Speaker of the Assembly.

JOHN McDOUGAL,
Lieutenant Governor and President of the Senate.

Approved March 9, 1850.

PETER H. BURNETT.

Resolution authorizing the State Translator to rent an office.

Resolved (the Senate concurring), That Mr. Lowry, the present Translator, be, and is hereby authorized to rent some suitable place as an office : *Provided*, the rent of said office does not exceed one hundred and fifty dollars per month.

JOHN BIGLER,
Speaker of the Assembly.

JOHN McDOUGAL,
President of the Senate.

Approved March 11, 1850.

PETER H. BURNETT.

Joint Resolution relative to the Public Archives.

The People of the State of California, represented in Senate and Assembly, do resolve as follows :

Be it Resolved, by the Assembly (the Senate concurring therein), That the Secretary of State be authorized to forthwith despatch some suitable person to Monterey to procure the Archives of this State, the expenses of the same to be paid out of the general fund by the Treasurer of the State, on the warrant of the Comptroller, founded on the

certificate of the Secretary of State, specifying the amount of money necessarily expended in procuring said Archives.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
President of the Senate.

Approved April 9, 1850.

PETER H. BURNETT.

Joint Resolution concerning the Reports of the Proceedings of the Convention of Monterey.

Resolved, That, if the Senate concur, each member of the Convention to form the Constitution of this State, General Bennett Riley, the executive officers of this State, and each member of the present Legislature, shall be furnished by the Secretary of State, when he shall receive them, with a copy of the report of the proceedings and debates in the Convention, as prepared by J. Ross Brown, and printed by order of the Convention; and

Be it further resolved, That the Secretary of State be, and he is hereby authorized and required to call upon the said J. Ross Brown, by letter or otherwise, to ascertain why he has not furnished the reports mentioned in the first Resolution in accordance with his contract upon that subject; and unless said reports are furnished, in accordance with such contract, in a reasonable time after the call of the Secretary of State upon him for that purpose, that the Secretary of State be, and he is hereby authorized to commence proceedings on the bond of the said Brown.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
President of the Senate.

Approved April 10, 1850.

PETER H. BURNETT.

A Joint Resolution concerning Grants of Land by the General Government to Commissioned Officers who served in the late War with Mexico.

Be it resolved by the People of the State of California, represented in Senate and Assembly, as follows:

Resolved first, That our Senators be, and they are hereby instructed, and our Representatives requested, to use their exertions and influence to procure appropriate grants of land by the General Government to each and every Commissioned Officer, whether Regular or Volunteer, of the Army of the United States, who faithfully and honorably served out a complete term of service in the late War with Mexico.

Resolved second, That His Excellency, the Governor, be requested to forward to each of our Senators and Representatives in Congress a certified copy of this Joint Resolution.

JOHN BIGLER,
Speaker of the House of Assembly.

JOHN McDOUGAL,
President of the Senate.

Approved April 11, 1850.

PETER H. BURNETT.

Joint Resolution classifying the Justices of the Superior Court of the City of San Francisco.

Resolved, (the Senate concurring), That the Justices of the Superior Court of the City of San Francisco shall be classified as follows: The Hon. P. A. Morse, Chief Justice, shall hold office for one year; the Hon. Hugh C. Murray shall hold office for the term of two years, and shall be Chief Justice at the expiration of the term of office of the Hon. P. A. Morse; the Hon. J. C. Smith shall hold office for three years, and shall succeed the Hon. H. C. Murray as Chief Justice.

JOHN BIGLER,
Speaker of the Assembly.

E. KIRBY CHAMBERLIN,
Speaker pro tem. of the Senate.

Approved April 20th, 1850.

PETER H. BURNETT.

A Joint Resolution in relation to the care and protection of the State property now in use by the Legislature.

Be it Resolved, by the Senate and Assembly of the Legislature of California, that immediately after the adjournment of the Legislature, it shall be the duty of the Secretary of State to take charge of and keep in his possession, until the next meeting of the Legislature, all the furniture, stationery, and other property belonging to the State and in use by the present Legislature.

JOHN BIGLER,
Speaker of the Assembly.

E. KIRBY CHAMBERLIN,
President pro tem. of the Senate.

Approved April 22d, 1850.

PETER H. BURNETT.

Joint Resolution granting leave of absence to Justices Lyons and Bennett of the Supreme Court.

Resolved (the Senate concurring), that a leave of absence for three months is hereby granted to the Hon. Henry A. Lyons, and that after the expiration of his leave, a similar leave of absence is granted to the Hon. Nathaniel Bennett, provided that in no case shall any two of the Justices of the Supreme Court be absent from the State at the same time.

JOHN BIGLER,
Speaker of the Assembly.

E. KIRBY CHAMBERLIN,
President pro tem. of the Senate.

