

Supreme Court

THE

STATUTES OF CALIFORNIA,

PASSED AT THE

SECOND SESSION

OF THE



LEGISLATURE:

BEGUN ON THE SIXTH DAY OF JANUARY, 1851, AND ENDED ON
THE FIRST DAY OF MAY, 1851, AT THE CITY
OF SAN JOSE.

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EUGENE CASSERLY, STATE-PRINTER.

1851.

Handwritten text, possibly a signature or name, located at the top of the page. The text is written in a cursive style and is difficult to decipher.

ERRATA.

[The reader is requested to correct the following errata. The lines refer to each section separately.]

- Page 11, sec. 14, line 1, read *Superior* for "Superior."
- " 11, " 11, " 7, insert *ful* after "room."
- " 11, " 16, " 4, after "composed" insert *of the counties*.
- " 16, " 48, " 10, insert before "San Francisco" the *County of*.
- " 16, " 46, " 2, read *actions* instead of "action."
- " 17, " 53, " 5, read *received* instead of "received."
- " 18, " 58, " 2, read *officer* instead of "office."
- " 18, " 64, " 7, read *filing* instead of "filling."
- " 19, " 64, " 16, before "persons" insert *them*.
- " 23, " 85, " 2, before "property" read *real* instead of "that."
- " 37, " 20, " 3, read *jurors* instead of "witnesses."
- " 42, " 41, " 12, insert *entering* before "every."
- " 44, " 48, last line, read *sections* instead of "action."
- " 46, " 54, line 3, for "entered" read *rendered*.
- " 50, " 20, " 2, for "insufficiency" read *sufficiency*.
- " 50, " 21, " 1, read *sufficiency* instead of "insufficiency."
- " 61, " 73, " 5, read *depart* instead of "start."
- " 61, " 73, " 6, strike out "or where."
- " 78, " 178, " 3, before "special" read *a* instead of "the."
- " 79, " 180, " 4, read *of* instead of "at."
- " 81, " 195, " 10, read *settled* instead of "sealed."
- " 82, " 201, " 3, read *each* instead of "such."
- " 83, " 208, " 3, read *satisfaction* instead of "contract."
- " 90, " 241, " 3, after "judgment" read *and* instead of "or."
- " 103, " 329, " 3, after "other" insert *demands*.
- " 104, " 329, " 15, after "master" insert *agent*.
- " 108, " 357, " 4, read *heard* instead of "held."
- " 120, " 440, " 7, read *or* instead of "and."
- " 125, " 470, " 6, insert *not* before "be granted."
- " 129, " 494, " 5, read *action* instead of "execution."
- " 131, " 507, " 2, before "express" insert *of* instead of "or."
- " 133, " 524, " 4, for "no" read *em*.
- " 139, " 554, " 3, after "property" insert *of the descendant*.
- " 140, " 561, " 3, for "office" read *officer*.
- " 142, " 576, " 3, after "account" insert *or instrument*.
- " 142, " 580, " 10, for "adjournment" read *amendment*.
- " 144, " 584, " 4, before "summons" insert *return of the*.
- " 144, " 584, " 5, strike out *return of the*.
- " 146, " 601, " 4, for "office" read *officer*.
- " 151, " 631, " 5, for "liquidated" read *litigated*.
- " 157, " 27, " 7, before "day" insert *first*.
- " 157, " 28, " 3, read *at* for "for."
- " 167, " 1, " 15, read *Treasurer* for "treasury."
- " 170, " 1, " 3, read *or* instead of "and."
- " 171, " 7, " 5, read *of* instead of "of."
- " 171, " 1, " 5, read *coin* for "sum."
- " 178, " 4, " 10, after "beginning" insert *thence to said place of beginning*
- " 173, " 7, " 3, after "mountains" insert *thence*.
- " 175, " 13, " 9, before "North" insert *middle of the*.
- " 175, " 11, " 8, after "river" insert *thence up the middle of the San Juan River to the mouth of the Merced River*.
- Page 179, sec. 29, line 5, read *South* instead of "North."
- " 190, " 4, " 5, read *affrays* for "arrays."
- " 192, " 14, " 2, read *nomination* for "nomination."
- " 192, " 15, " 7, after "officer" insert *delivered to him for that purpose*.
- " 212, " 12, " 2, before "duly" read *and* for "or."
- " 231, " 174, " 7, read *thereupon* for "therefore."
- " 232, " 181, " 1, before "three" insert *last*.
- " 236, " 219, " 2, after "jury" insert *relative to a matter legally pending before the jury*.

- Page 237, sec. 229, line 2, read *endorsed* for "entitled."
- " 237, " 234, " 3, read *sections* for "section," and insert thereafter *two hundred and sixty-one and*.
- Page 240, sec. 261, last line read *bench* for "search."
- " 248, " 337, line 4, for "obligation" read *objection*.
- " 248, " 343, " 1, after "death" insert *or*.
- " 250, " 347, subdivision 3, line 2, for "person," read *prisoner*.
- " 250, " 432, line 3, for "must" read *may*.
- " 259, " 435, " 3, for "trial" read *time*.
- " 260, " 438, " 2, read *used* instead of "are."
- " 264, " 474, " 3, read *appointing* instead of "appropriating."
- " 266, " 493, " 2, for "interim" read *day in term*.
- " 268, " 508, " 2, read *of* for "or."
- " 269, " 517, " 5, read *more than two* for "two or more."
- " 269, " 520, " 3, insert *would* before "or."
- " 273, after section 546 insert the following after "compelling attendance of witnesses:"—*Sec. 547. The process by which the attendance of a witness before a court or magistrate is required, is a subpoena. . . . Sec. 548. 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. . . . Sec. 549. 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, upon any investigation pending before them, may direct.*
- Page 276, sec. 375, line 8, read *until* for "unless."
- " 278, " 586, subdivision 5, line 3, read *may* for "shall."
- " 280, " 607, line 3, for "public" read *duplicate*.
- " 281, " 211, " 5, read *to for* for "for."
- " 291, " 3, " 3, after "attendance" insert *or*.
- " 294, " 26, " 4, strike out "court."
- " 294, " 30, " 1, for "supreme" read *superior*.
- " 294, " 31, " 2, for "supreme" read *superior*.
- " 297, " 3, " 4, read *of* instead of "with," at the beginning of the line.
- " 302, " 5, " 11, after "five" insert *hundred*.
- " 309, " 2, " 12, read *County* instead of "court."
- " 311, " 1, " 2, read *commencing*, for "commencing."
- " 315, " 1, " 1, read *entered* instead of "entered into."
- " 321, " 1, " 3, read 1850 for "1851."
- " 329, " 3, " 2, for "promised" read *possessed*.
- " 380, " 1, " 7, read *ordinances* for "ordinance," and insert there-
after *passed by the same council*; also, insert *provided the Common Council shall pass no ordinance*.
- Page 361, sec. 13, line 14, after "industry" insert *ovens houses and argluna*.
- " 361, " 13, " 17, for "making" read *rooking*.
- " 364, " 13, " 5, after "officer" insert *or department*,
- " 365, " 19, " 3, for "chapter" read *charter*.
- " 365, " 5, " 2, for "land" read *lava*.
- " 378, " 6, " 5, strike out "hundred."
- " 378, " 6, " 9, after "sowers" insert *and keeping the same in repair, and the cleaning of the drains and sewers*.
- Page 379, sec. 8, subdivision 18, line 1, after "suspend" insert *or remove*.
- " 388, " 5, line 4, after "out of" insert *the surplus remaining in their hands, to the extinguishment of*.
- Page 395, sec. 16, line 6, read *ten* for "two."
- " 396, " 22, " 2, for "two" read *ten*.
- " 397, " 28, " 1, for "fund" read *funds*.
- " 400, " 42, " 11, for "accredit" read *credit*.
- " 401, " 42, " 17, after "allowed" insert *upon*.
- Page 402, sec. 2, line 4, read *approving* for "appointing."
- " 402, " 3, " 11, read *surgeon* for "surveyor."
- " 410, " 13, " 2, read *two members of Assembly* instead of "one member."
- " 410, " 13, " 2, read *one member of Assembly* instead of "two members."

- Page 418, sec 16, line 9, insert between "election" and "every" of *the present year and at the general election.*
- Page 423, sec. 4, line 2, read *twentieth* for "thirtieth."
- " 425, " 1, " 4, read *investment* instead of "instrument."
- " 430, " 1, " 2, insert *straits* before "Carquines."
- " 431, " 1, " 5, read *hereinafter* for "thereinafter."
- Page 435, sec. 7, line 3, for "upon" read *open.*
- " 440, line 13, for "hereinafter" read *heretofore.*
- " 440, sec. 18, line 2, after "appear" insert *and who shall not appear.*
- " 442, " 27, line 6, strike "not" out.
- " 443, strike out section 31 and insert as follows:—*Sec. 31. Chap. 3. "Rail road Companies"—of an Act entitled "an Act concerning corporations," passed April 22d, 1850, is hereby repealed.*
- Page 445, "Act to regulate Rodeos" should read *Passed April 30, 1851*, instead of "June 30, 1851."
- Page 445, sec. 1, line 11, for "superior" read *supreme.*
- " 451, " 33, " 4, for "amended" read *annulled.*
- " 452, " 36, " 3, for "unmarried" read *married.*
- " 452, " 40, " 6, for "Devisors" read *Devises.*
- " 453, " 36, " 3, after "Executor" insert *unless there is another Executor.*
- Page 470, sec. 176, line 2, for "change" read *charge.*
- " 472, " 191, " 1, for "miners" read *minors.*
- " 473, " 108, " 8, after "of the" insert *effects of the.*
- " 473, " 108, " 3, for "appropriated" read *appraised.*
- " 476, " 221, " 5, read *ten* for "two."
- Page 479, read *sec. 240*, for "sec. 204"
- Page 480, sec. 246, line 5, for "contributed" read *contribute.*
- " 483, " 271, " 3, for "remit" read *commit.*
- " 487, " 296, " 3, for "promote" read *promote.*
- " 490, " 10, " 2, after "warrants" insert *any sum.*
- Page 494, sec. 2, line 14, for "rates" read *notes.*
- " 494, " 2, line 17, for "report" read *support.*
- Page 501, sec. 4, line 6, after "Legislature" insert *they shall submit to the Legislature.*
- Page 503, sec. 17, line 7, for "increasing" read *incurring.*
- " 504, " 22, " 5, for "two" read *ten.*
- " 505, " 1, " 5, after "of the" insert *President of the.*
- " 505, " 23, " 2, after "warrants" insert *upon the Treasurer of State.*
- " 505, " 23, " 3, after "favor" insert *of the President of the Board.*
- " 505, " 23, " 3, after "Hospital" insert *countersigned by the treasurer thereof quarterly, the net proceeds of all sums of money which may be collected and paid into the State Treasury arising from the recovery of forfeited bonds, recognizances, and fines, and for contempt of Courts; PROVIDED, that no more than thirty thousand dollars shall be paid in any one year. He shall also be and is hereby authorized to hold and set apart for the benefit of the State Hospital.*
- Page 512, sec. 6, line 1, for "thereby" read *herby.*
- " 513, " 9, " 27, for "reserve" read *receive.*
- " 513, " 10, " 6, for "having" read *hearing.*
- " 524, " 3, " 4, read *issuers* for "issuers."
- " 524, " 7, " 8, read *premiums* for "promises."
- " 525, " 7, " 14, read *sum* for "same."

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L A W S

OF THE

STATE OF CALIFORNIA,

PASSED AT THE SECOND SESSION OF THE LEGISLATURE,
BEGUN ON THE SIXTH DAY OF JANUARY, 1851, AND
ENDED ON THE FIRST DAY OF MAY, 1851, AT
THE PUEBLO DE SAN JOSÉ.

Chapter 1.

AN ACT concerning the Courts of Justice of this State, and Judicial Officers.

Passed March 11, 1851.

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

CHAPTER I.

The Courts of Justice in general.

§ 1. The following shall be the Courts of Justice of this State. 1st. Courts Enumerated. The Supreme Court. 2d. The District Courts. 3d. The Superior Court of the City of San Francisco. 4th. The County Courts. 5th. The Courts of Sessions. 6th. The Probate Courts. 7th. The Justices' Courts. 8th. The Recorders' Courts. 9th. The Mayors' Courts.

CHAPTER II.

The Supreme Court.

§ 2. The Supreme Court of this State shall consist of a Chief Justice Supreme Court Justice. and two Associate Justices. Each Justice hereafter elected, or appointed, shall be commissioned by the Governor, and before entering upon his duties, shall take the constitutional oath of office.

Election of Justices.

§ 3. The Justices of the Supreme Court shall be chosen at general elections by the qualified voters of the State. One of the 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. After the first election the senior Justice in commission shall be the Chief Justice.

Vacancies in office of Justice.

§ 4. When from any cause a vacancy shall occur in the office of a Justice of the Supreme Court, the Governor shall fill the same by granting a commission, which shall continue until the election and qualification of a Justice. A Justice to fill a vacancy shall be chosen at the first general election subsequent to the occurrence of the vacancy.

Appellate Jurisdiction.

§ 5. The Supreme Court shall have appellate jurisdiction in all cases where 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 a felony, or questions of law alone.

The like.

§ 6. The Supreme Court shall have jurisdiction to review upon appeal. 1st. A judgment in an action or proceeding commenced in the District Courts, or in the Superior Court of the city of San Francisco, or brought into those Courts from another Court, and to review, upon the appeal from such judgment, any intermediate order involving the merits, and necessarily affecting the judgment. 2d. An order made at a special term granting or refusing a new trial, or affecting a substantial right in an action or proceeding.

The like.

§ 7. This Court shall also have jurisdiction to review the proceedings of inferior tribunals, boards, or officers, upon the writ of certiorari, and may issue writs of mandate in the cases provided by law; and this Court, and each of the Justices thereof, may issue all other writs necessary or proper to the complete exercise of the powers conferred by the Constitution, and by this and other statutes.

Power of Court on appeal.

§ 8. This Court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, as to any or all of the parties, and may set aside, confirm, or modify any or all of the proceedings subsequent to, and dependent upon, such judgment or order; and may, if necessary or proper, order a new trial. When the judgment or order is reversed, or modified, this court may make complete restitution of all property and rights lost by the erroneous judgment or order.

General and Special Terms.

§ 9. This Court shall be distributed into general and special terms. The general terms shall be devoted to the hearing of appeals from a final judgment, and from a judgment rendered on an appeal, and from an order granting or refusing a new trial. The special terms shall be devoted to the hearing of all other appeals and of motions.

General Terms.

§ 10. There shall be four general terms in each year, to commence on the first Monday of January, April, July, and October, and to continue

until the fifth Saturday thereafter, inclusive ; unless all the cases ready for hearing be sooner disposed of. They may, however, be continued as much longer as in the opinion of the Court the public interests shall require. Additional general terms may also be held by order of the Court.

§ 11. There shall be eight special terms in each year, to commence on the second Monday of February, March, May, June, August, September, November, and December, and to continue until the second Saturday thereafter, inclusive ; unless the appeals and motions ready for hearing be sooner disposed of. Special Terms.

§ 12. The presence of two Justices shall be necessary for the transaction of business, and the concurrence of two Justices shall be necessary to pronounce a judgment. If two do not concur, the case shall be reheard. Judgment how pronounced.

§ 13. Whenever one of the Justices of the Court is disqualified by any cause from sitting on the determination of an appeal or a proceeding, or is absent from the State by the consent of the Legislature or Governor, and there is a disagreement of opinion between the other two Justices, so that a decision cannot be rendered, upon certificate of such fact from the Court, entered upon its records, the Governor shall appoint some person learned in the law to take the place of the Justice disqualified or absent ; and such person, together with the remaining two Justices, shall, after rehearing, determine the appeal or proceeding. Justice incompetent to act.

§ 14. The terms of the Superior Court, until the first day of January, one thousand eight hundred and fifty-two, shall be held at the city of San Francisco ; and after that day, at the seat of Government. If a room in which to hold the Court be not provided by the State, together with fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court may direct the Sheriff of the County in which it is held, to provide such room, attendants, lights, and stationery, and the expense thereof shall be paid out of the State Treasury. Terms of Superior Court.

§ 15. Within ten days after the expiration of every term, the Clerk of this Court shall prepare a statement, showing the number of causes and proceedings on the calendar of the term, the number heard, the number decided, the number remaining undisposed of, and the duration of the term, and transmit the same to the Governor. The Governor shall lay the several statements received before the Legislature at the opening of each session. Statement of number of causes to be prepared.

CHAPTER III.

The District Courts.

§ 16. The existing division of this State into Judicial Districts is hereby altered ; and there shall hereafter be eleven Judicial Districts, which Districts shall be composed of the several Counties, and number as follows : 1st. The first Judicial District shall be composed of San Diego and Los Angeles. 2d. The second Judicial District shall be Judicial districts.

composed of the Counties of Santa Barbara and San Luis Obispo. 3d. The third Judicial District shall be composed of the Counties of Santa Cruz, Santa Clara, Contra Costa, and Monterey. 4th. The fourth Judicial District shall be composed of the County of San Francisco. 5th. The fifth Judicial District shall be composed of the Counties of Calaveras, Tuolumne, San Joaquin, and Mariposa. 6th. The sixth Judicial District shall be composed of the County of Sacramento. 7th. The seventh Judicial District shall be composed of the Counties of Marin, Sonoma, Napa, Solano, and Mendocino. 8th. The eighth Judicial District shall be composed of the Counties of Trinity and Klamath. 9th. The ninth Judicial District shall be composed of the Counties of Colusi, Shasta, and Butte. 10th. The tenth Judicial District shall be composed of the Counties of Yuba, Nevada, and Sutter. 11th. The eleventh Judicial District shall be composed of the Counties of Yolo, Placer, and El Dorado.

District Judges
and Districts.

§ 17. There shall be a District Judge for each of the Judicial Districts. The courts held by them shall be the District Courts of this State.

Election of Dis-
trict Judges.

§ 18. The District Judges shall be chosen by the qualified electors of their respective districts, at the general election, in the year one thousand eight hundred and fifty-two, and at the general election every six years thereafter, and shall enter upon their duties on the first day of January subsequent to their election. The judges in office of the present Judicial Districts shall be the judges of the Judicial Districts as established by this act, according to the number of their respective districts. Judges for the tenth and eleventh Judicial Districts to hold their offices until the election and qualification of judges for these districts, in the year one thousand eight hundred and fifty-two, shall be appointed by the joint vote of the Legislature, on the first Monday of April of the present year.

Vacancy in office
of District
Judges.

§ 19. In case of a vacancy from any cause in the office of a District Judge, the Governor shall fill the same by granting a commission, which shall continue until the election and qualification of a Judge in his place; a Judge to fill the vacancy shall be chosen at the first general election subsequent to the occurrence of the vacancy.

District Judges
to be commis-
sioned, &c.

§ 20. Each District Judge hereafter elected or appointed shall be commissioned by the Governor, and before entering upon his duties shall take the constitutional oath of office.

Who eligible to
office of District
Judge.

§ 21. Each Judge shall reside in his District, and 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 this State for one year, and of the district six months previous to his election. The provisions of this section, as to eligibility, shall not apply to the Judges appointed by the Legislature.

Jurisdiction.

§ 22. The jurisdiction of these Courts shall be of two kinds. 1st. Original, and second, Appellate.

§ 23. Their original jurisdiction shall extend to all civil cases, where the amount in dispute exceeds two hundred dollars, exclusive of interest, and to all criminal cases not otherwise provided for. In cases involving the title or possession of real property, and in all issues of fact, joined in the Probate Court, their jurisdiction shall be unlimited. Original Jurisdiction.

§ 24. Their appellate jurisdiction shall extend to reviewing upon appeal. 1st. A final judgment of a County Court, except of the County of San Francisco, in an action or special proceeding commenced therein, and to reviewing upon the appeal from such judgment, any intermediate order involving the merits, and necessarily affecting the judgment. 2d. A judgment of a County Court, except of the County of San Francisco, rendered on an appeal from a Justice's or Recorder's Court, in an action or proceeding, involving the legality of any tax, fees, toll, impost license, municipal or other fine, or the possession of real property. 3d. A judgment of a Court of Sessions in a criminal action. 4th. An order granting or refusing a new trial, in an action or proceeding commenced in a County Court, except of the County of San Francisco, or in the Court of Sessions, or which affects a substantial right in such action or proceeding. 5th. An order or judgment of a Probate Court, in the cases prescribed by statute. Appellate Jurisdiction.

§ 25. This Court shall also have jurisdiction to try all issues of fact joined in the Probate Court. Other Jurisdiction.

§ 26. This Court shall also have jurisdiction to review the proceedings of inferior tribunals, boards, or officers, upon the writ of certiorari, and may issue writs of mandate in the cases provided by law, and this Court and the Judge thereof may issue all other writs necessary or proper to the complete exercise of the powers conferred by the Constitution, and by this and other Statutes. Further Jurisdiction.

§ 27. This Court shall be distributed into general and special Terms. terms.

§ 28. The general term shall be devoted to the trial. 1st. Of issues of fact in criminal cases now pending in this Court, or which may be transmitted to this Court from the Court of Sessions. 2d. Of issues of fact in civil action or proceedings. 3d. Of issues of fact joined in the Probate Court, and transmitted to this Court. 4th. Of all other questions of fact ordered by the Court to be tried by a jury. General Terms.

§ 29. The special terms shall be devoted to the hearing and determination, 1st. Of application upon failure to answer, and upon complaint and answer. 2d. Of issues of law now pending or hereafter joined, in actions or proceedings in this Court. 3d. Of applications for judgment upon special verdicts. 4th. Of cases reserved for argument, or further consideration. 5th. Of appeals from the County Courts. 6th. Of motions for new trials. 7th. Of all other special motions and questions. Special Terms.

§ 30. A general term of the District Court shall be held in the Counties of San Francisco, Sacramento, San Joaquin, Santa Clara, and Terms, when to be held.

Yuba, on the first Mondays of February, April, June, August, October, and December of each year; and each general term shall be immediately followed by a special term. The time for holding the general terms in the other counties shall be fixed by order of the District Court of the district embracing the county, on the first Monday of May of the present year, and on the first Monday of January of each subsequent year, which shall be entered on the minutes of the Court and published. The special terms shall follow immediately after the general terms; and in no organized County shall there be held less than three general, and three special terms in each year.

Terms, where to be held.

§ 31. The terms shall be held at the county seats of the several Counties. If a room for holding the Court be not provided by the County, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court may direct the Sheriff to provide such room, attendants, fuel, lights, and stationery, and the expense thereof shall be a County charge.

Duration of terms.

§ 32. The terms shall be held as long as in the opinion of the Judge holding them the public interests shall require, or until the day fixed for the commencement of some other term in the district, and may be adjourned from time to time, in the discretion of the Court. Provided, that in the second Judicial District the Judge shall hold his court for at least one month in each term.

Chamber business.

§ 33. The District Judges shall, at all reasonable times, when not engaged in holding Court, transact such business at their Chambers as may be done out of Court. At Chambers they may hear and dispose of all applications for orders and writs, which are usually granted in the first instance upon an *ex parte* application, and may in their discretion also hear applications to discharge such orders and writs.

Transfer of causes to County Court.

§ 34. Whenever an action or proceeding is commenced in a District Court, in which a County Court has concurrent jurisdiction, the District Court may, by order, transfer the same to such County Court; upon such transference, the County Court shall have and exercise over such action or proceeding the same jurisdiction as if originally commenced therein.

District Judge may hold a term in any district.

§ 35. A District Judge may hold a term in any Judicial District in this State, upon the request of the Judge of the District in which such term is to be held. And when, by reason of sickness or absence from the State, or from any other cause, a term cannot be held in a district by the Judge thereof, a certificate of that fact shall be transmitted by the Clerk to the Governor, who shall thereupon direct some other District Judge to hold such term. It shall be the duty of the Judge thus directed to hold such term.

Statement of number of causes, &c., to be prepared.

§ 36. Within ten days after the expiration of every term, the County Clerk shall prepare a statement, showing the number of causes and proceedings on the Calendar of the term, the number tried or heard, the number determined, the number remaining undisposed of, and the duration of the term: and transmit the same to the Governor. The

Governor shall lay the several statements received before the Legislature at the opening of each Session.

CHAPTER IV.

The Superior Court of the City of San Francisco.

§ 37. The Court known as the Superior Court of the City of San Francisco, established by the act entitled "An act to establish a Municipal Court in the City of San Francisco," passed April fifth, one thousand eight hundred and fifty, is continued, with the jurisdiction conferred by this chapter. Court continued.

§ 38. Until the first day of the month subsequent to the next general election, this Court shall be composed of the present three Judges; but on and after that day, this Court shall be composed of a single Judge, who shall be chosen by the electors of the City of San Francisco at the said general election, and shall hold his office until the general election in eighteen hundred and fifty-four. At the general election of that year, and every three years thereafter, a Judge of this Court shall be chosen by the electors of the City of San Francisco, and shall enter upon his duties on the first day of January subsequent to his election. Before entering upon his duties he shall take the constitutional oath of office. Judges.

§ 39. When a vacancy occurs in the office of Judge of this Court, a new Judge shall be chosen at the next general election for the unexpired term of the preceding Judge; and the Governor shall appoint some person to fill the vacancy until the general election be held and the person chosen be qualified. Vacancy in office of Judge.

§ 40. The City of San Francisco shall pay out of its Treasury to each of the three Judges of the Court, so long as this Court shall be composed of three Judges, and afterwards to the single Judge of this Court, the same salary or compensation as the District Judge in the district of San Francisco shall be allowed by law: the same to be paid quarterly in equal proportions. Compensation to Judge.

§ 41. The jurisdiction of this Court shall be of two kinds: 1st, Original; and 2d, Appellate. Jurisdiction.

§ 42. Its original jurisdiction shall extend to all civil cases in which the amount in controversy exceeds two hundred dollars, exclusive of interest, or which involves the title or possession of real property situated in the City of San Francisco, and its jurisdiction in such cases shall be co-extensive with the jurisdiction of the District Court in the like cases. Original jurisdiction.

§ 43. Its Appellate jurisdiction shall extend to reviewing upon appeal: 1st, A final judgment of the County Court of the County of San Francisco, in an action or proceeding commenced therein; and upon the appeal from such judgment, to reviewing any intermediate order involving the merits and necessarily affecting the judgment; 2d, A judgment rendered by the County Court of the County of San Fran- Appellate jurisdiction.

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cisco on appeal from a Justice's or Recorder's Court, in a civil action or proceeding involving the legality of any tax, fees, tolls, or impost or license, municipal or other fine, or the possession of real property; 3d, An order made by the County Court of San Francisco, granting or refusing a new trial in an action or proceeding commenced therein, or which affects substantial right in such action or proceeding.

Further jurisdiction.

§ 44. This Court shall also have jurisdiction to review the proceedings of an inferior tribunal, board, or officer, upon the writ of certiorari, and may issue writs of mandate in the cases provided by law; and this Court and the Judge thereof, and so long as it shall be composed of three Judges, each Judge thereof, may issue all other writs necessary or proper to the complete exercise of the powers conferred by this and other Statutes.

Terms.

§ 45. This Court shall be distributed into general and special terms.

General terms.

§ 46. The general term shall be devoted to the trial; 1st, Of issues of fact now pending, or hereafter joined in action in this Court; 2d, Of questions of fact in those actions, or in any other proceedings which are by this Court ordered to be tried by a jury.

Special terms.

§ 47. The special term shall be devoted to the hearing and determination; 1st, Of applications for judgment upon failure to answer, and upon complaint and answer; 2d, Of issues of law now pending, or hereafter joined, in actions or proceedings in this Court; 3d, Of applications for judgment upon special verdicts; 4th, Of cases reserved for argument, or further consideration; 5th, Of appeals; 6th, Of motions for new trials; 7th, Of all other special motions, in actions or proceedings in this Court.

Terms, when to be held.

§ 48. The Court shall hold a general and special term each month in the year. The time for holding the general and special terms shall be fixed by the order of the Court, on the first Monday of May of the present year, and on the first Monday of January of each subsequent year; which order shall be entered on the minutes of the Court and published. The Court shall continue in session at least three weeks of each month, unless the business of the Court be sooner disposed of; and may continue for a longer period, when, in the opinion of the Judge or Judges, the public interests require its continuance. So long as this Court shall be composed of three Judges, the attendance of two of them shall be necessary to hold a special term, and a concurrence of two of them shall be necessary to pronounce a judgment in a case heard at a special term; but a general term may be held by a single Judge; and different trials may take place before the different Judges at the same time.

Business at Chambers.

§ 49. The Judge of this Court, or one of the three Judges, so long as the Court shall be composed of three Judges, shall at all reasonable times, when not engaged in holding Court, transact such business at chambers as may be done out of Court. At chambers all applications for orders and writs, which are usually granted in the first instance upon an

ex parte application, may be heard and disposed of; and also in the discretion of the Judge, applications to discharge such orders and writs.

§ 50. This Court may send its writs, process, and orders, out of the City of San Francisco, in the actions and proceedings in which it has jurisdiction by this act. Process, &c., out of San Francisco.

§ 51. This Court shall hold its Sessions in the City of San Francisco, in such central and convenient place as shall be provided for that purpose by the City. If a room for holding the Court be not provided by the City, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court may direct the Sheriff of the County of San Francisco to provide such room, attendants, fuel, lights, and stationery, and the expense thereof shall be a charge upon the city. Sessions, where to be held.

§ 52. Within ten days after the expiration of every term, the Clerk of this Court shall prepare a statement, showing the number of causes and proceedings on the Calendar of the term; the number tried or heard, the number determined, the number remaining undisposed of, and the duration of the term; and transmit the same to the Governor. The Governor shall lay the several statements received before the Legislature at the opening of each session. Statement of number of causes, &c.

CHAPTER V.

The County Courts.

§ 53. There shall be in each of the Counties of this State a County Court, with the jurisdiction conferred by this chapter. But nothing contained in this chapter shall affect any action or proceedings now pending in the existing County Courts of this State; nor shall it affect any judgment already received, or order already made, or proceeding already taken in those Courts. County courts created.

§ 54. The County Judge of each County shall be the Judge of the County Court. The County Judge of each County shall, except in the cases hereafter otherwise provided by special statutes, be chosen by the electors of the County at the general election in the year eighteen hundred and fifty-three, and every four years thereafter, and shall enter upon the duties of his office on the first Monday of April, subsequent to his election. Before entering upon his duties, he shall take the constitutional oath of office. County Judge.

§ 55. In case of a vacancy in the office of County Judge, the vacancy shall be filled by appointment from the Governor, until the next general election, when a County Judge shall be chosen for the unexpired term of the preceding Judge, and until the new Judge elected be qualified. Vacancy in office of County Judge.

§ 56. The County Court shall have jurisdiction to review upon appeal a judgment rendered in a civil action or proceeding by a Justice's or Recorder's Court in the County. Jurisdiction on appeal.

§ 57. The County Court shall have original civil jurisdiction; 1st, Of Original civil jurisdiction.

an action to enforce the lien of mechanics and others; 2d, Of an action to prevent or abate a nuisance; 3d, Of an action to prevent waste, or to recover damages therefor; 4th, Of proceedings in case of insolvency.

Further jurisdiction on appeal.

§ 58. The County Court shall also have jurisdiction to review the proceedings of an inferior tribunal or office, on the writ of certiorari, and may issue writs of mandate to such inferior tribunal or officer, in the cases provided by law; and this Court and the Judge thereof may issue all other writs necessary or proper to the complete exercise of the powers conferred by the Constitution and this and other Statutes.

Terms.

§ 59. A term of the County Court shall be held at the County Seat of each County, on the first Mondays of January, March, May, July, September, and November, in each year, and shall continue in the County of San Francisco until the second Saturday, and in the other counties until the third Saturday after its commencement, unless all the business of the Court be sooner disposed of.

Court room, &c.

§ 60. If a room for holding the Court be not provided by the County, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court may direct the Sheriff to procure such room, attendants, fuel, lights, and stationery, and the expenses thereof shall be a County Charge.

Statement of number of causes, &c.

§ 61. Within ten days after the expiration of every term, the County Clerk shall prepare a statement, showing the number of causes and proceedings on the Calendar of the term, the number tried or heard, the number determined, the number remaining undisposed of, and the duration of the term, and transmit the same to the Governor. The Governor shall lay the several statements received before the Legislature at the opening of each session.

CHAPTER VI.

The Court of Sessions.

Courts of Sessions created.]

§ 62. There shall be in each of the Counties of this State, a Court denominated a Court of Sessions, with the jurisdiction conferred by this chapter; but nothing contained in this chapter shall affect any actions or proceedings now pending in the existing Courts of Sessions of this State, nor shall it affect any judgment already rendered, or order already made, or proceeding already taken in those Courts.

How composed.

§ 63. The Court of Sessions of each County shall 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.

Election of Associate Justices.

§ 64. The Associate Justices of the Court of Sessions shall be chosen by the Justices of the Peace of the County. The County Judge shall convene at the County Seat, on the first Monday of October in the year one thousand eight hundred and fifty-one, and on the first Monday of October in every year thereafter, the persons elected as Justices of the Peace of the County, at the last preceding general election, and they, after being qualified, and filling their respective bonds, as such Justices,

as required by law, shall elect by ballot two of their number as Associate Justices of the Court of Sessions. The County Judge shall preside over the Convention, and the County Clerk shall be its Clerk. A majority of the persons who have qualified and filed their bonds as Justices of the Peace of the County, shall form a quorum for the purpose of the election. A minute of the proceedings of the Convention shall be entered in the records of the Court of Sessions. A Certificate of election shall be given by the County Judge and Clerk, under the seal of the Court of Sessions, to the persons who receive a majority of all the votes cast.

§ 65. If the Justices of the Sessions, or either of them, be absent at a term of a Court of Sessions, or the office of those Justices, or either of them be vacant, the County Judge shall supply the vacancy or deficiency for the term, by designating the requisite number to form the Court, from the Justices of the Peace of the County. Justice absent, or office vacant.

§ 66. The Court of Sessions shall have jurisdiction; 1st, To inquire, by the intervention of a Grand Jury, of all public offences committed or triable in its County; 2d, To try, and determine, indictments found therein, for all public offences, except murder, manslaughter, and arson; and to try, and determine indictments in these excepted cases against a person holding the office of a District Judge; 3d, To hear and determine appeals from the Justices' and Recorders' Courts, in cases of a criminal nature. Jurisdiction.

§ 67. When an indictment is found in one of these Courts for murder, manslaughter, or arson, it shall be transmitted by the Clerk to the District Court, sitting in the County, for trial, except when the indictment is found against a person holding the office of a District Judge. Certain indictments to be sent to District Court for trial.

§ 68. All indictments found in this Court against a member thereof, any Justice of the Peace, shall also be transmitted to the District Court, sitting in the County for trial. The like.

§ 69. The Court of Sessions, except in the County of San Francisco, shall also have power and jurisdiction in its county, until otherwise provided by law; 1st, To make orders respecting the property of the county 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, legally chargeable against the county, and to direct the raising of such sums, by taxation on property real and personal in the county, not exceeding one fourth of one per cent. per annum, on the assessed value thereof, from and after the present year, and one half of one per cent. for the present year; one half of which amount levied and collected the present year, shall be set aside and applied to the payment of any county indebtedness now existing; 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 control and manage public roads, turnpikes, ferries, canals, and bridges within the county where the law does not Further jurisdiction.

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prohibit such jurisdiction, and except within the limits of an incorporated city, and to make such orders as may be necessary and requisite to carry its control and management into effect; 5th, To divide the county into townships, and to create new townships, and to 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 receive by donation, any property, for the use and benefit of the county; 8th, To purchase any real or personal property, necessary for the use of the county; Provided, the value of such real property be previously estimated by three disinterested persons, to be appointed for that purpose, by the District Court of the county; 9th, To sell and cause to be conveyed any property belonging to the county, appropriating the proceeds of such sale to the use of the same; 10th, 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. Provided, that the erection of such Court House, jail, and other public buildings be let out after one month's previous publication, in each case, of a readiness to receive proposals therefor, to the lowest bidder, who will give good and sufficient security for the completion of any contract which may be made respecting the same; 11th, To ascertain and determine with a jury, or by consent of parties without a jury, the just compensation to be made to the owners of private property, taken for public use; 12th, 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 the Court.

Bridges.

§ 70. When any river, stream, creek, or slough separate two counties, the Court of Sessions of the County lying north or east of such river, stream, creek, or slough, shall have jurisdiction of the same so far as the control and management of bridges and ferries are concerned; but all sums paid for licenses to construct any bridges, or to run any ferries over such river, stream, creek, or slough, shall be divided equally between the two counties.

Vouchers for County expenses to be filed.

§ 71. All accounts, vouchers, papers, petitions, and documents relating to the business or property of the county, shall be appropriately arranged under their several heads, filed in the office of the county Clerk, and preserved separate from the papers and documents of the Court, as a Court having criminal jurisdiction.

Proceedings to be entered.

§ 72. The orders, judgments, and proceedings of the Court, when sitting for the transaction of county business, shall be entered by the Clerk in separate books to be kept for that purpose.

Terms when to be held.

§ 73. A term of the Court of Sessions shall be held at the County Seat in each County, on the first Mondays of February, April, June, August, October, and December of each year; and shall continue in the county of San Francisco until the fourth Saturday, and in other counties until the third Saturday after its commencement, unless all the business

of the Court be sooner disposed of. Special terms of the Court may also be held whenever in the opinion of the County Judge the public interests require the same.

§ 74. The Court shall each term take up its business in the following order: 1st, The criminal business; 2d, Appeals from Justices' and Recorders' Courts, in cases of a criminal nature; 3d, Such other business as may be before it. Order of business.

§ 75. This Court may issue any and all writs, and may make any and all orders necessary and proper to the complete exercise of its powers. Power to issue writs, &c.

§ 76. Until a Court House be erected for the County, this Court may direct the Sheriff to furnish a suitable room for holding the Court, and the expenses thereof shall be a county charge. This Court may also at any time direct the Sheriff to furnish attendants, fuel, lights, and stationery suitable and sufficient for the transaction of business, and the expenses thereof shall also be a county charge. Court, where to be held.

§ 77. Within ten days after the expiration of every term of the Court of Sessions, the County Clerk shall prepare a statement, showing the number of criminal cases on the calendar of the term, the number tried or disposed of, the character of the offences, classifying them under general heads, and the duration of the term, and transmit the same to the Governor. The Governor shall lay the several statements received before the Legislature at the opening of each session. Statement of cases, &c.

CHAPTER VII.

The Probate Court.

§ 78. There shall be in each county a Probate Court, with the jurisdiction conferred by this chapter. But nothing contained in this chapter shall affect the proceedings heretofore had before the existing County Courts of this State, held for the transaction of Probate business; nor shall it affect any judgment or order already made, or proceeding already taken in those Courts. Probate Courts created.

§ 79. The County Judge of each county shall be the Judge of the Probate Court. Probate Judges.

§ 80. The Probate Court shall have exclusive jurisdiction, in the first instance, in the county, to take proof of wills; 1st, When the testator, at or immediately before his death, was an inhabitant of the county, in whatever place he may have died; 2d, When the testator, not being an inhabitant of this State, shall have died in the county, leaving assets therein; 3d, When the testator, not being an inhabitant of this State, shall have died out of the State, leaving assets in the county; 4th, When the testator, not being an inhabitant of this State, shall have died out of the State, not leaving assets therein, but where assets thereafter come into the county; 5th, Where real property, devised by the testator, is situated in the county, and no other Probate Court has gained jurisdiction, under either of the preceding subdivisions of this section. Jurisdiction.

§ 81. The Probate Court shall have jurisdiction also; 1st, To take Further jurisdiction.

proof of a will relative to real property, situated in the county when the testator shall have died out of this State, not being an inhabitant thereof, and not leaving assets therein ; 2d, To grant and revoke letters testamentary, and of administration ; 3d, To direct and control the conduct and settle the accounts of executors and administrators ; 4th, To enforce the payments of debts and legacies, and the distribution of the estates of intestates ; 5th, To order the sale and disposal of the real property of deceased persons ; 6th, To take the care and custody of the person and estate of an infant residing in the county : and of the person and estate of an individual residing in the county, who from any cause is incapable of taking care of himself and of managing his property, and to appoint and remove guardians, to direct and control their conduct, and to settle their accounts.

Exclusive jurisdiction.

§ 82. The jurisdiction acquired by a Probate Court over a matter or proceeding, shall be exclusive of that of another Probate Court, except when otherwise provided by law. And when a guardian is appointed or any other proceeding is commenced in the Probate Court of a particular county, all further proceedings in respect to the same shall be continued in that Court.

Probate Court at San Francisco.

§ 83. The County Judge in the County of San Francisco shall hold a Probate Court at the city of San Francisco, on the third Mondays of January, March, May, July, September, and November ; and on the fourth Mondays of February, April, June, August, October, and December.

Certain issues to be sent to District Court.

§ 84. When an issue of fact shall be joined in the Probate Court, respecting the competency of the deceased to make a last will and testament, such issue shall, at the request of either of the parties interested, be certified to the District Court sitting in the county, for trial ; or may, by consent of parties, be tried in the Probate Court.

Court may issue writs, &c.

§ 85. The Probate Court may issue any and all writs, and make any and all orders, necessary and proper to the complete exercise of its powers ; and the County Judge, as Judge of the Probate Court, may, in vacation, appoint appraisers ; receive inventories and accounts to be filed in the Probate Court ; suspend the powers of executors, administrators, or guardians, in the cases allowed by law ; grant special letters of administration or guardianship, approve of bonds, and direct the issuance of any and all writs and process ; and make any and all orders necessary and proper in the exercise of his powers as such Probate Judge.

Power of Judge in vacation.

CHAPTER VIII.

Justices' Courts.

Justices' Courts defined.

§ 86. The Courts held by Justices of the Peace, in this State, shall be denominated Justices' Courts, and shall have the jurisdiction conferred by this chapter ; but nothing contained in this chapter shall affect their jurisdiction in actions or proceedings, now pending therein ;

nor shall it affect any judgment or order already made, or proceeding already taken.

§ 87. These Courts, except in the counties of San Francisco and Sacramento, shall have jurisdiction of the following actions and proceedings; 1st, Of an action arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, do not exceed five hundred dollars; 2d, Of an action for damages for an injury to the person, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed five hundred dollars; 3d, Of an action for a fine, penalty, or forfeiture, not exceeding five hundred dollars, given by statute, or the ordinance of an incorporated city; 4th, Of an action upon a bond, conditioned for the payment of money, not exceeding five hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due; when the payments are to be made by instalments, an action may be brought for each instalment as it becomes due; 5th, Of an action upon a surety bond or undertaking, taken by them, though the penalty or amount claimed exceed five hundred dollars; 6th, Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed, exclusive of interest, five hundred dollars; 7th, Of an action to recover the possession of personal property, when the value of such property does not exceed five hundred dollars; 8th, To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed five hundred dollars; 9th, Of an action for a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions; The Justices' Courts of the Counties of San Francisco and Sacramento shall have jurisdiction of the actions specified in this section, but such jurisdiction shall be limited in the actions mentioned in the first eight subdivisions, to cases involving an amount not exceeding two hundred dollars, exclusive of interest.

§ 88. The jurisdiction conferred by the last section shall not extend however, 1st, To a civil action, in which the title to that property shall come in question; 2d, Nor to an action for the foreclosure of a mortgage or the enforcement of a lien on real estate; 3d, Nor to an action against an executor, or administrator, as such.

§ 89. These Courts shall also have jurisdiction; 1st, To try with a jury of twelve men, or with a jury of a less number if the parties agree thereto, the right to "mining claims," within their respective cities or townships; 2d, To hear and determine proceedings respecting vagrants and disorderly persons.

§ 90. These Courts shall also have jurisdiction, except within the limits of the cities of San Francisco, Sacramento, and Stockton, of the following public offences, committed within their respective cities or townships; 1st, Petit Larceny; 2d, Assault and Battery, not charged to have been committed upon a public officer in the execution of his

duties, or with intent to kill ; 3d, Breaches of the peace, riots, affrays, committing a wilful injury to property ; and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Courts always open.

§ 91. There shall be no terms in Justices' Courts ; these Courts shall be always open.

Election of Justices.

§ 92. Justices of the Peace shall be chosen by the electors of their respective townships, or cities, at the general election, in the year one thousand eight hundred and fifty-one, and at the general election every year thereafter, and shall enter upon their duties on the first Monday of October subsequent to their election. Whenever a vacancy shall occur in the office of a Justice by death, resignation, or otherwise, a special election may be ordered by the Court of Sessions, to supply such vacancy. The Justice elected to supply a vacancy shall hold his office only for the unexpired term of his immediate predecessor. Each Justice, before entering upon the discharge of his duties, shall take the constitutional oath of office, and shall execute a bond to the State in the sum of five thousand dollars, conditioned for the faithful performance of his duties, and file the same with the County Clerk.

Statement of number of actions, &c.

§ 93. The Justices of the Peace in each County shall prepare at the end of each month, a statement, showing the number of civil actions, and the number of criminal cases tried in their Courts during the month and the character of the offences, classifying them under general heads ; also showing the number of vagrants, and the number of disorderly persons fined, or committed by them during the month, and transmit such statement, to the Clerk of the County. On the first day of June and December of each year, the County Clerk shall prepare from the statements thus received a general statement, showing the number of civil actions, and the number of criminal actions tried in the Justices' Courts of the County for the preceding six months and the character of the offences, classifying them under general heads, and also showing the number of vagrants, and the number of disorderly persons fined or committed during the preceding six months, and transmit such general statements to the Governor. The Governor shall lay the general statements so received before the Legislature, at the opening of each Session.

CHAPTER IX.

Recorders' Courts.

Jurisdiction

§ 94. The Recorders' Courts which are already established, or which may hereafter be established, in any incorporate city of this State, shall have jurisdiction ; 1st. Of an action or proceeding for the violation of any ordinance of their respective cities ; 2d. Of an action or proceeding to prevent or abate a nuisance within the limits of their respective cities ; 3d. Of proceedings respecting vagrants and disorderly persons.

Further jurisdiction.

§ 95. The Recorders' Courts already established, or which may here-

after be established, shall also have jurisdiction of the following public offences, committed in their respective cities; 1st. Petit Larceny: 2d. Assault and Battery, not charged to have been committed on a public officer, in the execution of his duties, or with intent to kill: 3d. Breaches of the Peace, riots, affrays, committing a wilful injury to property, and all misdemeanors, punishable by fine, not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

§ 96. A Recorder's Court shall be held by a single Judge, who shall be designated as the "Recorder of the city," and said Court shall be held at such place in the City, within which it is established, as the government of such city may by ordinance direct.

Court, when and where to be held.

§ 97. The Recorders shall be chosen by the electors of their respective cities, on a day to be fixed by the Government of such cities, and shall hold their offices for one year, unless a longer period be fixed in the acts incorporating such cities; in which case, for such period so fixed. Before entering upon their duties they shall take the Constitutional oath of office.

Election of Recorders.

§ 98. The Recorders shall receive a compensation to be fixed by the Government of their respective cities, to be paid by such cities quarterly, in equal proportions. Such compensations shall not be increased or diminished during the period for which they are elected.

Compensation to Recorders.

§ 99. The Recorders shall possess the powers, and exercise the duties of committing magistrates, in the criminal cases over which the courts held by them have no jurisdiction by this act: and as such magistrates, they may examine, commit, or discharge all persons brought before them, as the justice of the case may require.

Powers and duties of Recorders.

§ 100. Recorders and Recorder's Courts may issue all process, writs, and warrants, and may make any and all orders necessary and proper to the complete exercise of their powers.

May issue process, &c.

§ 101. There shall be no terms in Recorder's Courts; these courts shall always be open.

Court always open.

§ 102. At the end of each month the Recorder of each city shall prepare a statement, showing the number of criminal cases tried in his Court during the month and the character of the offences, classifying them under general heads: and also showing the number of vagrants and the number of disorderly persons fined or committed by him during the month, and transmit such statement to the Governor. The Governor shall lay the several statements received before the Legislature, at the opening of each Session.

Statement of number of cases, &c.

CHAPTER X.

Mayors' Courts.

§ 103. The Mayors' Courts which are already established, or which may hereafter be established in any incorporated city of this State, shall have the same jurisdiction of actions, and of public offences, committed

Jurisdiction.

in their respective cities, which is conferred by this act upon Recorders' Courts.

Powers of Mayors.

§ 104. The Mayors of incorporated cities, when authorized by law to hold a Court in their respective cities, shall possess the same powers as committing magistrates, as are conferred by this act upon Recorders of cities.

May issue process.

§ 105. The Mayors' Courts, and the Mayors, as the Judges of such Courts, may issue all process, writs, and warrants, and may make any and all orders, necessary and proper to the complete exercise of their powers.

Statement of number of cases, &c.

§ 106. At the end of each month the Mayors who are authorized to hold a court, shall prepare a statement showing the number of criminal cases tried in their respective courts during the month, and the character of the offences, classifying them under general heads; also showing the number of vagrants, and the number of disorderly persons fined or committed by them during the month, and transmit such statement to the Governor. The Governor shall lay the several statements received by him before the Legislature at the opening of each session.

CHAPTER XI.

General provisions respecting the Courts of Justice and Judicial Officers.

ARTICLE I.

Courts of Record: publicity of the proceedings of the Courts and their Incidental Powers.

Courts of Record.

§ 107. The Supreme Court, the several District Courts, the Superior Courts of the City of San Francisco, the several County Courts, and the several Courts of Sessions of this State, shall be courts of record.

Proceedings to be public.

§ 108. The sittings of every Court of Justice shall be public, except as is provided in the next section.

Exceptions.

§ 109. In an action for divorce, the Court may direct the trial of any issue of fact joined therein to be private; and upon such direction all persons may be excluded except the officers of the court, the parties, their witnesses and counsel.

Powers of Courts.

§ 110. Every Court shall have power: 1st. To preserve and enforce order in its immediate presence; 2d. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority; 3d. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its Judge out of Court, in an action or proceeding pending therein; 4th. To control in furtherance of justice the conduct of its ministerial officers; 5th. To compel the attendance of persons to testify in an action or proceeding pending therein in the manner provided by law; 6th. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties; 7th. To

amend and control its process and orders, so as to make them conformable to law and justice.

ARTICLE II.

Particular disqualification of Judges.

§ 111. A Judge shall not act as such in any of the following cases : When Judge disqualified.
 1st. In an action or proceeding to which he is a party, or in which he is interested ; 2d. When he is related to either party, by consanguinity or affinity, within the third degree ; 3d. When he has been attorney or counsel for either party in the action or proceeding ; but this section shall not apply to the arrangement of the Calendar, or the regulation of the order of business.

§ 112. A Judge shall not act as attorney or counsel in a court in which he is a Judge, or in an action or proceeding removed therefrom to another court for review. Judge not to act as Attorney, &c.

§ 113. A Judge of the Supreme Court, or of the District Court, or of the Superior Court of the City of San Francisco, shall not act as attorney or counsel in any court, except in an action or proceeding to which he is a party on the record. The like.

§ 114. A Judge shall not have a partner acting as attorney or counsel in a court of which he is Judge. Partner of Judge not to act as Attorney, &c.

§ 115. A Judge of the Supreme Court, or of the District Court, or of the Superior Court of the City of San Francisco, or of a County Court, shall not absent himself from the State, without the consent of the Legislature if in session : and, during the recess of the Legislature, without the consent of the Governor previously obtained. The Governor of the State shall supply the temporary vacancy, occasioned by the absence of a Judge of one of these courts, by appointment, which shall continue during said absence. Such temporary Judge shall draw the salary of the Judge whose place he fills, during the absence of the last mentioned Judge. Judge not to absent himself from the State. Temporary vacancies.

ARTICLE III.

Judicial days, and places of holding Courts of Justice.

§ 116. The Courts of Justice may be held, and judicial business may be transacted on any day, except as provided in the next section. Courts, when to be held.

§ 117. No court shall be opened, nor shall any judicial business be transacted on Sunday, on New Year's day, on the Fourth of July, on Christmas day, or on a day on which the general election is held, except for the following purposes : 1st. To give, upon their request, instructions to a Jury then deliberating on their verdict ; 2d. To receive a verdict, or discharge a Jury ; 3rd. For the exercise of the powers of a single magistrate in a criminal action, or in a proceeding of a criminal nature. Judicial business which not to be transacted.

§ 118. If any of the days mentioned in the last section happen to be a day appointed for the holding of a court, or to which it is Courts, when deputed adjourned.

adjourned, it shall be deemed appointed for, or adjourned to the next day.

Courts, where to be held.

§ 119. Every Court of Justice, except a Justice's, Mayor's, or Recorder's Court, shall sit at the county seat of the county in which it is held, except in the cases provided in this Article. Justices' Courts shall be held in their respective Townships or Cities, and Mayors' and Recorders' Courts, in their respective Cities.

Sheriff may adjourn Court.

§ 120. If no Judge attend on the day appointed for the holding of the Court before noon, the Sheriff shall adjourn the Court until the next day at ten o'clock; and if no Judge attend on that day before noon, the Sheriff shall adjourn the Court until the following day; and so on from day to day for one week. If no Judge attend for one week, the Sheriff shall adjourn the Court for the term.

One Judge may adjourn Court.

§ 121. When the Court is required to be held by more than one Judge, if only one Judge attend on the day appointed for holding a Court or on the day to which it stands adjourned, as provided in the last section, the Judge attending shall adjourn the Court until the next day at ten o'clock; and may in the same manner adjourn it from day to day, not beyond two weeks, until another Judge also attend, or the place of the absent Judge or Judges be supplied. If at the end of two weeks no other Judge attend, he may adjourn the Court for the term.

Judge may change place of holding Court.

§ 122. A Judge authorized to hold or preside at a Court appointed to be held in a city or town, may by an order filed with the County Clerk, and published as he may prescribe, direct that the Court be held or continued at any other place in the city or county than that appointed, when war, pestilence, or other public calamity, or the dangers thereof, or the destruction of the building appointed for holding the Court, may render it necessary; and may in the same manner revoke the order, and in his discretion appoint another place in the same city or county for holding the court.

Parties required to appear at such Court.

§ 123. When the Court is held at a place appointed as provided in the last section, every person held to appear at the Court, shall appear at the place so appointed.

ARTICLE IV.

Seals of the Courts of Justice.

Courts have seals.

§ 124. Each of the following Courts, and no other, shall have a seal; 1st. The Supremo Court; 2d. The District Court; 3d. The Superior Court of the City of San Francisco; 4th. The County Courts; 5th. The Court of Sessions; 6th. The Probate Courts.

Existing seals to be used.

§ 125. The seals now used by the Supreme Court, and the Superior Court of the City of San Francisco, shall be the seals of the said courts, and where seals have been provided for the County Courts, Courts of Sessions, and Probate Courts, such seals shall continue to be used as the seals of said Courts.

Seals to be procured for certain Courts.

§ 126. The several District Courts, and also the several County

Courts, Courts of Sessions, Probate Courts, for which separate seals have not been heretofore provided, shall direct their respective Clerks to procure seals, which shall be devised by the respective Judges of such Courts, and shall have the following inscriptions surrounding the same : 1st. For the District Courts, "District Court of Californin," inserting the number of the District and the name of the County ; 2d. For the County Courts, "County Court, ——— County, Cal." inserting the name of the County ; 3d. For the Court of Sessions, "Court of Sessions, ——— County, Cal," inserting the name of the County ; For the Probate Courts, "Probate Court, ——— County, Cal." inserting the name of the County.

§ 127. Until the seals devised as provided in the last section, are procured, the Clerk of each court may use his private seal, whenever a seal is required. Clerk may use his private seal.

§ 128. The Clerk of each Court shall keep the seal thereof. Custody of seal.

§ 129. The seal of a Court need not be affixed to any proceedings therein, except : 1st. to a Summons or Writ ; 2d. to the proof of a Will, or the appointment of an Executor, Administrator, or Guardian ; 3d. to the authentication of a copy of a record or other proceeding of the Court, or an officer thereof, for the purpose of evidence in another Court. To what proceedings seal to be affixed.

§ 130. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper and capable of receiving the impression. Seal how affixed.

ARTICLE V.

Miscellaneous Provisions, respecting Courts and Judicial Officers.

§ 131. A Judge may exercise out of Court all the powers expressly conferred upon a Judge, as contradistinguished from the Court. Power of Judge out of Court.

§ 132. If an application for an order, made to a Judge of a Court in which the action or proceeding is pending, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other Judge, except of a higher Court. Order, &c. refused by one Judge, a bar to a subsequent application.

§ 133. A violation of the last section may be punished as a contempt ; and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of a Court in which the action or proceeding is pending. Punishment for violation of last section.

§ 134. Every judicial officer shall have power : 1st. To preserve and enforce order in his immediate presence ; and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law ; 2d. To compel obedience to his lawful orders, in the manner provided by law ; 3d. To compel the attendance of persons to testify in a proceeding, pending before him in the manner provided by law ; 4th. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties. Power of judicial officers.

§ 135. The Judges of the Supreme Court, of the District Courts, of the Superior Court of the City of San Francisco, and of the County Powers of Judges of certain Courts.

Courts, shall have power in any part of the State, and Justices of the Peace within their respective Counties, and Recorders within their respective cities, shall have power to take and certify; 1st. The proof and acknowledgment of a conveyance of real property, or of any other written instrument; 2d. The acknowledgment of satisfaction of a Judgment in any Court; 3d. An affidavit to be used in any Court of Justice of this State.

Justices' Courts.

§ 136. No action or proceeding in a Court of Justice shall be affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

Proceedings to be in English.

§ 137. Every written proceeding in a Court of Justice in this State, or before a Judicial Officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals in the customary manner.

Oppression in office by judicial officer.

§ 138. When a Judicial Officer performs a Judicial act corruptly, or willfully disobeys the mandate of a superior tribunal, or is guilty of oppression or tyranny in office, he may be indicted for a misdemeanor in office, and shall be liable to the party aggrieved in an action for damages.

Repeal of certain acts.

§ 139. The following acts are hereby repealed; The Act entitled "An Act to organize the Supreme Court of California," passed February fourteenth, one thousand eight hundred and fifty; The Act entitled "An Act to amend an Act to organize the Supreme Court of California," passed April thirteenth, one thousand eight hundred and fifty; The Act entitled "An Act to organize the District Courts of the State of California," passed March sixteenth, one thousand eight hundred and fifty; The Act entitled, "An Act to amend An Act organizing the District Courts of the State of California," passed April eighteenth, one thousand eight hundred and fifty; The Act entitled "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 fifth, one thousand eight hundred and fifty; The Act entitled "An Act to fix the terms of the Superior Court of the City of San Francisco," passed April seventeenth, one thousand eight hundred and fifty; The Act entitled, "An Act to organize the County Courts," passed April thirteenth, one thousand eight hundred and fifty; and the Act entitled, "An Act to organize the Court of Sessions," passed April eleventh, one thousand eight hundred and fifty. Nothing in this section shall, however, affect any judgment already rendered, or any order already made or any proceedings already taken in any civil or criminal cases, in any of the existing courts of this State; nor shall it be construed so as to remove from office any of the Judges of the existing courts of this State, except as otherwise provided in this Act; but the present Judges of the Supreme Court; the present three Judges of the Superior Court of the City of San Francisco, until the first day of the month subsequent to the next general election; The present County Judges; the present Associate Justices of the Court of

Proviso.

Sessions; the present Justices of the Peace and the present City Recorders; are hereby confirmed in their respective offices, until other Judges, Justices, and Recorders are elected in their respective places, as provided in this Act, and have entered upon their respective duties.

§ 140. This Act shall take effect on the first day of May next, except ^{When act to take effect.} section eighteen, and said section so far as it authorizes the appointment of Judges for the tenth and eleventh Judicial Districts, shall take effect immediately.

Chap. 2.

AN ACT amending an Act entitled, "An Act concerning the Courts of Justice of this State and Judicial Officers."

Passed March 11, 1851.

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

§ 1. Section twenty-four of the Act concerning the Courts of Justices ^{Amendment to § 24} and Judicial Officers, which reads as follows: "Their appellate jurisdiction shall extend to reviewing upon appeal: 1st. A final judgment of a County Court, except of the County of San Francisco, in an action or special proceeding commenced therein, and to reviewing upon the appeal from such judgment, any intermediate order involving the merits, and necessarily affecting the judgment; 2d. A judgment of a County Court, except of the County of San Francisco, rendered on appeal from a Justice's or Recorder's Court, in an action or proceeding involving the legality of any tax, fees, tolls, impost, license, municipal, or other fine, or the possession of real property; 3d. A judgment of a Court of Sessions in a criminal action; 4th. An order granting or refusing a new trial, in an action or proceeding commenced in the County Court, except of the County of San Francisco, or in the Court of Sessions, or which affects a substantial right in such action or proceeding:" is hereby amended so as to read as follows: "Their appellate jurisdiction shall extend to reviewing upon appeal: 1st. A final judgment of a County Court, in an action or special proceeding commenced therein, and to reviewing upon the appeal from such judgment any intermediate order involving the merits, and necessarily affecting the judgment; 2d. A judgment of a County Court rendered on appeal from a Justice's, Mayor's, or Recorder's Court, in an action or proceeding involving the legality of any tax, fees, toll, impost, license, municipal or other fine, or the possession of real property; 3d. A judgment of a Court of Sessions in a criminal action; 4th. An order granting or refusing a new trial, in an action or proceeding commenced in

the County Court, or in the Court of Sessions, or which affects a substantial right, in such action or proceeding.

Amendment to
§ 29.

§ 2. Section twenty-eight of said "Act concerning the Courts of Justice of this State and Judicial officers," which reads as follows: "The general term shall be devoted to the trial: 1st. Of issues of fact in criminal cases, now pending in this Court, or which may be transmitted to this Court, from the Court of Sessions; 2d. Of issues of fact in civil actions or proceedings; 3d. Of issues of fact joined in the Probate Court, and transmitted to this Court; 4th. Of all other questions of fact, ordered by the Court to be tried by a jury:" is hereby amended so as to read as follows: "The general terms shall be devoted to the trial; 1st. Of issues of fact in criminal actions; 2d. Of issues of fact in civil actions or proceedings; 3d. Of issues of fact joined in the Probate Court, and transmitted to this Court; 4th. Of all other questions of fact ordered by the Court to be tried by a jury."

Amendment to
§ 30.

§ 3. Section thirty, of said Act, which reads as follows: "A general term of the District Court shall be held in the Counties of San Francisco, Sacramento, San Joaquin, Santa Clara, and Yuba, on the first Mondays of February, April, June, August, October, and December of each year; and each general term shall be immediately followed by a special term. The time for holding the general terms in the other Counties shall be fixed by order of the District Court of the District embracing the County, on the first Monday of May of the present year; and on the first Monday of January of each subsequent year, which shall be entered on the minutes of the Court, and published. The special terms shall follow immediately after the general terms: and in no organized County shall there be held less than three general and three special terms in each year," is hereby amended so as to read as follows: "A general term of the District Court shall be held in the Counties of San Francisco, Sacramento, San Joaquin, Santa Clara, and Yuba, on the first Mondays of February, April, June, August, October, and December of each year; and each general term shall be immediately followed by a special term. The time for holding the general terms in the other Counties shall be fixed by order of the District Court of the District embracing the Counties, on or before the first Monday of July of the present year, and in the month of January of each subsequent year, which shall be entered on the minutes of the Court and published." The special terms shall follow immediately after the general terms; and in no organized County shall there be held less than three general and three special terms in each year.

Amendment to
§ 31.

§ 4. Section thirty-two of said Act, which reads as follows: "The terms shall be held as long as in the opinion of the Judge holding them the public interest requires, or until the day fixed for the commencement of some other term in the District; and may be adjourned from time to time, in the discretion of the Court; Provided, that in the second Judicial District, the Judge shall hold his Court for at least one month

in each term," is hereby amended so as to read as follows : The terms shall be held so long as in the opinion of the Judge holding them the public interests require, or until the day fixed for the commencement of some other term in the District, and may be adjourned from time to time in the discretion of the Court.

§ 5. Section forty-one of said Act which reads as follows : "The jurisdiction of this Court shall be of two kinds : 1st. Original ; and 2d. Appellate," is hereby repealed. Amendment to § 41.

§ 6. Section forty-two of said Act, which reads as follows : "Its original jurisdiction shall extend to all civil cases, in which the amount in controversy exceeds two hundred dollars, exclusive of interest, or which involves the title or possession of real property situated in the city of San Francisco, and its jurisdiction in such cases shall be co-extensive with the jurisdiction of the District Court in like cases," is hereby amended so as to read as follows : The jurisdiction of this Court shall extend to all civil cases in which the amount in controversy exceeds two hundred dollars exclusive of interest, or which involve the title or possession of real property situated in the city of San Francisco, and its jurisdiction in such cases shall be co-extensive with the jurisdiction of the District Court in the like cases. Amendment to § 42.

§ 7. Section forty-three of said Act, which reads as follows : "Its appellate jurisdiction shall extend to reviewing upon appeal : 1st. A final judgment of the County Court of the County of San Francisco, in an action or proceeding commenced therein, and upon the appeal from such judgment, to reviewing any intermediate order involving the merits, and necessarily affecting the judgment. 2d. A judgment rendered by the County Court of the County of San Francisco, on appeal from a Justice's or Recorder's Court, in a civil action or proceeding involving the legality of any tax, fees, toll, impost, or license, municipal or other fine, or the possession of real property : 3d. An order made by the County Court of the County of San Francisco, granting or refusing a new trial in an action or proceeding commenced therein or which affects a substantial right in such action or proceeding," is hereby repealed. Amendment to § 43.

§ 8. Section forty-seven of said Act, which reads as follows : "The special terms shall be devoted to the hearing and determination : 1st. Of applications for judgment upon failure to answer, and upon complaint and answer ; 2d. Of issues of law now pending or hereafter joined in actions or proceedings in this Court ; 3d. Of applications for judgment upon special verdicts : 4th. Of cases reserved for argument, or further consideration : 5th. Of appeals ; 6th. Of motions for new trials : 7th. Of all other special motions in actions or proceedings in this Court," is hereby amended so as to read, as follows : The special terms shall be devoted to the hearing and determination ; 1st. Of applications for judgment upon failure to answer and upon complaint and answer ; 2d. Of issues of law now pending or hereafter joined, in actions or proceedings Amendment to § 47.

in this Court; 3d. Of applications for judgment upon special verdicts; 4th. Of cases reserved for argument or further consideration; 5th. Of motions for new trials; 6th. Of all other special motions in actions or proceedings in this Court.

Amendment to
§ 83.

§ 9. Section eighty-three of said Act, which reads as follows: "The County Judge in the County of San Francisco shall hold a Probate Court in the city of San Francisco, on the third Mondays of January, March, May, July, September, and November; and on the fourth Mondays of February, April, June, August, October, and December, in each year. In the other counties of the State, the County Judge shall hold a Probate Court on the fourth Monday of each month" is hereby amended so as to read as follows: The County Judge in the County of San Francisco shall hold a Probate Court at the city of San Francisco, on the third Mondays of January, March, May, July, September, and November. In the other counties of the State, the County Judge shall hold a Probate Court on the fourth Monday of each month.

Amendment to
§ 107.

§ 10. Section one hundred and seven of said act, which reads as follows: "The Supreme Court, the several District Courts, the Superior Court of the city of San Francisco, the several county courts, and the several courts of Sessions of this State, shall be courts of Record:" is hereby amended so as to read as follows: The Supreme Court, the several District Courts, the Superior Court of the City of San Francisco, the several County Courts, the several courts of Sessions and the several Probate Courts of this State, shall be courts of Record.

Amendment to
§ 66.

§ 11. Section sixty-six of said act, which reads as follows: "The Court of Sessions shall have jurisdiction: 1st. To inquire by the intervention of a Grand Jury of all public offences committed or triable in its county; 2d. To try and determine indictments found therein, for all public offences, except murder, manslaughter, and arson, and to try and determine indictments in these excepted cases, against a person holding the office of a District Judge; 3d. To hear and determine appeals from the Justices' and Recorders' Courts in cases of a criminal nature," is hereby amended so as to read as follows: The courts of Sessions shall have jurisdiction: 1st. To inquire, by the intervention of a Grand Jury, of all public offences committed or triable in its County; 2d. To try and determine indictments found therein, for all public offences, except murder, manslaughter, and arson: and to try and determine indictments in these excepted cases against a person holding the office of District Judge; 3d. To hear and determine appeals from the Justices', Recorders' and Mayors' Courts in cases of a criminal nature, but this section shall not take effect until the first day of July next, except so far as it authorizes this court to hear and determine the appeals mentioned herein.

Act revived.

§ 12. The act entitled "An Act to organize the Court of Sessions" passed April eleventh, one thousand eight hundred and fifty, is hereby revived until the first day of July next, on which day the repeal of said act shall take effect.

Chap. 3.

AN ACT to regulate Fees in Office.

Passed May 1, 1851.

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

§ 1. The fees of the Clerk of the Supreme Court and of County officers in the following Counties, viz.—Klamath, Shasta, Butte, Yuba, Nevada, Sutter, Yolo, Colusa, El Dorado, Placer, San Francisco, and Sacramento, shall be prescribed in the first thirty-eight sections of this Act.

Supreme Court Clerk's, and County officers' fees.

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 Secretary of State, furnished to any private person on request, for each folio forty cents ; for a certificate and seal thereto, one dollar ; but the Secretary of State shall not receive any fees to his own use.

Secretary of State, fees in office of.

FEES OF THE COUNTY AUDITORS.

§ 3. The County Auditor shall receive for his services such compensation as may be just, to be determined by the Court of Sessions of the County ; Provided, the same does not exceed the sum of fifty dollars.

County Auditors, fees of.

FEES OF NOTARIES PUBLIC.

§ 4. The drawing and copying of every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a Bill of Exchange, order, draft, or check, two dollars ; for drawing and serving every notice of the non-payment of a promissory note, or the non-payment or non-acceptance of a bill of exchange, order, draft, or check, when personal service is made, two dollars ; but when service is made by depositing such notice in the post-office, fifty cents ; for recording every protest, one dollar ; for drawing an affidavit or other paper for which provision is not herein made, for each folio of one hundred words, forty cents ; for copies of affidavits or other papers, for every folio of one hundred words, forty cents ; for taking an acknowledgment of a deed, or other instrument, one dollar for each signature ; for administering an oath or affirmation, one dollar.

Notaries, fees of.

FEES OF THE CLERK OF SUPREME COURT.

§ 5. For filing papers sent at any one time from an inferior Court, six dollars ; for issuing any process of Court, two dollars ; for entering any motion, rule, or order, two dollars ; for entering judgment, five dollars ; for each certificate given on request, relative to any matter or cause, two dollars ; for certified copy of any record, opinion of the

Supreme Court clerk's fees.

Court, or paper, for each folio, forty cents; for entering each cause on the calendar, and making copy for the Bar, two dollars; for every remittance or mandate, for each folio, forty cents; for searching record on files in his office (but no charge to be made to suitors or attorneys) filing each paper, one dollar; for certificate of admission as Attorney or Counsellor, ten dollars; for administering oath or affirmation, one dollar; for taking acknowledgment of deed or other instrument, for each signature, one dollar; for recording opinion of Court, each folio, forty cents.

FEEs OF CLERK OF DISTRICT COURT.

District Court
clerk's fees.

§ 6. For each execution or writ of possession, one dollar; for docketing each execution, fifty cents; for entering return of each execution, fifty cents; for every writ, under seal, one dollar and fifty cents; for entering appearance, discontinuance, non-suit, default, motion, rule, or order, one dollar; for every certificate under seal, one dollar and fifty cents; for certificate of issuing or filing, one dollar; for each calling and swearing a Jury, one dollar; for swearing each witness, fifty cents; for entering each cause in a calendar, and making a copy for the Court or Bar, one dollar; for entering every cause, two dollars; for receiving and entering a verdict, one dollar; for filing each paper, fifty cents; for entering every final Judgment for each folio, two dollars and fifty cents; for entering satisfaction of Judgment, two dollars; for copy of record or paper, for each folio, forty cents; searching records (not charging parties to suit) fifty cents; for administering oath and certifying same, one dollar; for taking testimony of witness in Court, for each folio, forty cents.

FEEs OF CLERK OF COUNTY COURT.

County Court
clerk's fees.

§ 7. For filing all papers sent at one time from a Justice's Court, two dollars; For all other services the same fees as are allowed in the District Court for similar services.

FEEs OF CLERK OF COURT OF SESSIONS.

Court of Sessions
clerk's fees,

§ 8. When the Court is sitting as a Court of Criminal Jurisdiction, the Clerk of said Court shall receive the same fees as are allowed in the District Court for similar services.

The like.

§ 9. For services when attending the Court of Sessions, whilst sitting for the transaction of County business, the Clerk shall receive the same fees as are allowed to the Clerk of the District Court for similar services. For Transcript of Judgment, one dollar.

FEEs OF CLERK OF PROBATE COURT.

Probate clerks,
fees of.

§ 10. For drawing letters testamentary, or of administration, or a certificate of the appointment of appraisers, two dollars; for each notice given by posting, two dollars; for each notice given by publi-

cation, three dollars; for all other services the same fees as are allowed to the Clerk of the District Court for similar services.

FEES OF THE COUNTY RECORDER.

§ 11. For recording any instrument, paper, or notice, and for copies of any records, papers, or notices, when required, for every folio, forty cents; for noting any instrument recorded, the time when, and the place where recorded, fifty cents; for filing every notice or other paper, when required, and entering thereon a minute of the time filed, fifty cents; for making in the index the several entries of the instruments, papers, and notices required by law to be indexed, for every such instrument, paper, and notice, fifty cents; for every certificate attached to copies of records and papers in his office, when such copies are required, one dollar; for every entry of a discharge of a mortgage on the margin of the record, one dollar; for searching records and files in his office for each year for which the search is made, one dollar; for recording any instrument, paper, or notice in the Spanish language, and for copies of such instruments, papers, and notices, for every folio, one dollar; for taking the acknowledgment or proof of any instrument, paper, or notice, which may be by law recorded, one dollar for each signature; for recording the plot of any town or city, such price as may be agreed upon between the parties.

County Recorder,
fees of.

FEES OF COMMISSIONERS TO TAKE TESTIMONY.

§ 12. For taking depositions, for each folio, forty cents; for administering an oath or affirmation, fifty cents; for certificate to the deposition, one dollar.

Commissioners'
fees.

FEES OF PROBATE JUDGE.

§ 13. For every order or judgment, when not contested, one dollar; when contested, four dollars.

Probate Judge,
fees of.

§ 14. The fees received by the Probate Judge shall go into the County Treasury; and it shall be a misdemeanor for a Probate Judge to receive any fees to his own use.

The like.

THE FEES OF SHERIFFS.

§ 15. For serving a summons or any other process by which an action or proceeding is commenced, on each defendant, three dollars; for travelling in making such service, per mile, fifty cents, 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, two dollars; for a certified copy thereof, when requested, one dollar; for a copy of any writ, process, or other paper, when demanded or required by law, for each folio, fifty cents; for serving a notice in an action or proceeding, one dollar; for serving a subpoena, for each witness summoned, one dollar; and fifty cents for each mile actually

Sheriffs' fees.

travelled, in going only, but when 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 for arrest, or for the delivery of personal property, five dollars; advertising property for sale on execution, or under any judgment or order of sale, two dollars; for making the money upon the execution, for the first five thousand dollars, five per cent.; for all above five 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 defendants, 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, eight 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 restitution, putting any person entitled into possession of premises and removing the occupants, five dollars; and the same compensation for mileage as herein allowed for other writs; summoning a jury in any case, five dollars; attending on same, 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, three 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 custody, in either case, three dollars; for serving 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 expense 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 which are allowed by law for such services to a constable; for attending in person, or by deputy, the Supreme Court, for each day, five dollars; to be allowed by the Comptroller, on the certificate of the Clerk, and paid out of the State Treasury.

FEEES OF CORONERS.

Coroners' fees. § 16. For all services rendered by them when acting as sheriffs, the same fees which are allowed to sheriffs for similar services.

FEEES TO CONSTABLES.

Constables' fees. § 17. For serving a citation, summons, or other process by which a suit shall be commenced, two 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 TO JUSTICES OF THE PEACE.

§ 18. For filing every paper required to be filed, twenty-five cents; *Justices' fees.* for issuing a citation, summons, or other process by which a suit shall be commenced, one dollar; for entering a case upon his docket, fifty cents; for a subpoena, to each witness, twenty-five cents; administering oath to witness, twenty-five cents; for taking and certifying an oath, one dollar; for issuing writ of attachment, two dollars; entering any order or judgment in a case, for each folio, one dollar; 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, forty cents; for certified copy of judgment or of any order or paper on file in his office, forty cents; entering satisfaction of a judgment, one dollar; entering amicable suit without process, one dollar; transcript of judgment, fifty cents; issuing commission to take testimony, one dollar; issuing a supersedeas to an execution, fifty cents; making up transcript and returning papers on appeal, two dollars; issuing a search warrant, one dollar; issuing an execution, fifty cents; for celebrating a marriage and returning a certificate thereof to the Recorder, five dollars; for holding an inquisition in cases of forcible entry and detainer, five dollars.

FEES OF WITNESSES.

§ 19. Attending to any suit or proceeding, for each day, two dollars; *Witnesses' fees.* for travelling at the rate of fifty cents per mile in coming to the place of attendance, to be estimated from the residence of witness; but this section shall not be construed as allowing any fees to witnesses in criminal actions. No person shall be obliged to attend as a witness in a 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.

FEES OF JURORS.

§ 20. For the trial of each cause, two dollars; which shall be paid *Jurors fees.* by the party in whose favor the verdict is rendered before the same shall be entered. No fees shall be allowed to witnesses in criminal actions.

§ 21. If in any trial before any Court, the Jury be from any cause discharged without finding a verdict, the fees of the jurors 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.

MISCELLANEOUS PROVISIONS.

§ 22. The Secretary of State shall keep an account of all fees received *Account of fees to be kept.* in his office and shall settle an account for the same with the Comptrol-

ler once in every three months, and pay the amount into the State Treasury.

Disposition of Probate Judges' fees.

§ 23. 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 keep in a book provided for the purpose a full and accurate account of 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 Clerks shall at all times be 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 exhibited.

§ 24. Every officer whose fees are herein ascertained shall publish and set up in his office a fair table 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, when payable.

§ 25. 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 persons applying, until such fees are paid.

Cost of publication.

§ 26. 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.

§ 27. 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 thereof 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 officers may make searches, &c., without fees.

§ 28. 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.

§ 29. 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.

§ 30. No Attorney or Counsellor at law in any cause shall be allowed any fee for attending as a witness in such cause.

Attorneys, &c., not entitled to Witnesses' fees.

§ 31. 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, 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 paid.

Officers to deliver account of fees.

§ 32. No fee shall be charged by any officer for administering the oath of office.

No fee for oath of office.

§ 33. When a fee is allowed to one officer, the same fee shall be allowed to the 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.

Fees for services performed by officers not specified.

§ 34. The Attorney General, or any District Attorney, is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on 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, when fees have been tendered or paid.

Attorney Gen., &c., may subpoena witnesses without paying fees.

§ 35. 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 Treasurer.

Certificate to witnesses subpoenaed on behalf of the State.

§ 36. 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 person or persons, for the benefit of the State.

Extension of preceding provisions.

§ 37. For all services required by law to be performed by any Clerk, Sheriff, or Coroner, for which no compensation is provided by this act, such fees shall be allowed as shall from time to time be established by the Supreme Court, by general rules corresponding as near as may be with the rates herein specified.

Fees to Clerks, Sheriffs, and Coroners, not herein provided for.

§ 38. The fees of office allowable to the officers hereinafter named in the Counties of San Diego, Los Angeles, Santa Barbara, San Luis Obispo, Santa Clara, Santa Cruz, Solano, Napa, Sonoma, Marin, Mendocino, Contra Costa, and Monterey, shall be as follows :

Fees in certain Counties.

FEEs OF THE COUNTY AUDITOR.

§ 39. The County Auditor shall receive for his services such compensation as may be just, to be determined by the Court of Sessions of the County, or the Board of Supervisors of the County.

To County Auditor.

FEES OF NOTARIES PUBLIC.

To Notaries.

§ 40. For drawing and copying of every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, order, draft, or check, two dollars. For drawing and serving every notice of the non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, when personal service is made, two dollars; but when service is made by depositing such notice in the Post Office, fifty cents. For recovering every protest, one dollar. For drawing an affidavit, or other paper for which provision is not herein made, for each folio forty cents. For copies of affidavits or other papers, for each folio of one hundred words, forty cents. For taking an acknowledgment of a deed or other instrument, one dollar for each signature. For administering an oath or affirmation, one dollar.

FEES OF THE CLERK OF THE DISTRICT COURT.

To Clerk of District Court.

§ 41. For issuing any writ or process, one dollar. For filing every paper, fifty cents. For entering an appearance, discontinuance, dismissal, or default, one dollar. For entering every motion, rule, or order, for every folio, forty cents. For every certificate, fifty cents, but not to be allowed for certifying any paper to be a copy, for the copying of which he shall be paid. For calling and swearing a jury, one dollar. For swearing each witness in the progress of the trial, or in open Court, forty cents. For entering each cause in a calendar for the Court, and making a copy thereof for the Bar, twenty-five cents. For entering every cause without process, fifty cents. For receiving and entering a verdict, one dollar. For entering every judgment, or order, for each folio, forty cents. For every cause in his docket, fifty cents. For entering satisfaction of judgment, fifty cents. For a copy of any record or paper, for each folio, forty 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 or affirmation, and certifying same, fifty cents. For issuing a commission to take testimony, one dollar. For taking acknowledgment of deeds, or other instrument, for each signature, one dollar. For a transcript of judgment, fifty cents. For taking down testimony, thirty cents.

FEES OF THE CLERK OF THE COUNTY COURT.

To Clerk of County Court.

§ 42. For filing all the papers sent at any one time from a Justice's Court, fifty cents. For other services, the same fees as are allowed in the District Court for similar services.

FEES OF THE CLERK OF THE COURT OF SESSIONS.

To Clerk of Sessions.

§ 43. When the Court of Sessions is sitting as a court of criminal jurisdiction, the Clerk of said Court shall receive for his services eight dollars per day, and no other compensation. For services when attend-

ing the Court of Sessions, whilst sitting for the transaction of county business, the Clerk shall receive the same fees as are allowed to the Clerk of the District Court for similar services. For transcript of judgment, fifty cents.

FEES OF THE CLERK OF THE PROBATE COURT.

§ 44. For entering an order or judgment, or drawing letters testamentary or of administration, or a certificate of the appointment of appraisers, guardians, or commissioners, for each folio, forty cents. For each notice given by posting, fifty cents. For each notice given by publication, fifty cents, besides the expenses of the publication. For all other services, the same fees which are allowed to the Clerk of the District Court for similar services. To Probate Clerk.

FEES OF THE COUNTY RECORDER.

§ 45. For recording any instrument, paper, or notice, and for copies of any records, papers, or notices, when requested, for each folio, forty cents. For noting in any instrument, recorded, the time when, and the place where recorded, fifty cents. For filing every notice, or other paper when required, and entering thereon a minute of the time filed, fifty cents. For making in the indexes the several entries of the instruments, papers, and notices required by law to be indexed, for every such instrument, paper, and notice, fifty cents. For every certificate attached to copies of records and papers in his office, when such copies are required, fifty cents. For every entry of a discharge of a mortgage on the margin of the record, one dollar. For searching records and files in his office, for each year for which the search is made, fifty cents. For recording any instrument, paper, or notice, in the Spanish language, and for copies of such instruments, papers, and notices, for every folio, fifty cents. For taking the acknowledgment or proof of any instrument, paper, or notice, which may be by law recorded, one dollar for each signature. For recording any map or town lot, such price to be charged as may be agreed upon between the parties, but in no case to exceed five dollars. To County Recorder.

FEES OF COMMISSIONERS TO TAKE TESTIMONY.

§ 46. For taking depositions, for each folio, forty cents. For administering an oath or affirmation, fifty cents. For certificate to the deposition, one dollar. To Commissioners.

FEES OF PROBATE JUDGE.

§ 47. For every order or judgment, when not contested, one dollar; when contested, two dollars. To Probate Judge.

§ 48. The fees allowed for services rendered by the County Judge, as Probate Judge, shall be collected by the County Clerk, who shall keep a full and accurate account of the same in a book kept separate and apart for that purpose. The County Clerk shall make a settlement at The like.

least once a month with the County Treasurer of the fees thus collected, and pay the amount in his hands into the County Treasury. His accounts shall always be open to inspection by any County Officers, or any person who may be interested therein. The County Treasurer, in a book kept specially for that purpose, shall keep a full account of all moneys thus received, which shall constitute a separate and distinct fund, and so much thereof as may be necessary for that purpose shall be applied to the payment of the salary of the County Judge, and the residue, if any, shall be paid into the County Treasury, and it shall be a misdemeanor for a Probate Judge to receive any fees to his own use, except in such manner as is prescribed in this action.

THE FEES OF SHERIFFS.

To Sheriffs.

§ 49. For serving a summons or any other process by which an action or proceeding is commenced, on each defendant, one dollar: For travelling in making such service, per mile, fifty cents for the Southern Counties; 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, one dollar: For a certified copy thereof, when requested, one dollar; For a copy of any writ, process, or other paper, when demanded or required by law, for each folio, thirty cents: For serving a notice in an action or proceeding, one dollar: For serving a subpoena, for each witness summoned, fifty cents; and fifty cents for each mile actually travelled, in going only; but when 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, two dollars: Advertising property for sale on execution, or under any judgment or order of sale, two dollars: For making the money upon an execution, for the first five thousand dollars three per cent.; for all above five thousand dollars, one and one half 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, five 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 for other writs: Summoning a Jury in any cause, 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, two 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 a prisoner into his custody in either case, two 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 expense 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 sale on execution : For any services which may be rendered by a constable, the same fees which may be allowed by law for such services, to a constable : For attending in person or by deputy the Supreme Court, for each day five dollars ; to be allowed by the Comptroller, on the certificate of the Clerk, and paid out of the State Treasury.

FEES OF CORONERS.

§ 50. For all services rendered by them when acting as Sheriff, the same fees which are allowed to Sheriffs for similar services. To Coroners.

FEES OF CONSTABLES.

§ 51. For serving a citation, summons, or other process, by which a suit shall be commenced on each defendant, one dollar ; on all sums made on execution, to be charged against the defendant in the execution, three per cent. : For all other services, the same fees as are allowed to Sheriffs, for similar services. To Constables.

FEES OF JUSTICES OF THE PEACE.

§ 52. For filing every paper required to be filed, fifteen cents : For issuing a citation, summons, or other process by which a suit shall be commenced, fifty cents : For entering a cause upon his docket, twenty-five cents : For a subpoena, to each witness, twenty-five cents : Administering oath to witness, ten cents : For taking and certifying an oath, fifty cents : For issuing writ or attachment, two dollars : Entering any order or judgment in a case, for each folio, forty cents : For taking and approving any bond directed by law to be taken or approved by him, fifty cents : Swearing a jury, fifty cents : Taking depositions, per folio, thirty cents : For certified copy of judgment or of any order or paper on file in his office, thirty cents : Entering satisfaction of a judgment, fifty cents : Transcript of judgment, fifty cents : Issuing commission to take testimony, one dollar : Issuing a supersedeas to an execution, twenty-five cents : Making up transcript and returning papers on appeal, one dollar : Issuing a search-warrant, fifty cents : Issuing an execution, fifty cents : For celebrating marriage and returning certificate thereof to the Recorder, five dollars : For holding an inquisition in cases of forcible entry and detainer, five dollars. To Justices of the Peace.

FEES OF WITNESSES.

§ 53. Attending to any suit or proceeding for each day two dollars : To Witnesses.

For travelling, at the rate of twenty-five 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.

FEES OF JURORS.

To Jurors.

§ 54. For the trial of each cause, one dollar, which shall be paid by the party in whose favor the verdict is rendered, before the same shall be entered. No fees shall be allowed to jurors in criminal actions.

The like.

§ 55. If in any trial before any Court, the jury be from any cause discharged without finding a verdict, the fees of the jurors 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.

MISCELLANEOUS PROVISIONS.

Accounts of fees to be kept.

§ 56. The Secretary of State shall keep an account of all fees received in his office, and shall settle an account for the same with the Comptroller, once in every three months, and pay the amount into the State Treasury.

Disposition of Probate Judge's fees.

§ 57. 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 the County. The Clerk of the Probate Court shall be bound to collect them in the same manner as his own fees, and 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 Treasurer, and pay the amount in his hands into the County Treasury. The accounts of the Clerks shall at all times be open to the inspection of 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 exhibited.

§ 58. 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, when payable.

§ 59. 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.

§ 60. When by law any publication is required to be made by any officer of any suit, process, notice, order, or other paper, the costs of such publication shall be first tendered by the party, if demanded, for whom such process or order was granted, before the officer shall be compelled to make publication thereof.

Cost of publication.

§ 61. 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.

Execution for fees.

§ 62. 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 office 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.

Certain officers may make searches, &c., without fee.

§ 63. 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 not exceeding one quarter, shall be computed as a folio.

Folio defined.

§ 64. No Attorney or Counsellor at law in any cause shall be allowed any fee for attending as a Witness in such cause.

Attorneys, &c., not entitled to Witnesses' fees.

§ 65. Every officer upon receiving any fees for any official duty or service, shall be required by the person paying the same, to 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.

Officers to deliver account of fees.

§ 66. No fee shall be charged by any officer for administering the oath of office.

No fee for oath of office.

§ 67. 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.

Fees to Officers not specified.

§ 68. 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, when fees have been tendered or paid.

When Witnesses compelled to attend without fee.

§ 69. The Clerk of any Court, at which any witness shall have attended on behalf of the State in civil action, shall give to such witness

Certificate to Witnesses subpoenaed for the State.

a certificate of travel and attendance, which shall entitle him to receive the same from the County Treasury.

Extension of pro-
ceeding provisions

§ 70. 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.

Repeal of Act

§ 71. The act entitled "An act to regulate the fees of office" passed April twenty-second, one thousand eight hundred and fifty, is hereby repealed, said repeal to take effect from and after the first day of May next.

When Act to
take effect.
Act not to apply
to certain
Counties.

§ 72. This Act shall take effect on the first day of May next.

§ 73. Nothing contained within this Act shall be construed so as to apply to the Counties of Tuolumne, Calaveras, Mariposa, San Joaquin, and Trinity. The fees of the officers of said counties shall remain as affixed in an Act entitled, "An act to regulate fees of office," passed April twenty-second, one thousand eight hundred and fifty, except so far as the fees allowed Sheriffs for travelling per mile shall be affixed in this act.

Bill and receipt
for fees.

§ 74. All officers shall give the party paying fees, for official services, a bill of the items of such fees, together with a receipt for the amount of fees so paid. Any officer receiving more fees than are allowed by the law, shall be liable to the party injured to treble the amount of the total fees charged in the bill of fees. Any party so injured may sue for and recover back such treble amount in any court of civil jurisdiction in this State.

Penalty for
taking unlawful
fees.

Chap. 4.

AN ACT concerning Attorneys and Counsellors at Law.

Passed February 19, 1851.

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

Who may be
admitted as an
Attorney, &c.

§ 1. Any white male citizen of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, shall be entitled to admission as Attorney and Counsellor in all the Courts of this State.

What is required
of applicants for
admission.

§ 2. Every applicant for admission as Attorney and Counsellor shall produce satisfactory testimonials of good moral character, and undergo a strict examination, in open Court, as to his qualifications, by one of the Judges of the Supreme Court of this State.

Certificates of ad-
mission.

§ 3. If upon examination he be found duly qualified, the Court shall admit him as Attorney and Counsellor in all the Courts of this State, and shall direct an order to be entered to that effect upon its

records, and that a certificate of such record be given to him by the Clerk of the Court, which certificate shall be his license.

§ 4. The District and County Courts of this State are authorized to admit as Attorney and Counsellor in their respective Courts, any white male citizen of the age of twenty-one years, and of good moral character, who possesses the requisite qualifications, on similar testimonials and like examinations as are required by the preceding sections for admission by the Supreme Court, and may direct their clerks to give a certificate of such admission, which certificate shall be his license to practise in such Courts.

District and County Courts may admit Attorneys, &c.

§ 5. Every person, on his admission, shall take an oath or affirmation to support the Constitution of the United States and of the State, and to discharge the duties of Attorney and Counsellor to the best of his knowledge and ability. A certificate of such oath or affirmation shall be endorsed on the license.

Oath on admission.

§ 6. The examination may be dispensed with, in the case of a person who has been admitted Attorney and Counsellor in the highest Courts of a sister State; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission.

When examination may be dispensed with.

§ 7. Each Clerk shall keep a roll of Attorneys and Counsellors of the Court of which he is Clerk, which shall be a record of the Court.

Roll of Attorneys, &c., to be kept.

§ 8. If any person shall practise Law in any Court, except a Justice's or Recorder's Court, without having received a license as Attorney and Counsellor, he shall be deemed guilty of a contempt of Court, and punished as in other cases of contempt.

Penalty for practising without a license.

§ 9. An Attorney and Counsellor shall have authority: 1st, To bind his client in any of the steps of an action or proceeding, by his agreement filed with the Clerk, or entered upon the minutes of the Court, and not otherwise. 2d. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or within one year after judgment, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Authority of Attorney.

§ 10. The Attorney in an action or special proceeding, may be changed at any time before judgment or final determination, as follows: 1st. Upon his own consent, filed with the Clerk, or entered upon the minutes; 2d. Upon the order of the Court, or Judge thereof, on the application of the client.

Change of Attorney.

§ 11. When an Attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new Attorney or of the appearance of the party, in person, shall be given to the adverse party; until then he shall be bound to recognise the former Attorney.

Notice of change to be given.

§ 12. When an Attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as Attorney, shall, before any further proceedings be had against him, be required

Death or removal of an Attorney.

by the adverse party, by written notice, to appoint another attorney, or to appear in person.

When an Attorney, &c., may be removed.

§ 13. An Attorney and Counsellor may be removed or suspended by the Supreme Court, and by no other Court in the State, for either of the following causes, arising after his admission to practice: 1st. Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence; 2d. For wilful disobedience or violation of the order of a court, requiring him to do or forbear an act connected with or in the course of his profession.

Attorney convicted of felony, &c.

§ 14. In case of the conviction of an Attorney or Counsellor of a felony, or misdemeanor involving moral turpitude, the Clerk of the Court in which the conviction was had, shall within thirty days thereafter transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings to remove an Attorney, &c.

§ 15. The proceedings to remove or suspend an Attorney and Counsellor, under the first subdivision of Section thirteenth, shall be taken by the Court on the receipt of the certified copy of the record of conviction; the proceedings under the second subdivision of section thirteenth, may be taken by the Court for matters within its knowledge, or may be taken upon the information of another.

The like.

§ 16. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the Court.

The like.

§ 17. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

The like.

§ 18. After receiving the accusation the Court shall, if, in its opinion, the case require it, make an order requiring the accused to appear and answer the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order and of the accusation to be served upon the accused, within a prescribed time before the day appointed in the order.

The like.

§ 19. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the Court assign another day for that purpose; if he do not appear, the Court may proceed and determine the accusation in his absence.

§ 20. The accused may answer to the accusation, either by objecting to the insufficiency, or by denying its truth.

The like.

§ 21. If he object to the insufficiency of the accusation, the objection shall 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 accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

The like.

§ 22. If an objection to the insufficiency of the accusation be not sustained, the accused shall answer forthwith.

§ 23. If the accused plead guilty, or refuse to answer the accusation, The like. The Court shall proceed to judgment of removal or suspension. If he deny the matters charged, the Court shall immediately, or at such time as it may appoint, proceed to try the accusation.

§ 24. The Court may in its discretion order a reference to a com- The like. mittee to take depositions in the matter, and to report to the Court before proceeding to try the accusation.

§ 25. Upon conviction, in cases arising under the first subdivision of The like. section thirteenth, the judgment of the Court shall be, that the name of the party be stricken from the roll of Attorneys and Counsellors of the Court, and he be precluded from practising as such Attorney or Counsellor in all the Courts of this State; and upon conviction in cases under the second subdivision of section thirteenth, the judgment of the Court may be according to the gravity of the offence charged; deprivation of the right to practise as Attorneys or Counsellors in the Courts of this State, permanently or for a limited period.

Chap. V.

AN ACT to regulate proceedings in Civil Cases, in the Courts of Justice of this State.

Passed April 20, 1851.

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

TITLE I.

Of the Form of Civil Actions, and of the Parties thereto.

§ 1. There shall be in this State but one form of Civil Action, for Only one form of civil action. the enforcement or protection of private right, and the redress or prevention of private wrongs.

§ 2. In such action the party complaining shall be known as the Parties defined. plaintiff, and the adverse party as the defendant.

§ 3. 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 Trial of issues not raised by pleadings. and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

§ 4. Every action shall be prosecuted in the name of the real party By whom action to be prosecuted. in interest, except as otherwise provided in this Act.

§ 5. In the case of an assignment of a thing in action, the action by Action by Assignee of chose in action. 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 bill of exchange, transferred in good faith, and upon good consideration before due.

Action by executor, &c.

§ 6. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted.

Married woman a party.

§ 7. When a married woman is a party, her husband shall 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.

Defence by married woman.

§ 8. If a husband and wife be sued together, the wife may defend for her own right.

Infants to appear by Guardian.

§ 9. When an infant is a party he shall appear by guardian, who may be appointed by the Court in which the action is prosecuted, or by a Judge thereof, or a County Judge.

Guardian, how appointed.

§ 10. The guardian shall be appointed as follows:

1st. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant:

2d. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons: if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Action for injury to Child or Ward.

§ 11. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Who to be Plaintiff.

§ 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Act.

Who to be Defendant.

§ 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 question involved therein.

Who to be joined as Parties.

§ 14. Of the parties to the action, those who are united in interest shall 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; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all.

Several parties may be sued in one action.

§ 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

Transfer of interest, or death of party, effect of.

§ 16. An action shall not abate by the death, 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 the death, or other disability of a party, the Court, on motion, 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 may 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 parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court shall order them to be brought in.

Court may determine controversy, &c.

TITLE II.

Of the Place of Trial of Civil Actions.

§ 18. Actions for the following causes shall 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, as provided in this Act:

Actions to be tried where subject matter situated.

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 foreclosure of a mortgage of real property.

§ 19. Actions for the following causes shall 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:

Actions to be tried where cause of Action arose.

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 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, does anything touching the duties of such officer.

§ 20. In all other cases, the action shall be tried in the county in which the parties, or some of them, 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 may designate in his complaint; subject, however, to the power of the court to change the place of trial, as provided in this act.

Actions to be tried where Parties reside.

§ 21. The Court may, on motion, change the place of trial in the following cases:

Changing place of trial.

1st. When the county designated in the complaint is not the proper county.

2d. When there is reason to believe that an impartial trial cannot be had therein :

3d. When the convenience of witnesses and the ends of justice would be promoted by the change :

4th. When from any cause the Judge is disqualified from acting in the action.

TITLE III.

Of the Manner of Commencing Civil Actions.

Actions, how commenced.

§ 22. Civil actions in the District Courts, Superior Court of the City of San Francisco, and the County Courts, shall be commenced by the filing of a complaint with the Clerk of the Court in which the action is brought, and the issuance of a summons thereon.

Time of filing complaint to be endorsed.

§ 23. The Clerk shall endorse on the complaint the day, month, and year the same is filed ; and at any time after the filing, the plaintiff may have a summons issued. The summons shall be signed by the Clerk, and directed to the defendant, and be issued under the Seal of the Court.

Summons to be signed by Clerk.

Form of Summons.

§ 24. The summons shall state generally the nature of the action ; the parties thereto ; the Court in which it is brought ; the County in which the complaint is filed ; and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service ; or that judgment, by default, will be taken against him.

When Defendant required to answer.

§ 25. The time in which the summons shall require the defendant to answer the complaint, shall be as follows :

1st. If the defendant is served within the County in which the action is brought, ten days :

2d. If the defendant is served out of the County, but in the District in which the action is brought, twenty days :

3d. In all other cases, forty days.

Notice to be inserted in summons.

§ 26. There shall also be inserted in the summons a notice, in substance, as follows :

1st. In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint :

2d. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded therein.

§ 27. In an action affecting the title to real property, the plaintiff at the time of filing the complaint, or at any time afterwards, may file with the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby. From the time of filing only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

§ 28. The summons shall be served by the Sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a Judge of the Court in which the action is brought. A copy of the complaint, certified by the clerk, shall be served with the summons. The summons shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the clerk from which the summons issued.

Summons, by whom to be served.

§ 29. The summons shall be served by delivering a copy thereof attached to the certified copy of the complaint, as follows:

Summons, how served.

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 resides, or in whose service he is 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:

4th. In all other cases, to the defendant personally.

§ 30. When the person on whom the service is to be made, resides out of the State, or has departed from the State; or cannot, after due diligence, be found within the State; or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the Court, or a Judge thereof, or a county Judge, and it shall in like manner appear, 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 the action, such Court or Judge may grant an order that the service be made by the publication of the summons.

Service by publication.

§ 31. The order shall direct the publication to be made in a newspaper to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week: *Provided*, that publication against a defendant residing out of the State, or absent therefrom, shall not be less than three months. In case of publication where the residence of a non-resident or absent defendant is known, 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. When publication is ordered, personal service of a copy of the summons and complaint, out of the State, shall be equivalent to publication and deposit in the Post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication. In actions upon contracts for the direct payment of money, the Court in its discretion may, instead of ordering publication, or may, after publication, appoint an Attorney to

Order for publication.

appear for the non-resident, absent, or concealed defendant, and conduct the proceedings on his part.

Proceedings
where summons
served on some
Defendants only.

§ 32. Where 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 :

1st. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the Court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendant served; or,

2d. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

Proof of service
of summons.

§ 33. Proof of the service of the summons shall be as follows :

1st. If served by the Sheriff or his deputy, the affidavit or certificate of such Sheriff or deputy; or,

2d. If by any other person, his affidavit thereof; or,

3d. 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; or,

4th. The written admission of the defendant.

Time and place
of service to be
stated.

§ 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

When Court has
jurisdiction of
Action.

§ 35. From the time of the service of the summons and copy of complaint in a civil action, the Court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

Voluntary
appearance equi-
valent to service.

TITLE IV.

Of the Pleadings in Civil Actions.

Pleadings
defined.

§ 36. The pleadings are the formal allegations by the parties of their respective claims and defences, for the judgment of the Court.

Rules of
Pleading.

§ 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

Pleadings by
Plaintiff and
Defendant.

§ 38. The only pleading on the part of the plaintiff shall be the complaint or demurrer to defendant's answer, and the only pleading on the part of the defendant shall be the demurrer, or the answer.

Complaint, what
to contain.

§ 39. The complaint shall contain :

1st. The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant :

2d. A statement of the facts constituting the cause of action in ordinary and concise language :

3d. A demand of the relief which the plaintiff claims. If the recovery of money, or damages be demanded, the amount thereof shall be stated.

§ 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears 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 plaintiff 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.

§ 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded.

§ 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue ; or may demur and answer at the same time.

§ 43. If the complaint be amended, the amendments shall be filed, and a copy served upon the defendant, or his attorney, if he has appeared by attorney, otherwise a new summons shall issue thereon.

§ 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer.

§ 45. 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.

§ 46. 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 or counter claim, in ordinary and concise language.

§ 47. The counter claim mentioned in the last section shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

1st. A cause of action arising out of the transaction set forth in

the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action :

2d. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

Cross demands.

§ 48. When cross demands have existed between persons, under such circumstances, that if one had brought an action against the other, a counter claim could have been set up, neither shall be deprived of the benefit thereof, by the assignment or death of the other; but the two demands be deemed compensated, so far as they equal each other.

Several defences may be set up.

§ 49. The defendant may set forth by answer as many defences and counter claims as he may have. They shall each be separately stated, and the several defences shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

Sham Pleadings to be stricken out. Pleadings to be subscribed and verified.

§ 50. Sham answers and defences may be stricken out, on motion.

§ 51. Every pleading shall be subscribed by the party, or his attorney, and when the complaint is verified by affidavit, the answer shall be verified also, except as provided in the next section.

Verification, when it may be omitted.

§ 52. The verification of the answer required in the last section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony.

Genuineness of written instrument, when admitted.

§ 53. When an action is brought upon a written instrument, and the complaint contained a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

The like.

§ 54. When the defence to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the Clerk five days previous to the commencement of the term at which the action is to be tried an affidavit denying the same.

Manner of verifying Pleadings.

§ 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the Attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his Attorney, or other person verifying the same. When the pleading is verified by the Attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the State, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts, except that

in actions prosecuted by the Attorney General in behalf of the State the pleadings need not, in any case, be verified.

§ 56. 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, or be precluded from giving evidence thereof. The Court, or a Judge thereof, or a County Judge, may order a further account, when the one delivered is too general, or is defective in any particular.

Items of account need not be set forth.

§ 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the Court on motion of any person aggrieved thereby.

Irrelevant or redundant matter to be stricken out.

§ 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint.

Complaint to recover real property.

§ 59. In pleading a judgment or other determination of a Court or Officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Judgment, how pleaded.

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

Conditions precedent, how pleaded.

§ 61. In pleading a private Statute, or a right derived therefrom, it shall be sufficient to refer to such Statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof.

Private Statute, how pleaded.

§ 62. 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 establish on the trial that it was so published or spoken.

Pleadings in Action for libel and slander.

○ § 63. 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.

The like.

§ 64. 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. Claims to recover specific real property, with or without

damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same ; or,

3d. Claims to recover specific personal property, with or without damages, for the withholding thereof ; or,

4th. Claims against a trustee, by virtue of a contract, or by operation of law ; or,

5th. Injuries to character ; or,

6th. Injuries to person ; or,

7th. Injuries to property. But the causes of action so united shall all belong to one only of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Allegations, when taken as true.

§ 65. Every material allegation of the complaint, not specifically controverted by the answer, shall, for the purposes of the action, be taken as true. But the allegation of new matter in the answer shall be deemed controverted by the adverse party, as upon a direct denial, or avoidance, as the case may require.

Material allegation defined.

§ 66. A material allegation in a pleading is one essential to the claim, or defence, and which could not be stricken from the pleading without leaving it insufficient.

Answer after demurrer.

§ 67. After the decision of a demurrer, and on the payment of the costs of the same, the defendant may answer.

Amendments may be ordered by Court.

§ 68. The Court may, 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 a party or a mistake in any other respect. The Court may, likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars ; and may, upon like terms, allow an answer to be made after the time limited by this Act, or by an order enlarge such time ; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment order, or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect. When from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Plaintiff ignorant of Defendant's name.

§ 69. When the plaintiff is 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 is discovered, the pleading or proceeding may be amended accordingly.

Pleadings, how construed.

§ 70. In the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

§ 71. The Court shall, in every stage of an action, disregard any error or defect in the pleadings, or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

Error, &c., to be disregarded, when.

TITLE V.

Of the Provisional Remedies in Civil Actions.

CHAPTER I.

ARREST AND BAIL.

§ 72. No person shall be arrested in a civil action, except as prescribed by this Act.

Arrest, when may be made.

§ 73. The defendant may be arrested as hereinafter prescribed, in the following cases arising after the passage of this Act:

The like.

1st. In an action for the recovery of money or damages on a cause of action arising upon contract express or implied, when the defendant is about to start from the State, with intent to defraud his creditors, or where or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another:

2d. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer; or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment; or for a wilful violation of duty:

3d. In an action to recover the possession of personal property, unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the Sheriff.

4th. When the defendant has been guilty of 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:

5th. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

§ 74. An order for the arrest of the defendant shall be obtained from a Judge of the Court in which the action is brought, or from a County Judge.

Order for arrest, how obtained.

§ 75. The order may be made whenever it shall appear to the Judge by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists; and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive, or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the Clerk of the County.

In what cases Order for arrest may be made.

Plaintiff to give undertaking.

§ 76. Before making the order, the Judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the State, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the Clerk of the Court.

When order may be made.

§ 77. The order may be made to accompany the summons, or 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 therein mentioned to the Clerk of the Court in which the action is pending.

Order for arrest to be delivered to Sheriff, &c.

§ 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the Sheriff, who, upon arresting the defendant, shall deliver to him the copy of the affidavit; and also, if desired, a copy of the order of arrest.

Order, how executed.

§ 79. The Sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

When Defendant may be discharged from arrest.

§ 80. 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.

Bail, how given.

§ 81. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the Court, during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender in discharge of bail.

§ 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration: or he may surrender himself to the Sheriff of the County where he was arrested.

Bail may arrest the Defendant.

§ 83. For the purpose of surrendering the defendant, the bail at any time or 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 the Sheriff to do so. Upon the arrest of the defendant by the Sheriff, or upon his delivery to the Sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *Provided*, Such arrest, delivery, or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender, be not made within ten days after judgment, the bail shall be finally charged on

their undertaking, and be bound to pay the amount of the judgment, within ten days thereafter.

§ 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, judgment against such bail for the amount of such original judgment, may be, by order of the Court, upon affidavit of such neglect or refusal, entered against the bail.

Judgment against bail.

§ 85. The bail shall also be exonerated 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.

Bail, how exonerated.

§ 86. Within the time limited for that purpose, the Sheriff shall file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. 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 them, and the Sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the Clerk of the Court.

Proceeding after arrest.

§ 87. Within five days after the receipt of notice, the Sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail, (specifying the places of residence and occupations of the latter) before a Judge of the Court, or County Judge, or County Clerk, at a specified time and place; the time to be not less than five, nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Notice of justifying by bail.

§ 88. The qualifications of bail shall be as follows:

Qualifications of bail.

1st. Each of them shall be a resident, and householder, or freeholder, within the County:

2d. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge, or County Clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

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

How bail to justify.

§ 90. If the Judge, or Clerk, find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed, and the Sheriff shall thereupon be exonerated from liability.

Allowance of bail.

Deposit in lieu of bail.

§ 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the Sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Disposition of Deposit.

§ 92. The Sheriff shall immediately after the deposit pay the same into Court, and take from the Clerk receiving the same, two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment the same proceedings may be had on the official bond of the Sheriff, to collect the sum deposited, as in other cases of delinquency.

Bail after deposit.

§ 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited shall be refunded by such Clerk to the defendant.

Application of deposit after judgment.

§ 94. Where money shall have been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of 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, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied.

When Sheriff liable as bail.

§ 95. If, after being arrested, the defendant escape or be rescued, the Sheriff shall himself be liable as bail; but he may discharge himself from such liability, by the giving and justification of bail, at any time before judgment.

Judgment against Sheriff on his liability as bail.

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

Vacating order of arrest, and reducing amount of bail.

§ 97. A defendant arrested may at any time before the justification of bail apply to the Judge who made the order, or the Court in which the action is pending, upon reasonable notice to the plaintiff to vacate the order of arrest, or to reduce the amount of bail. 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 order of arrest was made.

The like.

§ 98. If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER II.

CLAIMS AND DELIVERY OF PERSONAL PROPERTY.

§ 99. 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 delivery of such property to him, as provided in this chapter. When claim may be made.

§ 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: Affidavit to obtain order for delivery.

1st. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof:

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 an 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.

§ 101. A Judge of the Court in which the action is brought, or a County Judge, shall thereupon, by an endorsement in writing upon the affidavit, order the Sheriff of the County where the property claimed may be, to take the same from the defendant, and deliver it to the plaintiff, upon receiving the undertaking mentioned in the next section. Order for delivery.

§ 102. Upon the receipt of the affidavit and order, with a written undertaking, executed by two 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 forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, 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; or if neither have any known place of abode, by putting them into the nearest Post-office directed to the defendant. Proceedings on order.

§ 103. The defendant may, within two 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 fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the Sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, Excepting to plaintiff's sureties.

or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant may require a return.

§ 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by 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 delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 109.

Justification of Defendant's Sureties.

§ 105. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before a Judge or County Clerk, in the same manner as upon bail on arrest; and 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 the justification is completed or expressly waived, and may retain the property until that time; if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification of Sureties.

§ 106. The qualification of sureties and their justification shall be such as are prescribed by this Act, in respect to bail upon an order of arrest.

Property Concealed.

§ 107. If the property, or any part thereof, be concealed in a building or enclosure, the Sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his county.

Sheriff to keep property.

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

Proceedings where property claimed by third party.

§ 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to possession thereof, stating the grounds of such title or right, and serve the same upon the Sheriff, the Sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the Sheriff against such claim, by an undertaking, by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders, or householders in the county; and no claim to such property

by any other person than the defendant or his agent, shall be valid against the Sheriff, unless so made.

§ 110. 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; or if the Clerk reside in another county, shall mail or forward the same within that time.

Order and affidavit to be filed.

CHAPTER III.

INJUNCTION.

§ 111. An injunction is a writ or order, requiring a person to refrain from a particular act. The order or writ, may be granted by the Court in which the action is brought, or by a Judge thereof, or by a County Judge; and when made by a Judge, may be enforced as the order of the Court.

Injunction defined.

§ 112. An injunction may be granted in the following cases :

In what Cases it may be granted.

1st. 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 the act complained of, either for a limited period or perpetually :

2d. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff :

3d. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

§ 113. The injunction may be granted at the time of issuing the summons upon the complaint; and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he the person making the oath has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

When it may be granted.

§ 114. An injunction shall not be allowed after the defendant has 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.

§ 115. On granting an injunction, the Court or Judge shall require, except where the people of the State are a party plaintiff, a written

Undertaking before injunction issued.

undertaking, on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto.

Order nisi for injunction.

§ 116. If the Court or Judge deem it proper that the defendant, or any of several defendants, should 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.

Injunction to suspend business of Corporation.

§ 117. An injunction to suspend the general and ordinary business of a corporation, shall not be granted except by the Court; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation, except when the people of this State are a party to the proceeding.

Motion to dissolve or modify injunction.

§ 118. If an injunction be granted without notice, the defendant at any time before the trial may apply upon reasonable notice to the Judge who granted the injunction, or to the Court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on the part of the defendant, with or without the answer. 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 evidence, in addition to those on which the injunction was granted.

When injunction will be dissolved or modified.

§ 119. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

ATTACHMENT.

In what cases attachment may issue.

§ 120. In an action upon a contract, express or implied, made after the passage of this Act, for the direct payment of money, which contract is made, or is payable in this State, and is not secured by a mortgage upon real or personal property, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment as hereinafter provided.

When it may issue.

§ 121. The Clerk of the Court shall issue the writ of attachment upon receiving an affidavit, by or on behalf of the plaintiff, which shall be filed, showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs, or counter claims), upon a contract express or implied, for the direct payment of money, and that such contract was made after the passage

of this Act, and was made, or is payable in this State, and that the payment of the same has not been secured by any mortgage on real or personal property.

§ 122. Before issuing the writ the Clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Plaintiff to give undertaking.

§ 123. The writ shall be directed to the Sheriff of any County in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking. Several writs may be issued at the same time, to the Sheriffs of different Counties.

Requirement of writ, &c.

Several may issue.

§ 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Stock, &c., may be attached.

§ 125. The Sheriff to whom the writ is directed and delivered, shall execute the same without delay, and if the undertaking mentioned in section 123 be not given, as follows:

How executed.

1st. Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the Recorder of the County:

2d. Personal property capable of manual delivery, shall be attached by taking it into custody:

3d. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached, by leaving with the President, or other head of the same, or the Secretary, Cashier, or managing Agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ:

4th. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal

property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Property in hands of third party.

§ 126. Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the Sheriff shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of third party to Plaintiff.

§ 127. All persons having in their possession, or under their control, any credits or other personal property, belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff, for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Third party may be examined as to Property.

§ 128. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the Court or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The Court or Judge may, after such examination, order personal property capable of manual delivery, to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Return, how made.

§ 129. The Sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

Perishable Property.

§ 130. If any of the property attached be perishable, the Sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The Sheriff's receipt shall be a sufficient discharge for the amount paid.

§ 131. If any personal property attached be claimed by a third person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution. Property claimed by third party.

§ 132. If judgment be recovered by the plaintiff, the Sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose: Proceedings after judgment.

1st. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment:

2d. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

§ 133. If after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the Sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment. The like.

§ 134. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 128 or section 137, or he may proceed as in other cases upon the return of an execution. Execution returned unsatisfied.

§ 135. If the defendant recover judgment against the plaintiff any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged, and the property released therefrom. Proceeding where Defendant has judgment.

§ 136. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the Judge who issued the attachment, or to the Court, for an order to discharge the same, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the Sheriff, and all the property attached remaining in his hands, shall be released from the attachment, and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. Defendant may move to discharge attachment.

Undertaking by Defendant.

§ 137. Upon such application the defendant shall deliver to the Court or Judge an undertaking executed by at least two sureties, residents and freeholders in the county, to the effect that the sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify, on application before the Judge or Court, and the property attached shall not be released from the attachment without their justification, if the same be required.

Motion to discharge as improperly issued.

§ 138. The defendant may also, any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the Judge who made the order, or the Court in which the action is brought, that the attachment be discharged, on the ground that the writ was improperly issued.

Motion, how opposed.

§ 139. If the motion be made upon affidavits, on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

When writ will be discharged.

§ 140. If upon such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Sheriff's return.

§ 141. The Sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon, or attached thereto. The provisions of this chapter shall not apply to any suits already commenced, but so far as such suits may be concerned, the Act entitled an Act to regulate proceedings against debtors by attachment, passed April 22d, 1850, shall be deemed in full force and effect.

CHAPTER V.

DEPOSIT IN COURT.

Court may order subject matter of action to be deposited in Court.

§ 142. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing, capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due, to another party, the Court may order the same, upon motion, to be deposited in Court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the Court.

Disobeying order.

§ 143. Whenever, in the exercise of its authority, a Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience, may make an order requiring the Sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the Court.

TITLE VI.

Of the Trial and Judgment in Civil Actions.

CHAPTER I.

JUDGMENT IN GENERAL.

§ 144. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation.

Judgment defined.

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

Judgment, how given.

§ 146. 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 is proper.

Judgment' against one of several Defendants.

§ 147. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have 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.

Extent of relief.

§ 148. An action may be dismissed, or a judgment of nonsuit entered, in the following cases:

When action may be dismissed or nonsuit entered.

1st. By the plaintiff himself, at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the Clerk to the defendant, who may have his action thereon:

2d. By either party, upon the written consent of the other:

3d. By the Court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal:

4th. By the Court, when upon the trial, and before the final submission of the case, the plaintiff abandons it:

5th. By the Court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the Jury. The dismissal mentioned in the first two subdivisions, shall be made by an entry in the Clerk's Register. Judgment may thereupon be entered accordingly.

§ 149. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

Judgment to be rendered on the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

§ 150. Judgment may be had, if the defendant fail to answer the complaint, as follows:

Judgment on failure to answer, when it may be had.

1st. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon application of the plaintiff, shall

enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants in the cases provided for in section 32 :

2d. In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk shall enter the default of the defendant ; and thereafter the plaintiff may apply at the first or any subsequent term of the Court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the Court to give judgment, or to carry the judgment into effect, the Court may take the account or hear the proof ; or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the Court may order the damages to be assessed by a Jury ; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided :

3d. In actions, where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment ; and the Court shall thereupon require proof to be made of the demand mentioned in the complaint : and if the defendant be not a resident of the State, shall require the plaintiff or his agent to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

OF ISSUES, AND THE MANNER OF THEIR DISPOSITION.

When an issue arises.

§ 151. An issue arises when a fact or conclusion of law is maintained by the one party, and is controverted by the other. Issues are of two kinds :

- 1st. Of law : and,
- 2d. Of fact.

Issue of Law.

§ 152. An issue of law arises upon a demurrer to the complaint, or to some part thereof.

Issue of Fact.

§ 153. 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.

Issue of Law, how tried.

§ 154. An issue of law shall be tried by the Court, unless it be referred, upon consent, as provided in Chapter VI. of this Title.

Issue of Fact, how tried.

§ 155. An issue of fact shall be tried by a Jury, unless a Jury trial is waived, or a reference be ordered, as provided in this Act. Where

there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

§ 156. The Clerk shall enter causes upon the Calendar of the Court, according to the date of the issue. Causes once placed on the Calendar for a general or special term, if not tried or heard at such term, shall remain upon the Calendar from Court to Court, until finally disposed of. Entry of Causes on Calendar.

§ 157. Either party may bring the issue to trial, or to a hearing, and in the absence of the adverse party, unless the Court for good cause otherwise direct, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require. Either Party may bring issue to trial.

§ 158. A motion to postpone a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The Court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. Motion to postpone trial.

CHAPTER IV.

TRIAL BY JURY.

ARTICLE I.

Formation of the Jury.

§ 159. When the action is called for trial by Jury, the Clerk shall prepare separate ballots containing the names of the Jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the Jury. If the ballots become exhausted before the Jury is complete, or if from any cause a Juror or Jurors be excused or discharged, the Sheriff shall summon, under the direction of the Court, from the citizens of the county and not from bystanders, so many qualified persons as may be necessary to complete the Jury. The Jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the Clerk in the minutes of the trial. Jury, how drawn, &c.

§ 160. As soon as the Jury is completed, an oath or affirmation shall be administered to the jurors, in substance, that they each of them will well and truly try the matter in issue between — the plaintiff, and — the defendant, and a true verdict render according to the evidence. Jurors to be sworn.

§ 161. Either party may challenge the Jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual Jurors, and shall either be peremptory, or for cause. Each party shall be entitled to four peremptory challenges. Challenge to Jurors.

Challenges for cause.

§ 162. Challenges for cause may be taken on one or more of the following grounds :

1st. A want of any of the qualifications prescribed by Statute to render a person competent as a Juror :

2d. Consanguinity or affinity within the third degree to either party :

3d. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party ; or being a member of the family of either party ; or a partner in business with either party ; or being security on any bond or obligation for either party.

4th. Having served as a Juror or been a witness on a previous trial between the same parties for the same cause of action :

5th. Interest on the part of the Juror in the event of the action, or in the main question involved in the action :

6th. Having formed or expressed an unqualified opinion or belief as to the merits of the action :

7th. The existence of a state of mind in the Juror evincing enmity against or bias to either party.

Challenges, how tried.

§ 163. Challenges for cause shall be tried by the Court. The Juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

ARTICLE II.

Conduct of the Trial.

Juror becoming sick.

§ 164. If, after the empanelling of the Jury, and before verdict, a Juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case the trial may proceed with the other Jurors, or a new Jury may be sworn, and the trial begin anew ; or the Jury may be discharged, and a new Jury then or afterwards empanelled.

Court, how to charge Jury.

§ 165. In charging the Jury the Court shall state to them all matters of law which it thinks necessary for their information in giving their verdict ; and if it state the testimony of the case, it shall also inform the Jury that they are the exclusive judges of all questions of fact. The Court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge ; or shall sign, at the time, a statement of such points prepared and submitted by the Counsel of either party.

Jury may retire for deliberation.

§ 166. After hearing the charge, the Jury may either decide in Court, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more Officers, until they agree upon their verdict, or are discharged by the Court. The Officer shall, to the utmost of his ability, keep the Jury together, separate from other persons ; he shall not suffer any communication to be made to them,

or make any himself, unless by order of the Court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

§ 167. Upon retiring for deliberation the Jury may take with them all papers (except depositions), which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the Court, to be taken from the person having them in possession: and they 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.

What papers
Jury may take
with them when
they retire.

§ 168. After the Jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may 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 parties or Counsel.

Jury may return
for instruction on
point of law.

§ 169. In all cases where a Jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the Court shall direct.

Jury discharged
without render-
ing a verdict.

§ 170. While the Jury are absent, the Court may adjourn, from time to time, in respect to other business; but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the Jury, until a verdict is rendered, or the Jury discharged. The Court may direct the Jury to bring in a sealed verdict, at the opening of the Court, in case of an agreement during a recess, or adjournment for the day. A final adjournment of the Court for the term shall discharge the Jury.

Court may
adjourn during
absence of Jury.

Sealed verdict
may be directed

§ 171. When the Jury have agreed upon their verdict, they shall be conducted into Court by the officer having them in charge. Their names shall then be called, and they shall be asked by the Court, or the Clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

Jury, how
discharged.
Verdict, how
given.

§ 172. If the verdict be informal, or insufficient, in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the Court, or the jury may be again sent out.

Verdict may be
corrected.

§ 173. When the verdict is given, and is not informal or insufficient, the Clerk shall immediately record it, in full, in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

Verdict, how
recorded.

ARTICLE III.

The Verdict.

General and
Special verdicts.

§ 174. The verdict of a jury is either general or special. A general verdict is that by which they 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. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented, as that nothing shall remain to the Court but to draw from them conclusions of law.

Verdict general,
when.

§ 175. The Court may instruct the jury to find a special verdict: when not so instructed, the verdict shall be general.

When Jury to
find amount of
recovery.

§ 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

Verdicts in
actions to recover
specific personal
property.

§ 177. 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, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry in minutes
after verdict.

§ 178. Upon receiving a verdict, an entry shall be made by the Clerk in the minutes of the Court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where the special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

TRIAL BY THE COURT.

Jury trial, how
waived.

§ 179. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract; and with the assent of the Court in other actions, in the manner following:

1st. By failing to appear at the trial:

2d. By written consent, in person or by attorney, filed with the Clerk.

3d. By oral consent in open Court, entered in the minutes. The Court may prescribe by rule what shall be deemed a waiver in other cases.

Decision of issue
of fact by Court,
how given.

§ 180. Upon the trial of an issue of fact by the Court, its decision shall be given in writing, and filed with the Clerk, within ten days after the trial took place. In giving the decision, the facts found, and the

conclusions at law, shall be separately stated. Judgment upon the decision shall be entered accordingly.

§ 181. On a judgment upon an issue of law, if the taking of an account be necessary to enable the Court to complete the judgment, a reference may be ordered. Reference after judgment on issue of law.

CHAPTER VI.

OF REFERENCES, AND TRIAL BY REFEREES.

§ 182. A reference may be ordered upon the agreement of the parties filed with the Clerk, or entered in the minutes : When a reference may be ordered.

1st. To try any or all of the issues in an action or proceeding, whether of fact or of law ; and to report a judgment thereon.

2d. To ascertain a fact necessary to enable the Court to proceed and determine the case.

§ 183. When the parties do not consent, the Court may, upon the application of either, or of its own motion, direct a reference in the following cases : When the Court may order a reference.

1st. When the trial of an issue of fact requires 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 report upon any specific question of fact involved therein :

2d. When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect :

3d. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action ; or,

4th. When it is necessary for the information of the Court in a special proceeding.

§ 184. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the Court or Judge shall appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection. Who may be Referee.

§ 185. Either party may object to the appointment of any person as referee, on one or more of the following grounds : Grounds of objection to Referee.

1st. A want of any of the qualifications prescribed by Statute to render a person competent as a juror :

2d. Consanguinity or affinity, within the third degree, to either party :

3d. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party ; or being a member of the family of either party ; or a partner in business with either party ; or being security on any bond or obligation for either party :

4th. Having served as a juror, or been a witness on any trial between the same parties for the same cause of action :

5th. Interest on the part of such person in the event of the action, or in the main question involved in the action :

6th. Having formed or expressed an unqualified opinion or belief as to the merits of the action :

7th. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections to Referee, how disposed of.

§ 186. The objections taken to the appointment of any person as referee shall be heard and disposed of by the Court. Affidavits may be read, and any person examined as a witness, as to such objections.

Referee's report.

§ 187. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the Court, and upon filing the report with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the Court. The decision of the referees may be excepted to and reviewed in like manner as if made by the Court. When the reference is to report the facts, the report shall have the effect of a special verdict.

CHAPTER VII.

GENERAL PROVISIONS RELATING TO TRIALS.

ARTICLE I.

Exceptions.

Exception defined.

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

Point of exception to be stated.

§ 189. The point of the exception shall be particularly stated, and may be delivered in writing to the Judge, or if the party require it, shall be written down by the Clerk; when delivered in writing, or written down by the Clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing, or written down as above, it may be entered in the Judge's minutes, and afterwards settled in a statement of the case, as provided in this Act.

Form of exception.

§ 190. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence, or other matter, as is necessary to explain it, but no more; and the whole as briefly as possible.

When decision or report deemed excepted.

§ 191. When a cause has been tried by the Court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on

motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II.

New Trials.

§ 192. A new trial is a re-examination of an issue of fact, in the same court, after a trial and decision by a jury, Court, or referees. New trial defined.

§ 193. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party: Grounds for granting a new trial.

1st. Irregularity in the proceedings of the Court, jury, or adverse party, or any order of the Court, or abuse of discretion by which either party was prevented from having a fair trial :

2d. Misconduct of the jury :

3d. Accident, or surprise, which ordinary prudence could not have guarded against :

4th. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial :

5th. Excessive damages, appearing to have been given under the influence of passion or prejudice :

6th. Insufficiency of the evidence to justify the verdict, or other decision ; or that it is against law :

7th. Error in law, occurring at the trial, and excepted to by the party making the application.

§ 194. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it shall be made upon affidavit ; for any other cause, it shall be made upon a statement prepared as provided in the next section. When motion must be supported by affidavit.

§ 195. The party intending to move for a new trial, shall give notice of the same within two days after the trial, and shall, within five days after such notice, prepare and file with the clerk the affidavit required by the last section, or a statement of the grounds upon which he intends to rely. If no affidavit or statement be filed within five days after the notice, the right to move for a new trial shall be deemed waived. The statement shall contain so much of the evidence, or reference thereto, as may be necessary to explain the grounds taken, and no more. Such statement, when containing any portion of the evidence of the case and not agreed to by the adverse party, shall be sealed by the Judge upon notice. On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the clerk one day at least previous to the hearing. Notice of motion for new trial.

Motion, when to be made.

§ 196. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement.

CHAPTER VIII.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

When judgment may be entered.

§ 197. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the Court order the case to be reserved for argument, or further consideration, or grant a stay of proceedings.

Argument of case reserved.

§ 198. When the case is reserved for argument, or further consideration, as mentioned in the last section, it may be brought by either party before the Court for argument at the first special term.

Judgment for Defendant.

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

Judgment in action to recover specific personal property.

§ 200. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and 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.

Clerk to keep a Judgment book.

§ 201. The Clerk shall keep among the records of the Court a book for the entry of Judgments, to be called the "Judgment Book," in which such judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

Death of party after verdict and before judgment.

§ 202. If a party die after a verdict or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Judgment roll, how constituted.

§ 203. Immediately after entering the judgment, the Clerk shall attach together and file the following papers, which shall constitute the judgment roll:

1st. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed on the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment:

2d. In all other cases, the summons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties.

Judgment to be docketed, and to become a lien.

§ 204. Immediately after filing a judgment roll the Clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed, it shall become a lien upon all the real property of the judgment debtor,

not exempt from execution in the county owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

§ 205. The docket mentioned in the last section is a book which the Clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment Debtors; Judgment Creditors; Judgment: Time of Entry; Where entered in Judgment Book; Appeals, when taken; Judgment of Appellate Court; Satisfaction of Judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order. Docket described

§ 206. The docket kept by the Clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the Clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection. Docket to be open for inspection.

§ 207. A transcript of the original docket certified by the Clerk may be filed with the Recorder of any other county, and from the time of the filing the judgment shall become a lien upon all the real property of the judgment debtor not exempt from execution in such county owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied. Transcript of docket may be filed.

§ 208. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of contract filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment Creditor; or within one year after the judgment by the Attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party, or Attorney, to give such acknowledgment, and upon motion the Court may compel it, or may order the entry of satisfaction to be made without it. Entry of satisfaction.

TITLE VII.

Of the Execution of the Judgment in Civil Actions.

CHAPTER I.

THE EXECUTION.

§ 209. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter. Execution within five years.

§ 210. The writ of execution shall be issued in the name of the people, sealed with the seal of the Court, and subscribed by the clerk, Form of execution.

and shall be directed to the Sheriff, and shall intelligibly refer to the judgment, stating the Court, the County where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon, and shall require the Sheriff substantially as follows :

1st. If it be against the property of the judgment debtor, it shall require the Sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property ; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or if the execution be issued to a county other than the one in which the judgment was recovered on the day when the transcript of the docket was filed in the office of the Recorder of such county, stating such day, or at any time thereafter :

2d. If it be against real or personal property, in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the Sheriff to satisfy the judgment, with interest, out of such property :

3d. If it be against the person of the judgment debtor, it shall require the Sheriff to arrest such debtor, and commit him to the jail of the county, until he pay the judgment, with interest, or be discharged according to law :

4th. If it be for the delivery of the possession of real or personal property, it shall require the Sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or 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 real property, as provided in the first subdivision of this section.

Execution on judgment where all the Defendants not served.

§ 211. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the Sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served, or who appeared in the action. In other respects, the writ shall contain the directions specified in the first subdivision of the last section.

Execution, when returnable.

§ 212. The execution may be made returnable at any time, not less than ten nor more than sixty days after its receipt by the Sheriff, to the Clerk with whom the judgment roll is filed.

Judgment, how enforced.

§ 213. Where a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those

respects, by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced.

§ 214. After the lapse of five years from the entry of judgment, an execution shall be issued only by leave of the Court, on motion. Such leave shall not be given, unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due. Execution after five years.

§ 215. Notwithstanding the death of a party after the judgment, execution thereon against his property may, upon permission granted by the Probate Court, be issued and executed in the same manner, and with the same effect, as if he were still living. Execution against the property of a deceased judgment debtor.

§ 216. Where the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in the State. Where it requires the delivery of real or personal property, it shall 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 may issue to any Sheriff.

§ 217. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution. Until a levy, property shall not be affected by the execution. Property subject to execution.

§ 218. If the property levied on be claimed by a third person as his property, the Sheriff shall summon from his county six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the Sheriff, and if their verdict be in favor of the claimant, the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff, and the witnesses, shall be paid by the claimant, if the verdict be against him; otherwise by the plaintiff. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses. Claim by third party to property levied on.

§ 219. The following property shall be exempt from execution, except as herein otherwise specially provided: Property exempt from execution.

1st. Chairs, tables, desks, and books, to the value of one hundred dollars, belonging to the judgment debtor:

2d. Necessary household, table, and kitchen furniture, belonging to the judgment debtor, including stove, stove pipe, and stove furniture, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual or family use sufficient for one month:

3d. The farming utensils, or implements of husbandry, of the judgment debtor; also two oxen, or two horses, or two mules, and their harness, and one cart or wagon, and food for such oxen, horses, or mules, for one month:

4th. The tools and implements of a mechanic, necessary to carry on his trade, the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their professional library, and the law libraries of an attorney or counsellor :

5th. The tent and furniture, including a table, camp stools, bed and bedding of a miner ; also his rocker, shovels, spade, wheelbarrows, pumps, and other instruments used in mining, with provisions necessary for his support for one month :

6th. Two oxen, or two horses, or two mules, and their harness, and one cart or wagon, by the use of which a cartman, teamster, or other laborer, habitually earns his living ; and food for such oxen, horses, or mules for one month, and a horse, harness, and vehicle used by a physician or surgeon in making his professional visits :

7th. All arms and accoutrements required by law to be kept by any person. But no article mentioned in this section shall be exempt from an execution issued on a judgment recovered for its price, or upon a mortgage thereon.

Execution, how levied.

§ 220. The Sheriff shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient ; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment, or depositing the amount with the Clerk of the Court ; any excess in the proceeds over the judgment and the Sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the Sheriff's fees, within the view of the Sheriff, he shall levy only on such part of the property as the judgment debtor may indicate : *Provided*, That the judgment debtor be present at, and indicate at the time of the levy, such part ; and *provided*, that the property indicated be amply sufficient to satisfy such judgment and fees.

Notice of sale of property on execution.

§ 221. Before the sale of property on execution, notice thereof shall be given as follows :—

1st. In case of perishable property, by posting written notice of the time and place of sale, in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property :

2d. In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than five nor more than ten days successively :

3d. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold ; and publishing a copy thereof once a week, for the same period, in a newspaper in the county, if there be one.

§ 222. An officer selling without the notice prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment, (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

Penalty for selling without notice.

§ 223. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the Sheriff shall be bound to follow such directions.

Sales, how made and conducted.

§ 224. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion upon previous notice of five days before any Court, or before any Justice of the Peace, if the same shall not exceed his jurisdiction.

Purchaser at auction refusing to pay.

§ 225. Such Court or Justice shall proceed in a summary manner and give judgment, and issue execution therefor forthwith, but the defendant may claim a jury. And the same proceedings may 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.

The like.

§ 226. 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.

Construction of preceding sections.

§ 227. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest

Certificate to purchasers at sale.

which the debtor had in and to such property on the day the execution was levied.

Property not
capable of
manual delivery.

§ 228. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Sale of real
property.

§ 229. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases, the real property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchaser a certificate of the sale, containing

1st. A particular description of the real property sold :

2d. The price bid for each distinct lot or parcel :

3d. The whole price paid :

4th. When subject to redemption, it shall be so stated, a duplicate of which certificate shall be filed by the officer with the Recorder of the county.

Redemption of
property sold.

§ 230. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest :

1st. The judgment debtor, or his successor in interest, in the whole or any part of the property :

2d. A creditor, having a lien by judgment or mortgage on the property sold, or on some share or part thereof; subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

When property
may be redeemed.

§ 231. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with eighteen per cent. thereon in addition, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien with interest.

Property may be
again redeemed.

§ 232. If the property be so redeemed by a redemptioner, either the judgment debtor, or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with six per cent. thereon in addition, and the amount of any assessments or taxes which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount; and the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as the debtor or any redemptioner is so disposed,

redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with six per cent. thereon in addition, and the amount of any assessments or taxes which the said last previous redemptioner paid after the redemption by him, with interest thereon; and the amount of any liens held by the said last redemptioner, previous to his own, with interest. Notice of redemption shall be given to the Sheriff. If no redemption be made within six months after the sale, the purchaser shall be entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner shall be entitled to a Sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate.

Notice of redemption.

§ 233. The payment mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale; and a tender of the money shall be equivalent to payment.

Payment to redeem, to whom made.

§ 234. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the Sheriff:

Evidence of right to redeem to be produced.

1st. A copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, or of the County where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the Recorder:

2d. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto: and,

3d. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

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

Court may restrain waste until expiration of time to redeem

§ 236. The purchaser from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof.

Purchaser, &c., entitled to rents, &c., until redemption.

Proceeding
where purchaser
evicted.

§ 237. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the recovery be in consequence of the irregularity in the proceedings concerning the sale, the judgment may, by order of the Court, upon notice to the judgment debtor, be revived, and a new execution issued for the price paid on the sale, with interest. Such judgment shall be a lien on the real estate of the judgment debtor only from the time of its revival.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

Judgment debtor
may be required
to submit to
examination.

§ 238. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Sheriff of the county where he resides; or if he do not reside in this State, to the Sheriff of the county where the judgment roll is filed; is 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 the Judge of the Court, or a County Judge, requiring such judgment debtor to appear and answer concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a Judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

Debtors to
judgment debtor
refusing to apply
property to
satisfy judgment.

§ 239. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise 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, before such Judge, or a referee appointed by him, 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.

Debtors to
judgment debtor
may pay Sheriff;

§ 240. After the issuing of an 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 may be necessary to satisfy the execution; and the Sheriff's receipt shall be a sufficient discharge for the amount so paid.

Debtors to
judgment debtor
may be
examined.

§ 241. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, or upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars,

the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him or a referee appointed by him, and answer concerning the same.

§ 242. Witnesses may be required to appear and testify before the Judge, or referee, upon any proceeding under this chapter in the same manner as upon the trial of an issue.

Witnesses may be required to attend.

§ 243. The Judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Judge may order property to be applied to satisfy judgment.

§ 244. If it appear that a person 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, the Court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt; and the Court or Judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the Court in which the action is brought, at any time upon such terms as may be just.

Suits against alleged debtor to judgment debtor.

§ 245. If any person, party or witness, disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the Court or Judge ordering the reference for a contempt.

Disobeying order of referee.

TITLE VIII.

Actions in Particular Cases.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

§ 246. In an action for the foreclosure or satisfaction of a mortgage of real property, or the satisfaction of a lien or incumbrance upon property, real or personal, the Court shall have power by its judgment to direct a sale of the property, or any part of it; the application of the proceeds to the payment of the amount due on the mortgage, lien, or incumbrance, with costs, and execution for the balance.

Judgment in actions to foreclose, &c.

§ 247. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance with costs, the Court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in Court.

Disposition of surplus.

§ 248. If the debt, for which the mortgage, lien, or incumbrance is

Sale for payment of instalment.

held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease: and afterwards as often as more becomes due, for principal or interest, the Court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILFUL TRESPASS, IN CERTAIN CASES, ON REAL PROPERTY.

Nuisance defined and action therefor.

§ 249. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment, the nuisance may be enjoined or abated, as well as damages recovered.

Who may sue for waste.

§ 250. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Damages in action for cutting timber, &c.

§ 251. Any person who shall cut down, or carry off, any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds; or on the commons or public grounds, of any city or town; or on the street or highway, in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any Court having jurisdiction.

Limitation of last section.

§ 252. Nothing in the last section shall authorize the recovery of more than the just value of the timber, taken from uncultivated wood land, for the repair of a public highway or bridge upon the land, or adjoining it.

Damages for unlawful entry.

§ 253. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

Who may bring action to determine adverse claim.

§ 254. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims

an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

§ 255. If the defendant in such action disclaim, in his answer, any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. When Plaintiff not to recover costs.

§ 256. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact; and the plaintiff may recover damages for withholding the property. Verdict where Plaintiff's right is determined pending the action.

§ 257. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages. When value of improvements to be allowed.

§ 258. The Court in which an action is pending for the recovery of real property may on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, for the purposes of the action. Order for entry and survey of real property in suit.

§ 259. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurements: but if any unnecessary injury be done to the property, he shall be liable therefor. Order, what to contain.

§ 260. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale. Mortgage not deemed a conveyance.

§ 261. The Court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon: or after a sale on execution, before a conveyance. Court may restrain where pending suit to foreclose.

§ 262. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance. Suit for injury to real property before obtaining possession.

§ 263. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action. Right of recovery not affected by alienation pending suit.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

§ 264. When several persons hold and are in possession of real property, as joint tenants, or as tenants in common, in which one or more of them have an estate of inheritance, or for life, an action may be In what cases suit for partition may be brought.

brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein; and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Complaint, what to contain.

§ 265. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Who to be parties.

§ 266. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

Notice to the parties.

§ 267. Immediately after filing the complaint, the plaintiff shall file with the Recorder of the County in which the property is situated, a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing, it shall be deemed notice to all persons.

Summons, how directed.

§ 268. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and generally, to all persons unknown, who have or claim any interest in the property.

Parties unknown or non-residents.

§ 269. If a party having a share or interest is unknown, or any one of the known parties reside out of the State, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party, by publication, as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

Answer, what to contain.

§ 270. The defendants who have been personally served with the summons, and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property; and if such defendants claim a lien upon the property, by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their right to such lien.

What put in issue and determined by action.

§ 271. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the Court, before the judgment of sale

shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

§ 272. The plaintiff shall produce to the Court, on the hearing of the case, the certificate of the Recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action.

Plaintiff to produce Recorder's certificate as to liens.

§ 273. If it appear by the certificate of the Recorder that there were outstanding liens of record at the time of the commencement of the action, and the persons holding or claiming such liens are not made parties to the action, the Court shall either order such parties to be brought in by an amendment, or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid; or if not paid, what amount remains due, and their order among the liens held by the parties who have appeared and answered; and whether the amount remaining due thereon has been secured in any way, and if secured, the extent and nature of the security.

Proceedings where certificate shows outstanding liens.

§ 274. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the Court, in such manner as may be proper. The report of the referee thereon shall be made to the Court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

Notice to persons having outstanding liens.

§ 275. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation, in the complaint, to the satisfaction of the Court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition, according to the respective rights of the parties, as ascertained by the Court, and appoint three referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

When sale will be ordered.

When partition will be ordered.

§ 276. In making the partition, referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of

Partition, how made.

the parties, as determined by the Court, designating the several portions by proper land marks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Referees' report,
what to specify.

§ 277. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Proceedings on
Referees' report.

§ 278. The Court may confirm or set aside the report, and if necessary appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual for ever; which judgment shall be binding and conclusive:

1st. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years; or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof after the termination of a particular estate therein; and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life:

2d. On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication: and,

3d. On all other persons claiming from such parties or persons, or either of them.

Who not affected
by judgment.

§ 279. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

Expense of
Reference.

§ 280. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the Court; and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

Apportionment
of liens.

§ 281. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life in
property ordered
to be sold.

§ 282. When a part of the property only is ordered to be sold, if there be an estate for life, or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds of sale,
how applied.

§ 283. The proceeds of the sale of the incumbered property shall be applied under the direction of the Court as follows:

1st. To pay its just proportion of the general costs of the action:

2d. To pay the costs of the reference:

3d. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment:

4th. The residue among the owners of the property sold, according to their respective shares therein.

§ 284. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the Court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property, on account thereof.

Where a party having a lien has other security.

§ 285. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the Court so directs. But in case no direction be given, all such proceeds and securities shall be paid into Court, or deposited therein, or as directed by the Court.

Disposition by Referees of proceeds of sale.

§ 286. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into Court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the Court. Further testimony may be taken in Court, or by a referee, at the discretion of the Court, and the Court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

Proceedings after payment of proceeds of sale into Court.

§ 287. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold, subject to a prior estate, charge, or lien, that shall be stated in the notice.

Sales to be by auction, and notice thereof to be given.

§ 288. The Court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties, out of the State.

Order for sale.

§ 289. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the Court to be sold on credit, in the name of the Clerk of the Court and his successors in office; and for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant.

Security for purchase money.

§ 290. The person entitled to a tenancy for life, or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person

Compensation to tenant for life, where he consents.

so entitled may consent to accept instead thereof, by an instrument in writing filed with the Clerk of the Court. Upon the filing of such consent, the Clerk shall enter the same in the minutes of the Court.

Where he does not consent.

§ 291. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the Court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate; and shall order the same to be paid to such party, or deposited in Court for him, as the case may require.

Unknown tenants for life.

§ 292. If the persons entitled to such estate for life or years be unknown, the Court shall provide for the protection of their rights, in the same manner, as far as may be, as if they were known and had appeared.

Rights in remainder or reversions.

§ 293. In all cases of sales when it appears that any person has a vested or contingent future right or estate in any of the property sold, the Court shall ascertain and settle the proportional value of such contingent, or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale to be published.

§ 294. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Who may not become purchasers.

§ 295. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Referees to report on sale.

§ 296. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the Court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale; and the securities, if any, taken. The report shall be filed in the office of the Clerk of the county where the property is situated.

Order confirming report.

§ 297. If the sale be confirmed by the Court, an order shall be entered, directing the referees to execute conveyances and take securities pursuant to such sale; which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

When incumbrancer a purchaser.

§ 298. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyances to be recorded.

§ 299. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in

the action; and against all such parties and persons as were unknown, if the summons have been served by publication, and against all persons claiming from them, or either of them.

§ 300. When there are proceeds of a sale belonging to an unknown owner, or to a person without the State, who has no legal representative within it, the same shall be invested in securities on interest, for the benefit of the persons entitled thereto.

Proceeds of sale belonging to unknown or non-resident owner.

§ 301. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the Clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the Court.

Security for such proceeds, how taken.

§ 302. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the Court, such securities shall be taken in the names of, and payable to, the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the Clerk.

When security to be taken in the names of the parties interested

§ 303. The Clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the Court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose, in the Clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Proceedings as to securities taken in the name of the Clerk.

§ 304. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered by judgment, the Court may adjudge compensation to be made, by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others, by owners unknown, nor by infants, unless, in case of an infant, it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Payments for equality of partition.

§ 305. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law, or directed by order of the Court.

Guardian of infant may receive proceeds of sale.

§ 306. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the

Committee of insane person may receive proceeds of sale.

proceeds of such real property, from the referees, on executing with sufficient sureties, an undertaking approved by a Judge of the Court, or by a County Judge, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

Guardian or
Committee may
consent to
partition without
action.

§ 307. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares, of the parts to which they may be respectively entitled, upon an order of the Court.

Costs of partition,
by whom to be
paid.

§ 308. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the Court may require the expense of such litigation to be paid by the parties thereto, or any of them.

Single referee
may be appointed

§ 309. The Court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Attorney Genl.
to sue for the
usurpation of an
office, &c.

§ 310. An action may be brought by the Attorney General in the name of the people of this State, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this State. And it shall be the duty of the Attorney General to bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the Governor.

Complaint, what
to contain.

§ 311. Whenever such action is brought, the Attorney General, in addition to the statement of the cause of Action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging

to the office, and by means of his usurpation thereof, an order may be granted by a Judge of the Supreme Court, or a District Judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested, and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Defendant may be arrested.

§ 312. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party, so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

Judgment, how rendered.

§ 313. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

Party found entitled may take upon him the execution of the office.

§ 314. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained, by reason of the usurpation of the office by the defendant.

Damage by reason of usurpation.

§ 315. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

One action may be brought against several claimants.

§ 316. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars; which fine, when collected, shall be paid into the Treasury of the State.

Penalty for usurping office.

CHAPTER VI.

OF ACTIONS AGAINST STEAMERS, VESSELS, AND BOATS.

§ 317. All steamers, vessels, and boats shall be liable:

Liability of steamers, vessels, and boats.

1st. For supplies furnished for their use at the request of their respective owners, masters, agents, or consignees:

2d. For services rendered on board at the request of, or on contract with, their respective owners, masters, agents, or consignees.

3d. For materials furnished in their construction, or repair, or equipment:

4th. For their wharfage and anchorage within the State:

5th. For non-performance or mal-performance of any contract for the transportation of persons or property, made by their respective owners, masters, agents, or consignees.

6th. For injuries committed by them to persons or property: *Provided*, that the wages of mariners, boatmen, and others employed in

the service of such steamers, vessels, and boats, shall have preference over all other demands.

Action may be directly against such steamer, &c.

§ 318. Actions for demands arising upon any of the grounds specified in the preceding section, may be brought directly against such steamers, vessels, or boats.

Complaint, what to state.

§ 319. The complaint shall designate the steamer, vessel, or boat by name, and shall be verified by the oath of the plaintiff, or some one on his behalf.

Summons, on whom served.

§ 320. The summons attached to a certified copy of the complaint, may be served on the master, mate, or any person having charge of the steamer, vessel, or boat, against which the action is brought.

Attachment may issue.

§ 321. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the steamer, vessel, or boat, against which the action is brought, with its tackle, apparel, and furniture attached, as security for the satisfaction of any judgment that may be recovered therein.

Plaintiff to give undertaking.

§ 322. The Clerk of the Court shall issue a writ of attachment, on the application of the plaintiff, upon receiving a written undertaking on behalf of the plaintiff, executed by two or more sufficient sureties, to the effect, that if judgment be rendered in favor of the steamer, vessel, or boat, as the case may be, he will pay all costs and damages that may be awarded against him, and all damages which may be sustained by such steamer, vessel, or boat from the attachment, not exceeding the sum specified in the undertaking, which shall in no case be less than five hundred dollars when the attachment is issued against a steamer or vessel, or less than two hundred dollars when issued against a boat. The undertaking shall be accompanied by an affidavit of each of the sureties, that he is a resident and freeholder or householder of the County, and worth double the amount specified in the undertaking over and above all his just debts and liabilities. The Clerk shall file the undertaking and affidavits.

Attachment, how directed.

§ 323. The writ shall be directed to the Sheriff of the county within which the steamer, vessel, or boat lies, and direct him to attach such steamer, vessel, or boat, with its tackle, apparel, and furniture, and keep the same in his custody until discharged by due course of law; unless the owner, master, agent, or consignee thereof, give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy the demand in suit, which shall be specified in the writ, besides costs; in which case, to take such undertaking.

Attachment, how executed.

§ 324. The Sheriff to whom the writ is directed and delivered shall execute the same without delay, and shall, unless the undertaking mentioned in the last section be given, attach and keep in his custody the steamer, vessel, or boat named therein, with its tackle, apparel, and furniture, until discharged by due course of law; but the Sheriff shall not be authorized by any such writ to interfere with the discharge of any merchandise on board of such steamer, vessel, or boat, nor will the

removal of any trunks or other property of passengers, or of the captain, mate, seaman, steward, cook, or other persons employed on board.

§ 325. The owner, master, agent, or consignee of the steamer, vessel, or boat, against which the action is brought, may appear and answer, or plead to the action; and may except to the sufficiency of the sureties on the undertaking filed on the behalf of the plaintiff, and may require sureties to justify, as in actions against individuals upon bail on arrest.

Who may defend action.

§ 326. All proceedings in actions under the provisions of this chapter shall be conducted in the same manner as in actions against individuals, except as otherwise herein provided: and in all proceedings subsequent to the complaint, the steamer, vessel, or boat may be designated as defendant.

Mode of proceeding in action.

§ 327. After the appearance to the action, of the owner, master, agent, or consignee, the attachment may, on motion, be discharged, in the same manner, and on like terms and conditions, as attachments in other cases, subject to the provisions of section 329.

Attachment may be discharged.

§ 328. If the attachment be not discharged, and a judgment be recovered in the action in favor of the plaintiff, and an execution be issued thereon, the Sheriff shall sell at public auction, after publication of notice of such sale for ten days, the steamer, vessel, or boat, with its tackle, apparel, and furniture, or such interest therein as may be necessary, and shall apply the proceeds of sale, as follows:

Sale on attachment.

1st. When the action is brought for demands other than the wages of mariners, boatmen, and others employed in the service of the steamer, vessel, or boat sold, to the payment of the amount of such wages, as specified in the execution:

2d. To the payment of the judgment and costs, including his fees: and,

3d. He shall pay any balance remaining to the owner, master, agent, or consignee, who may have appeared in the action; or if there be no appearance, then into Court, subject to the claim of any party or parties legally entitled thereto.

§ 329. Any mariner, boatman, or other person employed in the service of the steamer, vessel, or boat attached, who may wish to assert his claim for wages against the same, the attachments being issued for other than such wages, shall file an affidavit of his claim setting forth the amount and the particular service rendered, with the Clerk of the Court; and thereafter no attachment shall be discharged upon filing an undertaking, unless the amount of such claim, or the amount determined as provided in the next section, be covered thereby in addition to the other requirements; and any execution issued against such steamer, vessel, or boat, upon judgment recovered thereafter, shall direct the application of the proceeds of any sale: *first*, to the payment of the amount of such claims filed, or the amount determined, as provided in the next section which the Clerk shall insert in the writ; and *second*, to the payment of the judgment and costs, and Sheriff's fees; and shall direct the payment of

Provision for claims of persons employed in steamers, &c., attached.

any balance to the owner, master, or consignee who may have appeared in the action; but if no appearance by them be made therein, it shall direct a deposit of the balance in Court.

The like.

§ 330. If the claim of the mariner, boatman, or other person, filed with the Clerk of the Court, as provided in the last section, be not contested within five days after notice of the filing thereof by the owner, master, agent, or consignee of the steamer, vessel, or boat against which the claim is filed, it shall be deemed admitted; but if contested, the Clerk shall endorse upon the affidavit thereof a statement that it is contested, and the grounds of the contest; and shall immediately thereafter order the matter to a single referee for his determination, or he may hear the proofs and determine the matter himself. The judgment of the Clerk, or referee, may be received by the County Judge either in term or vacation, immediately after the same is given, and the judgment of the County Judge shall be final. On the review, the County Judge may use the minutes of the proofs taken by the Clerk, or referee, or may take the proofs anew.

Notice of sale, what to contain.

§ 331. The notice of sale published by the Sheriff shall contain a statement of the measurement and tonnage of the steamer, vessel, or boat, and a general description of her condition.

Appeal.

§ 332. From orders and judgments under this chapter, an appeal may be taken by the owner, master, agent, or consignee, on the same terms and conditions as appeals in actions against individuals.

TITLE IX.

Of Appeals in Civil Actions.

CHAPTER I.

APPEALS IN GENERAL.

Judgment or order, how reviewed.

§ 333. A judgment or order in a civil action may be reviewed as prescribed by this title, and not otherwise.

Order made out of Court without notice.

§ 334. An order made out of Court, without notice to the adverse party, may be vacated or modified, without notice, by the Judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made.

Who may appeal. Parties, how designated.

§ 335. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Appeal, in what cases.

§ 336. An appeal may be taken:

1st. From a final judgment in an action, or special proceeding, commenced in the Court in which the judgment is rendered, within one year after the rendition of the judgment.

2d. From a judgment rendered on an appeal from an inferior Court, within ninety days after the rendition of the judgment.

3d. From an order made at a special term within sixty days after the order is made, and entered in the minutes of the Clerk.

This section shall not extend to appeals to the District Courts from orders or judgments of the Probate Courts, but shall extend to judgments rendered in the District Courts upon such appeals.

§ 337. The appeal shall be made by filing with the Clerk of the Court, with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

Appeal, how made.

§ 338. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more; and shall serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare amendments to the statement, and serve a copy on the appellant. If such amendments are admitted, the statement shall be corrected accordingly; and if not admitted, the statement and amendments shall be presented to the Judge who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such Judge.

Case may be annexed to record.

§ 339. If the party 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.

Right to make a case when deemed waived.

§ 340. The several periods of time above limited may be enlarged, upon good cause shown by the Judge before whom the cause was tried.

Time may be enlarged.

§ 341. The statement, when settled by the Judge, shall be signed by him, with his certificate that the same has been allowed and is correct: when the statement is agreed upon by the parties, they or their Attorneys shall sign the same with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the Clerk.

Case, how settled.

§ 342. The Clerk shall annex the statement, if the appeal be from a final judgment, to the judgment roll; if the appeal be from an order, to such order, or to a copy thereof.

Case to be annexed to record, &c.

§ 343. The provisions of the last five preceding sections shall not apply to appeals taken from an order made at a special term upon affidavits filed; but such affidavits shall be annexed to the order in the place of the statement mentioned in those sections.

Limitation of preceding sections.

§ 344. Upon an appeal from a judgment, the Court may review any intermediate order involving the merits, and necessarily affecting the judgment.

Power of Court on appeal.

§ 345. Upon an appeal from a judgment or order, the Appellate

The like.

Court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside or confirm, or modify any or all of the proceedings subsequent to or dependent upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the Appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the Appellate Court that the appeal was made for delay, it may add to the costs such damages as may be just.

Appellant to furnish the Court with papers.

§ 346. On an appeal from a final judgment, the appellant shall furnish the Court a copy of the notice of appeal, the judgment roll, and the statement annexed, certified by the Clerk to be a correct copy.

On appeal from a judgment rendered on an appeal, or from an order made at a special term, the appellant shall furnish the Court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing of the Court below; such copies to be certified by the Clerk to be correct. If any written opinion be given on rendering the judgment or making the order in the Court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers the appeal may be dismissed.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS, AND THE SUPERIOR COURT OF THE CITY OF SAN FRANCISCO.

Appeal from District Courts and Superior Court of San Francisco.

§ 347. An appeal may be sent to the Supreme Court from the District Courts, and the Superior Court of the City of San Francisco, in the following cases:

1st. From the judgment rendered in an action or special proceeding, commenced in those Courts, or brought into those Courts from another Court:

2d. From an order made at a special term granting or refusing a new trial, or which affects a substantial right in an action or special proceeding.

Undertaking on appeal.

§ 348. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars; or that sum shall be deposited with the Clerk, with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the Clerk within five days after the notice of appeal is filed.

Undertaking to stay execution.

§ 349. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to

the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant, upon the appeal.

§ 350. If the judgment or order appealed from, direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered, be placed in the custody of such officer or receiver as the Court may appoint; or unless an undertaking be entered into, on the part of the appellant, with at least two sureties, and in such amount as the Court or the Judge thereof, or County Judge, may direct, to the effect that the appellant will obey the order of the Appellate Court upon the appeal.

Where judgment directs delivery of documents, &c.

§ 351. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal, until the instrument is executed and deposited with the Clerk, with whom the judgment or order is entered, to abide the judgment of the Appellate Court.

Where execution of a conveyance is directed.

§ 352. If the judgment or order appealed from direct the sale, or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

Where sale or possession of real property is directed.

Or sale of mortgaged premises.

§ 353. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the Court below, upon the judgment or order appealed from, or upon the matter embraced therein; but the Court below may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from. And the Court below may, in its discretion, dispense with, or limit the security required by said sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

Effect of appeal.

Appellant an Executor, &c.

§ 354. The undertaking prescribed by sections 348, 349, 350, and

Form of undertaking.

352, may be in one instrument, or several, at the option of the appellant.

Affidavit of sureties to accompany undertaking.

§ 355. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth double the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within five days after the filing of the undertaking; and unless they or other sureties justify before a Judge of the Court below, or a County Judge, or the County Clerk, within five days thereafter (upon notice to the adverse party), the appeal shall be regarded as if no such undertaking had been given.

Excepting to and justification by sureties.

Effect of appeal, in cases not before provided for.

§ 356. In cases not provided for in sections 349, 350, 351, and 352, the perfecting of an appeal, by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in section 348, shall stay proceedings in the Court below upon the judgment or order appealed from; except that where it directs the sale of perishable property, the Court below may order the property to be sold, and the proceeds thereof to be deposited, to abide the judgment of the Appellate Court.

Appeals, where to be heard.

§ 357. Appeals in the Supreme Court from a final judgment, and from a judgment rendered on an appeal, and from an order granting or refusing a new trial, shall be heard at a general term. Appeals in all other cases shall be held at a special term.

Judgment on appeal to be certified to Court below.

§ 358. When judgment is rendered upon the appeal, it shall be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the Clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the Supreme Court on the docket against the original entry. In cases of appeal from an order, the Clerk shall enter at length in the records of the Court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the Supreme Court, on appeal.

CHAPTER III.

APPEALS TO THE DISTRICT COURTS FROM THE COUNTY COURTS.

Appeal from County Court, in what cases.

§ 359. An appeal may be taken to the District Courts from the County Courts, of the county or counties comprising any judicial district in the following cases:

- 1st. From a final judgment rendered in an action, or special proceeding commenced therein:
- 2d. From a judgment rendered on an appeal from a Justice's Court or a Recorder's Court, in a case involving the legality of any tax,

fees, toll, impost, license, municipal or other fine, or the possession of real property :

3d. From an order granting or refusing a new trial, or which affects a substantial right in an action or special proceeding.

§ 360. Security shall be given upon such appeal, in the same manner and to the same extent as upon an appeal to the Supreme Court, and like justification on the part of the sureties may be required. Security on appeal.

§ 361. Appeals to the District Courts, as provided in this chapter, shall be heard at the special terms of those Courts, and shall be brought on to a hearing at the earliest period practicable. Appeal, where to be heard.

§ 362. The appellant shall furnish the papers to the Appellate Court, in the same manner as upon an appeal to the Supreme Court. Appellant to furnish papers.

CHAPTER IV.

APPEALS TO THE DISTRICT COURTS FROM THE PROBATE COURTS.

§ 363. An appeal may be taken from a Probate Court to the District Court of the District in which the Probate Court is held, in the following cases : Appeal from Probate Court, in what cases.

1st. From an order or decree admitting a will to probate, or refusing the same :

2d. From an order setting apart property, or making an allowance for the widow or children :

3d. From an order granting letters testamentary or of administration, or appointing a guardian of an infant, or of an insane person, or of a person incompetent to manage his property, or refusing to grant such letters, or to make such appointment, or making such letters or appointment.

4th. From an order directing the sale or conveyance of real property :

5th. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed ; or by which such allowance or direction is refused :

6th. From an order made on the settlement of an executor, administrator, or guardian.

§ 364. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the Clerk. Appeal, how taken.

§ 365. Appeals from the Probate Courts shall be heard at the special terms of the District Courts, and be brought on at the earliest period practicable. Appeal, where to be heard.

CHAPTER V.

APPEALS TO THE COUNTY COURTS FROM JUSTICES' AND RECORDERS' COURTS.

§ 366. Judgments in all civil cases rendered by Justices' and Recorders' Courts may be reviewed by the County Court. The manner of Appeals from Justices' and Recorders' Courts.

appealing, and the papers to be furnished, and the security to be given, are prescribed in Titles XVI. and XVII. of this Act.

Power of Court on Appeal.

§ 367. Upon an appeal the Court may review all orders affecting the judgment, and may reverse, affirm, or modify the judgment appealed from; and may set aside, or confirm, or modify any or all of the proceedings subsequent to, and dependent upon, such judgment, and may, if necessary or proper, order a new trial.

TITLE X.

Miscellaneous Proceedings.

CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

Joint debtor may be summoned to show cause why he should not be bound by judgment.

§ 368. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding, as provided in section 82, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Summons, what to state.

§ 369. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Affidavit to accompany summons.

§ 370. The summons should be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment or some part thereof remains unsatisfied; and shall specify the amount due thereon.

Answer to summons.

§ 371. Upon such summons the defendant may answer within the time specified therein, denying the judgment, or setting up any defence which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

What to constitute the pleadings.

§ 372. If the defendant in his answer deny the judgment, or set up any defence, which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case: if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Issues, how tried.

§ 373. The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

§ 374. 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 manner prescribed by this chapter. Judgment may be entered by confession.

§ 375. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: Statement, what to contain.

1st. It shall authorize the entry of judgment for a specified sum:

2d. If it be for money due, or to become due, it shall state concisely the facts out of which it arose, and shall 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 a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

§ 376. The statement shall be filed with the Clerk of the County in which the judgment is to be entered, who shall endorse upon it, and enter in the Judgment Book a judgment of such Court, for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll. Statement to be filed.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

§ 377. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which should have jurisdiction, if an 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 case, and render judgment thereon, as if an action were depending. Controversy may be submitted and decided without suit.

§ 378. Judgment shall be entered in the Judgment Book, as in other cases, but without costs, for any proceeding prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll. Judgment, how entered.

§ 379. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal. Judgment, how enforced.

CHAPTER IV.

OF ARBITRATIONS.

§ 380. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between Controversy may be submitted to arbitration.

them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

Submission to be in writing.

§ 381. The submission to arbitration shall be in writing, and may be to one or more persons.

Submission may be made an order of Court.

§ 382. It may be stipulated in the submission, that it be entered as an order of the County Court, or of the District Court, for which purpose it shall be filed with the Clerk of the County where the parties, or one of them, reside. The Clerk shall, thereupon, enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the Court to make an award, and the award may be enforced by the Court, in the same manner as a judgment. If the submission be not made an order of the Court, it may be revoked at any time before the award is made.

Power of Arbitrators.

§ 383. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

All the Arbitrators to meet. To be sworn.

§ 384. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties, in relation to the matters in controversy, and to make a just award according to their understanding.

Award, how made.

§ 385. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the Court, the award shall be filed with the Clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his Attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the Clerk in the Judgment Book, and shall thereupon have the effect of a judgment.

Vacating award.

§ 386. The Court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion:

1st. That it was procured by corruption or fraud:

2d. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced:

That the arbitrators exceeded their powers in making their award ; or that they refused, or improperly omitted, to consider a part of the matters submitted to them ; or that the award is indefinite, or cannot be performed.

§ 387. The Court, may, on motion, modify or correct the award, where it appears : When Court may modify or correct award:

1st. That there was a miscalculation in figures, upon which it was made, or that there is a mistake in the description of some person or property therein :

2d. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted :

3d. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

§ 388. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action ; but the judgment entered before a motion is made shall not be subject to appeal. Appeal from decision.

§ 389. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration. Action for revoking submission to arbitration.

CHAPTER V.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

§ 390. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him, for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the Clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence ; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs, from the time of the offer. Offer of compromise, and proceedings thereon.

TITLE XI.

Of Witnesses, and of the Manner of Obtaining Evidence.

CHAPTER I.

OF WITNESSES.

§ 391. All persons, without exception, otherwise than as specified in this chapter, may be witnesses in any action or proceeding. Who may be a witness.

§ 392. No person offered as a witness shall be excluded by reason of his interest in the event of the action or proceeding ; nor on account of opinions on matters of religious belief. Interest or religious belief not to disqualify.

§ 393. The provision of the last section that no person shall be ex- Last section not

cluded by reason of his interest in the event of an action or proceeding, shall not apply to a party in such a proceeding, nor to any person for whose immediate benefit it is prosecuted or defended. The examination of such party or person shall be taken as provided in chapter third in this Title.

Who may not be a witness.

§ 394. The following persons shall not be witnesses :

1st. Those who are of unsound mind at the time of their production for examination :

2d. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly : and,

3d. Indians, or persons having one fourth or more of Indian blood, in an action or proceeding to which a white person is a party :

4th. Negroes, or persons having one half or more Negro blood, in an action or proceeding to which a white person is a party.

Husband and wife.

§ 395. A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband ; nor can either, during the marriage, or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

Attorney or Counsellor.

§ 396. An Attorney or Counsellor shall not, without the consent of his client, be examined as a witness as [to] any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Clergyman or Priest.

§ 397. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Physician or Surgeon.

§ 398. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

Public Officer.

§ 399. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge or Juror.

§ 400. The Judge himself, or any Juror, may be called as a witness by either party ; but in such case it shall be in the discretion of the Court or Judge to order the trial to be postponed or suspended, and to take place before another Judge or Jury.

Interpreter.

§ 401. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

§ 402. A subpoena may require not only the personal attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control. No witnesses shall be required to attend before any Court, Judge, Justice, or other officer, out of the county in which he resides.

What a subpoena may require.

§ 403. The subpoena shall be issued as follows :

Subpoena, when issued.

1st. To require attendance before a Court, or at the trial of an issue therein, it shall be issued in the name and under the seal of the Court before which the attendance is required, or in which the issue is pending :

2d. To require attendance out of Court before a Judge, Justice, or other officer, authorized to administer oaths, or take testimony in any matter, under the laws of this State ; it shall be issued by the Judge, Justice, or other officer before whom the attendance is required :

3d. To require attendance before a commissioner appointed to take testimony by a Court of any other State or County, it may be issued by any Judge or Justice of the Peace, in places within their respective jurisdictions.

§ 404. The service of a subpoena shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Subpoena, how served.

§ 405. If a witness be concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any Court or Judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the Sheriff of the county serve the subpoena ; and the Sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Service of subpoenas on person concealed.

§ 406. A person present in Court, or before a judicial officer, may be required to testify, in the same manner as if he were in attendance upon a subpoena issued by such Court or officer.

Parties present in Court may be required to testify.

§ 407. It shall be the duty of a witness, duly served with a subpoena, to attend at the time appointed, with any papers under his control required by the subpoena, to answer all pertinent and legal questions ; and unless sooner discharged, to remain till the testimony is closed.

Witness to attend pursuant to subpoena.

§ 408. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself ; but he need not give an answer which will have a tendency to

When witness must answer.

subject him to punishment for a felony; nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Disobeying subpoena, or refusing to be sworn, or contempt.

§ 409. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court, or officer issuing the subpoena, or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed, or his answer stricken out.

Penalty for disobeying subpoena

§ 410. A witness disobeying a subpoena shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Witness failing to attend may be arrested.

§ 411. In case of failure of a witness to attend, the Court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the County to arrest the witness and bring him before the Court or officer where his attendance was required.

Examination of witness confined in jail.

§ 412. If the witness be a prisoner, confined in a jail or prison within this State, for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer for the purpose of being orally examined, may be made, as follows:

1st. By the Court itself, in which the action or special proceeding is pending:

2d. By a Judge of the Supreme Court, District Court, or County Judge of the County where the action or proceeding is pending, if before a Judge or other person out of Court.

Order for such examination, how made.

§ 413. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Examination, how to be taken.

§ 414. If the witness be imprisoned in the County where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

Witness privileged from arrest.

§ 415. Every person who has been in good faith served with a subpoena to attend as a witness before a Court, Judge, Commissioner, Referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest, in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest of a witness to be void.

§ 416. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for

any subsequent detention of the party, if such party claim the exemption and make an affidavit stating :

1st. That he has been served with a subpoena to attend as a witness before a Court, officer, or other person ; specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued ; and,

2d. That he has not been thus served by his own procurement with the intention of avoiding an arrest :

3d. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

CHAPTER III.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, AND OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

§ 417. No action to obtain a discovery under oath, in aid of the prosecution or defence of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this chapter.

No action to obtain a discovery allowed.

§ 418. A party to an action or proceeding 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 at the trial, and he may be examined on a commission.

Party to action may be examined

§ 419. The examination of a party, thus taken, may be rebutted by adverse testimony.

Testimony of party may be rebutted.

§ 420. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint, answer, or reply may be stricken out, and judgment be taken against him ; and he may be also, in the discretion of the Court, proceeded against as in other cases for a contempt.

Penalty on party to action refusing to testify.

§ 421. A party examined by an adverse party, as in this chapter 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 to 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.

§ 422. 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 of examination, as if he were named as a party.

Examination of party for whose benefit action is prosecuted, &c.

Examination of
co-plaintiff or
co-defendant.

§ 423. A party may be examined on the part of his co-plaintiff or a co-defendant; but the examination thus taken shall not be used on behalf of the party examined, except as against the examining party.

CHAPTER IV.

ON AFFIDAVITS.

Affidavits, before
whom to be
taken.

§ 424. An affidavit to be used before any Court, Judge, or officer of this State, may be taken before any Judge or Clerk of any Court, or any Justice of the Peace, or Notary Public in this State.

Affidavits taken
out of State.

§ 425. An affidavit taken in another State of the United States, to be used in this State, shall be taken before a Commissioner appointed by the Governor of this State to take affidavits and depositions in such other State, or before any Judge of a Court of record having a seal.

Affidavit taken
in a Foreign
Country.

§ 426. An affidavit taken in a foreign country to be used in this State, shall be taken before an ambassador, minister, or consul of the United States, or before any Judge of a Court of record having a seal in such foreign country.

Certificates to
Affidavits taken
out of State.

§ 427. When an affidavit is taken before a Judge of a Court in another State, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such Judge is a member thereof, shall be certified by the Clerk of the Court under the seal thereof.

CHAPTER V.

OF DEPOSITIONS TAKEN IN THIS STATE.

When testimony
may be taken by
deposition.

§ 428. The testimony of a witness in this State may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases:

1st. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended:

2d. When the witness resides out of the county in which his testimony is to be used:

3d. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required:

4th. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

Either party may
take depositions
on giving notice.

§ 429. Either party may have the deposition taken of a witness in this State, before any Judge or Clerk, or any Justice of the Peace, or Notary Public in this State, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last section.

Such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown, a Judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

§ 430. Either party may attend such examination and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper sealed, and directed to the Clerk of the Court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial, or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by the reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent, or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

Either party may attend such examination. Deposition, how taken, &c.

§ 431. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

Deposition, when it may be read.

CHAPTER VI.

OF DEPOSITIONS TAKEN OUT OF THIS STATE.

§ 432. The testimony of a witness out of the State may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

Deposition of witness out of State.

§ 433. The deposition of a witness out of this State shall be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Judge, or Court, or County Judge, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to any Judge or Justice of the Peace selected by the officer granting the commission, or to a commissioner appointed by the Governor of this State to take affidavits and depositions in other States.

Deposition to be upon Commission.

§ 434. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled if the parties disagree as to their form,

Settling Interrogatories.

by the Judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

Authority of Commissioners.

§ 435. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute; and to certify the deposition to the Court, in a sealed envelope directed to the Clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Non-return of commission, when not to stay trial.

§ 436. A trial, or other proceeding, shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the Court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER VII.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Testimony may be perpetuated.

§ 437. The testimony of a witness may be taken and perpetuated, as provided in this chapter.

Affidavit to obtain order to perpetuate.

§ 438. The applicant shall produce to a District Judge, or to a County Judge, an affidavit stating:

1st. That the applicant expects to be a party to an action, in a Court of this State:

2d. That the testimony of a witness residing in this State, whose place of residence is stated, is necessary to the prosecution or defence of such action; and generally the facts expected to be proved:

3d. That the party named who is expected to be adverse to the applicant resides or is at the time in this State. The Judge may, thereupon, in his discretion, make an order allowing the examination, and prescribing how long before the examination the order and notice of the time and place thereof shall be served.

When deposition may be taken.

§ 439. Upon proof of personal service upon the person who is expected to be the adverse party of the order, copy of the affidavit, and of a notice that the examination will be taken before a District Judge, or County Judge of the county wherein the witness resides, or may be at a specified time and place; such Judge may take the deposition of the witness, and the examination may, if necessary, be adjourned from time to time.

Examination, how conducted, &c.

§ 440. The examination shall be by question and answer, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, then certified by the Judge, and immediately thereafter filed in the office of the Clerk of the County where it was taken; together with the order for the examination of the witness, the affidavit on which the same was granted, and the affidavit of service of the affidavit, order, and notice.

§ 441. The affidavits filed with the deposition, or a certified copy thereof, shall be primary evidence of the facts stated therein, to show compliance with the provisions of this chapter. Evidence of compliance with these provisions.

§ 442. If a trial be had between the persons named in the affidavit as parties expectant, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or a certified copy thereof may be used by either party subject to all legal objections. But if the parties attend at the examination no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. When deposition may be used on the trial.

CHAPTER VIII.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

§ 443. Every Court of this State, every Judge or Clerk of any Court, every Justice of the Peace, and every Notary Public, and every officer authorized to take testimony or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations. Who may administer oaths and affirmations.

§ 444. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. Oath by person not a Christian.

§ 445. Any witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm, that the evidence you shall give in this issue (or matter), pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer, "I do." A false affirmation or declaration shall be deemed perjury, equally with a false oath. Affirmation, &c., in lieu of an oath.
False affirmation, &c., deemed perjury.

CHAPTER IX.

INSPECTION OF DOCUMENTS, AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

§ 446. Any Court in which an action is pending, or a Judge thereof, or a County Judge, may, upon 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 book, document, or paper 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 may exclude the book, document, or paper, from being given in evidence; or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the Court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness. Order for inspection of books, &c., may be made.

Evidence of the contents of a writing.

§ 447. There shall be no evidence of the contents of a writing, other than the writing itself, except in the following cases :

1st. When the original has been lost or destroyed ; in which case proof of the loss or destruction shall first be made :

2d. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice :

3d. When the original is a record or other document, in the custody of a public officer :

4th. When the original has been recorded, and a certified copy of the record is made evidence by statute :

5th. When the original consists of numerous accounts or other documents, which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole.

When alterations in written instrument must be accounted for.

§ 448. The party producing a writing as genuine, which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Judicial records of this State or the U. S., how proved.

§ 449. A judicial record of this State, or of the United States, may be proved by the production of the original, or a copy thereof, certified by the Clerk, or other person having the legal custody thereof, under the seal of the Court, to be a true copy of such record.

Judicial records of a sister State, how proved.

§ 450. A judicial record of a sister State may be proved by the production of a copy thereof, certified by the Clerk or legal keeper of the record under the seal of the Court, to be a true copy of such record, together with the certificate of a Judge of the Court, that the person making the certificate is the Clerk of the Court, or legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form.

Judicial records of a foreign country, how proved.

§ 451. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the Clerk, with the seal of the Court annexed, if there be a Clerk and seal ; or by the legal keeper of the record with the seal of his office annexed, if there be a seal, to be a true copy of such record : together with a certificate of a Judge of the Court, that the person making the certificate is the Clerk of the Court, or the legal keeper of the record, and in either case, that the signature is genuine, and the certificate in due form ; and also together with the certificate of the minister or ambassador of the United States or of a consul of the United States, in such foreign country, that there is such a Court, specifying generally the nature of its jurisdiction, and verifying

the signature of the Judge and Clerk, or other legal keeper of the record.

§ 452. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: The like.

1st. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it:

2d. That such original was in the custody of the Clerk of the Court, or other legal keeper of the same: and,

3d. That the copy is duly attested by a seal, which is proved to be the seal of the Court where the record remains, if it be the record of a Court; or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original.

§ 453. 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. Written laws of other States, &c., how proved.

§ 454. A seal of a Court or public office, when required to any writ or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone. How seal may be impressed.

TITLE XII.

Of the Writ of Certiorari and of Mandamus.

CHAPTER I.

THE WRIT OF CERTIORARI, OR REVIEW.

§ 455. The writ of certiorari may be denominated the writ of review. Certiorari, how denominated.

§ 456. This writ may be granted on application by any Court of this State, except a Justice's, or Recorder's, or Mayor's Court; the writ shall be granted in all cases when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer; and there is no appeal, nor, in the judgment of the Court, any plain, speedy, and adequate remedy. When granted.

§ 457. The application shall be made on affidavit by the party beneficially interested, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice. Application therefor how made.

§ 458. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or pro-

ceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Form of writ. § 459. The writ of review shall command the party to whom it is directed to certify fully to the Court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them, with convenient certainty), that the same may be reviewed by the Court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

The like. § 460. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted in the sound discretion of the Court; but if omitted, the power of the inferior Court or officer shall not be suspended, nor the proceedings stayed.

How served. § 461. The writ shall be served in the same manner as a summons in civil action, except when otherwise expressly directed by the Court.

How far review to extend. § 462. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

Defective return. § 463. If the return to the writ be defective, the Court may order a further return to be made. - When a full return has been made, the Court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

Judgment on return. § 464. A copy of the judgment, signed by the Clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Copy judgment to be transmitted to Court below. § 465. A copy of the judgment, signed by the Clerk, entered upon, or attached to, the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the Supreme Court, an appeal may be taken from the judgment in the same manner, and upon the same terms, as from a judgment in a civil action.

CHAPTER II.

THE WRIT OF MANDATE, OR MANDAMUS.

Mandamus, how denominated. § 466. The writ of mandamus may be denominated the writ of mandate.

When it may issue. § 467. It may be issued by any Court in this State, except a Justice's, Recorder's, or Mayor's Court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act, which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right, or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

The like. § 468. This writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It

shall be issued upon affidavit, on the application of the party beneficially interested.

§ 469. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

To be either alternative or peremptory. What to state.

§ 470. When the application to the Court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall be granted by default. The case shall be heard by the Court, whether the adverse party appear or not.

When alternative, and when peremptory writ to issue in first instance.

§ 471. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the Court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

Showing cause by answer against alternative writ.

§ 472. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the Court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

Questions of fact raised by answer how disposed of

§ 473. On the trial, the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Sufficiency of answer may be objected to on the trial.

§ 474. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section 195. The motion for a new trial may, upon reasonable notice, be brought on before the Judge of the Court in which the cause was tried, either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

New trial may be applied for, in what cases.

§ 475. If no notice for a new trial be given, or if given, be denied, the Clerk, within five days after the rendition of the verdict or denial of

Copy of verdict to be transmitted to Court in

which application for writ is pending.

the motion, shall transmit to the Court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Proceedings where no answer is made.

§ 476. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section 472, but only such matters as may be explained or avoided by a reply, the Court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the Court shall proceed to hear, or fix a day for hearing the argument of the case.

Damages where judgment for applicant.

§ 477. If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the Court, or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may issue; and a peremptory mandate shall also be awarded without delay.

Service of writ.

§ 478. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court.

Disobeying writ.

§ 479. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the Court that any member of such tribunal, corporation, or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned for a period not exceeding three months, and may take any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the State or County, a certified copy of the order shall be forwarded to the Comptroller, or County Treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer for his wilful disobedience shall also be deemed guilty of a misdemeanor in office.

TITLE XIII.

Of Contempts and their Punishments.

What to be deemed a contempt.

§ 480. The following acts or omissions shall be deemed contempts:

1st. Disorderly, contemptuous, or insolent behavior towards the Judge whilst holding Court, or engaged in his judicial duties at Chambers, or towards Referees or Arbitrators whilst sitting on a reference or arbitration, tending to interrupt the due course of a trial, reference, or arbitration, or other judicial proceeding:

2d. A breach of the peace, boisterous conduct, or violent disturb-

ance in presence of the Court or its immediate vicinity, tending to interrupt the due course of a trial, or other judicial proceeding :

3d. Disobedience or resistance to any lawful writ, order, rule, or process, issued by the Court, or Judge at Chambers :

4th. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness :

5th. Rescuing any person or property in the custody of any Officer, by virtue of an order of process of such Court or Judge at Chambers.

§ 481. When a contempt is committed in the immediate view and presence of the Court, or Judge at Chambers, it may be punished summarily ; for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Court, or Judge at Chambers, an affidavit shall be presented to the Court or Judge, of the facts constituting the contempt, or a statement of the facts by the Referees or Arbitrators.

Contempt, how punished.

§ 482. When the contempt is not committed in the immediate view and presence of the Court or Judge, a warrant of attachment may be issued to bring the person charged to answer, or without a previous arrest, a warrant of commitment may upon notice, or upon an order to show cause, be granted ; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

The like.

§ 483. Whenever a warrant of attachment is issued pursuant to this chapter, the Court or Judge shall direct whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail ; and if he may be bailed, the amount in which he may be let to bail. The directions given in this respect shall be specified in the warrant, or endorsed thereon.

Warrant to state whether or not party to be admitted to bail.

§ 484. Upon executing the warrant of attachment, the Sheriff shall keep the person in custody, bring him before the Court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Duty of Sheriff on executing writ.

§ 485. When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the Officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of the Court or Judge thereupon ; or they will pay as may be directed, the sum specified in the warrant.

Discharging party arrested on bail.

§ 486. The Officer shall return the warrant of arrest and the under-

Warrant, &c., to be returned.

taking, if any, received by him from the person arrested, by the return day specified therein.

Charge to be investigated.

§ 487. When the person arrested has been brought up or appeared, the Court or Judge shall proceed to investigate the charge and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Punishment for contempt.

§ 488. Upon the answer and evidence taken, the Court or Judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

When contempt consists in omitting to do any act.

§ 489. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment.

Proceedings under this act no bar to indictment

§ 490. Persons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offence; but the Court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Proceeding where party arrested does not appear on return day of warrant.

§ 491. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court or Judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Duty of officer as to the custody of the person arrested.

§ 492. Whenever by the provisions of this chapter an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a Court or Judge, the inability from illness or otherwise of the person to attend shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Judgment in cases of contempt to be final.

§ 493. The judgment and orders of the Court or Judge made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or by imprisonment, but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section 489.

TITLE XIV.

Of Costs.

Costs defined.

§ 494. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the

parties. But there shall be allowed to the prevailing party certain sums by way of indemnity for his expenses in the action, or special proceedings in the nature of an execution, which allowances are in this Act termed costs.

§ 495. Costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in the following cases: When costs allowed of course to plaintiff

1st. In an action for the recovery of real property.

2d. In an action to recover the possession of personal property, when the value of the property amounts to over two hundred dollars. Such value shall be determined by the Jury, Court, or referee by whom the action is tried:

3d. In an action for the recovery of money or damages where the plaintiff recovers over two hundred dollars:

4th. In a special proceeding in the nature of an action.

§ 496. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this State; but the disbursements of the plaintiff shall be allowed to him in each section. Costs where several actions against parties who might have been joined in one action.

§ 497. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in section 495, and in a special proceeding in the nature of an action. When costs allowed of course to defendant.

§ 498. In other actions than those mentioned in section 495, costs may be allowed or not; and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the Court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than two hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than two hundred dollars. When the costs are in the discretion of the Court.

§ 499. When there are several defendants in the actions mentioned in section 495, not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the Court shall award costs to such of the defendants as have judgment in their favor. Costs to defendants having judgment in their favor.

§ 500. In the following cases the costs of an appeal shall be in the discretion of the Court: When costs of appeal in the discretion of the court.

1st. When a new trial is ordered:

2d. When a judgment is modified.

§ 501. When allowed, costs shall be as follows: Amount of costs.

1st. For all proceedings previous to the issue, twenty dollars.

2d. For the trial of every issue of fact, and the argument of every issue of law in an action, or special proceeding in the nature of

an action, thirty dollars. Attendance of counsel prepared for such trial or argument, ten dollars; but only one attendance shall be allowed at the same term:

3d. For the argument of every contested motion in the progress of an action, or special proceeding in the nature of an action, or the attendance of counsel prepared for such argument, ten dollars; but only one attendance shall be allowed at the same term:

4th. For proceedings subsequent to trial or argument, until judgment or appeal, ten dollars:

5th. For the argument of every appeal, thirty dollars. Attendance of counsel prepared for such argument, twenty dollars; but only one attendance shall be allowed at the same term:

6th. For proceedings subsequent to the argument of the appeal until judgment is entered thereon, twenty dollars.

Additional allowance.

§ 502. In actions for the recovery of money or damages, or the possession of personal property, or for the recovery of real property, the plaintiff shall be entitled to the additional allowance of five per cent. on the first one thousand dollars, and two per cent. on all over that sum, upon the amount of the verdict, or the value of the property recovered; such value to be determined at the trial, or at the time the judgment is applied for, in case no answer shall have been put in. In the actions specified in this section, the defendant, in case of judgment for the defendant, shall be entitled to a similar per centage on the amount or the value of the property claimed by the plaintiff. But such allowances shall in no case exceed five hundred dollars.

Costs on failure to answer.

§ 503. When recovery is had upon failure of the defendant to answer, the plaintiff shall be entitled to recover as follows:

1st. In actions for the recovery of real property, and in actions in which the taking of an account, or the examination of a long account, or the proof of any fact, shall be necessary to enable the Court to carry the judgment into effect, and a reference be ordered to take or examine the account, or determine the fact; and in actions in which a jury shall be called to determine a fact necessary to carry the judgment into effect, or to assess damages, the same costs as in actions in which issues are joined.

2d. In other actions, thirty dollars.

Fees of referees.

§ 504. The fees of referees shall be five dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Costs of postponing trial.

§ 505. When an application is made to a Court or referee to postpone a trial, the payment to the adverse party of a sum not exceeding twenty dollars, besides the fees of witnesses, may be imposed, as the condition of granting the postponement.

Costs after tender and payment into court.

§ 506. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the

action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in Court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

§ 507. In an action prosecuted or defended by an executor, administrator, trustee, or express trust, or a person expressly authorized by statute, costs may be recovered, as in action by and against a person prosecuting or defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the Court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defence.

Costs in actions
by and against
Executors, &c.

§ 508. When the decision of a Court of inferior jurisdiction in a special proceeding, is brought before a Court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the Court may direct, according to the nature of the case.

Costs on review
otherwise than
by appeal.

§ 509. On the commencement of an action, the plaintiff, and on the filing of notice of appeal from a final judgment, the appellant shall pay to the Clerk three dollars, to be applied to the payment of the salary of the Judge or Judges of the Court in which the payment is made. Each Clerk shall keep an account of money so received, and shall pay over the same at the end of each month to the Judge or Judges of the Court, taking duplicate receipts of each payment, one of which shall be filed by the Clerk in his own Court. On the first day of each month the Clerk of each County Court shall deliver to the Treasurer of his County, and the Clerk of the Superior Court of the City of San Francisco to the Treasurer of said City an account of all sums received, specifying the cases in which received, and of all sums paid out, with the receipts of the Judge or Judges therefor; at the same time a like account shall be forwarded by the Clerks of the District Courts to the Comptroller of the State, of the sums paid into their respective Courts, and of the sums paid out, with the receipts of the Judges therefor. In paying the salary of any District Judge, the Comptroller, and in paying the salary of the Judge or Judges of the Superior Court of the City of San Francisco, the City Treasurer, and in paying the salary of any County Judge, the County Treasurer, shall deduct the amount paid to such Judge or Judges, under the provisions of this section, as shown by the receipts of the Judge or Judges in their respective offices.

Fees for Judges'
salaries.

§ 510. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the Clerk of the Court a memorandum of the items of the costs to which he is entitled. He may include in the costs all the necessary disbursements in the action or proceeding, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses, taking depositions by commission or otherwise, the compensation of referees, and the fees paid on the commencement of the action,

Memo. of costs to
Clerk.

or on filing the notice of appeal. The memorandum shall be accompanied by the affidavit of the party, that the items are correct to the best of his knowledge and belief, and that the disbursements have been necessarily incurred in the action. The memorandum and affidavit shall be delivered to the Clerk within twenty-four hours after the rendition of the verdict, or the costs shall be deemed waived.

Costs, &c., to be included in judgment.

§ 511. The Clerk shall include in the judgment entered up by him the costs, the per centage allowed, and any interest on the verdict from the time it was rendered.

Security for costs.

§ 512. When the plaintiff in an action resides out of the State, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the Court or Judge upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

The like.

§ 513. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and householder or freeholder within the County, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

The like.

§ 514. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the Court or Judge may order the action to be dismissed.

TITLE XV.

Of Motions, Orders, Notices, Service of Papers, and Miscellaneous Provisions.

Order and motion defined.

§ 515. Every direction of a Court or Judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Motions where to be made.

§ 516. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

Notice of motion.

§ 517. When a written notice of a motion is necessary, it shall be given, if the Court be held in the same district with both parties, five days before the time appointed for the hearing; otherwise, ten days; but the Court or Judge may, by an order to show cause, prescribe a shorter time.

Hearing of motion may be transferred.

§ 518. When a notice of a motion is given, or an order to show cause is made returnable before a Judge out of Court, and at the time

fixed for the motion, or on the return day of the order, the Judge is unable to hear the parties, the matter may be transferred by his order to some other Judge, before whom it might originally have been brought.

§ 519. Written notices and other papers, when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this Title shall be applicable to original or final process, or any proceedings to bring a party into contempt. Notices, &c., how served.

§ 520. The service may be personal, by delivery to the party or attorney, on whom the service is required to be made, or it may be as follows: Service how made.

1st. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his Clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post-office, directed to such attorney:

2d. If upon a party, it may be made by leaving the notice or other paper at his residence between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post-office directed to such party.

§ 521. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside in different places, between which there is a regular communication by mail. Service by mail.

§ 522. In case of service by mail, the notice or other paper shall be deposited in the post-office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case, the time of service shall be increased one day for every twenty miles distance between the place of the deposit and the place of the address. The like.

§ 523. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail. What deemed an appearance.

§ 524. When a plaintiff or a defendant who has appeared resides out of the State, and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has no attorney in the action or proceeding, the service of papers, When service may be made on the Clerk or Attorney.

when required, shall be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt.

Successive actions on one contract.

§ 525. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

Consolidating actions.

§ 526. Whenever two or more actions are pending at one time between the same parties, and in the same Court, upon causes of action which might have been joined, the Court may order the actions to be consolidated into one.

Actions to determine adverse claims.

§ 527. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as security.

Register of actions.

§ 528. The Clerk shall keep among the records of the Court a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Referees and arbitrators.

§ 529. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Computation of time.

§ 530. The time within which an act is to be done, as provided in this Act, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

Affidavits.

§ 531. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Cause of action arising out of State.

§ 532. When a cause of action has arisen in another State, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this State, except in favor of a citizen thereof, who has held the cause of action from the time it accrued.

TITLE XVI.

Of Proceedings in Civil Cases in Justices' Courts.

CHAPTER I.

OF THE PARTIES AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.

Provisions applied to Justices' Courts.

§ 533. The provisions of Title I. of this Act, as to parties to actions, shall be applicable to actions of which a Justice's Court has jurisdiction.

How suits may be prosecuted or defended.

§ 534. Parties in Justices' Courts may prosecute or defend in person, or by Attorney; and any person, on the request of a party, may act as

his attorney, except that the constable by whom the summons or jury process was served, shall not appear or act on the trial in behalf of either party.

§ 535. No person shall be held to answer to any summons issued against him from a Justice's Court, in civil action, in any township or city other than the one in which he shall reside, except in the cases following :

When defendant may be held to answer out of place of residence.

1st. Where there shall be no Justice's Court for the township or city in which the defendant may reside, or no Justice competent to act on the case :

2d. 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 or different cities of the same county, or in different counties, the plaintiff may prosecute his action in a Justice's Court of the township or city in which any of the debtors or other persons liable may reside :

3d. In cases of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the township or city where the injury was committed :

4th. Where personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any township or city in which the property may be found, or in which the property was taken :

5th. Where the defendant is a non-resident of the county, he may be sued in any township or city wherein he may be found :

6th. When a person has contracted to perform any obligation at a particular place, and resides in another township or city, he may be sued in the township or city in which such obligation is to be performed, or in which he resides :

7th. Where the foreclosure of a mortgage or the enforcement of a lien upon personal property is sought by the action, the plaintiff may sue in the township or city where the property is situated.

§ 536. Judgment upon confession may be entered up in any Justice's Court in the State specified in the confession.

Judgment by confession.

§ 537. Justices' Courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences, or the place where the cause of action arose, or the subject matter of the action may exist.

Voluntary appearance to give jurisdiction

CHAPTER II.

SUMMONS, ARREST, ATTACHMENT, AND CLAIM OF PERSONAL PROPERTY.

§ 538. Actions in Justices' Courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and

Actions how commenced.

pleadings of the parties without summons. In the latter case the action shall be deemed commenced at the time of appearance.

Guardian how appointed.

§ 539. When a guardian is necessary, he shall be appointed by the Justice as follows :

1st. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards ; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the Justice.

2d. If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise, the Justice may appoint any suitable person who gives such consent.

Summons.

§ 540. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name ; and shall summon him to appear before the Justice at his office, naming its township or city, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described in general terms, sufficient to apprise the defendant of the nature of the claim against him ; and in action for money or damages, shall state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer. It shall be subscribed by the Justice before whom it is returnable.

Time for appearance for service of summons.

§ 541. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows :

1st. Where the summons is accompanied by an order to arrest the defendant, it shall be returnable immediately :

2d. When the defendant is not a resident of the township or city, or where the plaintiff is not a resident, and gives the security required by this Act, it shall be returnable not more than two days from its date, and shall be served at least one day before the time for appearance :

3d. In all other cases it shall be returnable in not less than two nor more than ten days from its date, and shall be served at least two days before the time for appearance.

Summons how served.

§ 542. The summons shall be served by the Sheriff or a Constable of the County as follows :

1st. If the action be against a corporation, by delivery of a copy to the President or other head of the corporation, or to the secretary, cashier, or managing agent thereof ; or when no such officer resides in the County, to a director resident therein :

2d. If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or

guardian ; or if there be none within the County, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is :

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, by delivery of a copy to such guardian :

4th. In all other cases, by delivery of a copy to the defendant personally.

§ 543. If the plaintiff annex to his complaint, or file with the Justice, at the time of issuing the summons, a copy of the account or promissory note, bill of exchange, or other obligation, for the payment of money, or for a specified amount of property at a valuation fixed therein, upon which the action is brought, the defendant shall be deemed to admit such account, note, bill, or obligation, unless he specifically deny the same in his answer, and verify the answer by his oath.

When defendant deemed to admit plaintiff's account.

§ 544. An order to arrest the defendant may be endorsed on a summons issued by the Justice, and the defendant may be arrested thereon by the Sheriff or Constable, at the time of serving the summons, and brought before the Justice, and there detained until duly discharged in the following cases, arising after the passage of this Act :

Order for arrest.

1st. In an action for the recovery of money, or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the State, with intent to defraud his creditors ; or where the action is for a wilful injury to the person, or for taking, detaining, or injuring personal property :

2d. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity :

3d. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought :

4th. When the defendant has removed, concealed, 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.

§ 545. Before an order for an arrest shall be made, the party applying shall prove to the satisfaction of the Justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the Justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Affidavit and undertaking to procure order for arrest.

§ 546. The defendant, immediately upon being arrested, shall be taken to the office of the Justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affi-

Proceedings after arrest.

davit of defendant, that he is a material witness in the action, the officer shall immediately take the defendant before the next Justice of the city or township, who shall take cognizance of the action, and proceed thereon, as if the summons had been issued and the order of arrest made by him.

Notice of arrest.

§ 547. The officer making the arrest shall immediately give notice thereof to the plaintiff or his attorney, or agent, and endorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Defendant to be kept in custody.

§ 548. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the Justice.

Defendant may demand an immediate trial.

§ 549. The defendant under arrest on his appearance with the officer may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time; or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest, but the action may proceed notwithstanding; and the defendant shall be subject to arrest on the execution in the same manner as if he had not been so discharged.

Adjournment at defendant's request.

§ 550. If the defendant on his appearance demand an adjournment, the same shall be granted, on condition that he execute and file with the Justice an undertaking, with two or more sufficient sureties, to be approved by the Justice, to the effect that he will render himself amenable to the process of the Court during the pendency of the action, and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the Justice shall order the defendant to be discharged from custody.

In what cases attachment may issue.

§ 551. In an action upon a contract, express or implied, made after the passage of this Act, for the direct payment of money, which contract is made or payable in this State, and is not secured by mortgage upon real or personal property, the plaintiff at the time of issuing the summons or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided.

Affidavit to obtain attachment.

§ 552. A writ to attach the property of the defendant shall be issued by the Justice, on receiving an affidavit by or on behalf of the plaintiff, showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs, or counter claims) upon a contract express or implied, for the direct payment of money, that such contract was made after the passage of this Act, and was made or is payable in this State, and that the payment of the same has not been secured by any mortgage on real or personal property.

Undertaking.

§ 553. Before issuing the writ the Justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient

sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment.

§ 554. The writ may be directed to the Sheriff or any constable of the county, and shall require him to attach and safely keep all the property within his County not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

Form of writ.

§ 555. The Sections of this Act, from section one hundred and twenty-four to section one hundred and forty-one, both inclusive, shall be applicable to attachments issued in Justices' Courts, the word "Constable" being substituted for the word "Sheriff," whenever the writ is directed to a Constable, and the word "Justice" being substituted for the word "Judge."

Sections applied.

§ 556. 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 delivery of such property to him, as provided in this chapter.

Claim of delivery of personal property.

§ 557. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

Affidavit in support of claim.

1st. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof:

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 an attachment against the property of the plaintiff, or if seized, that it is by statute exempt from such seizure: and

5th. The actual value of the property.

§ 558. The Justice shall thereupon, by an endorsement in writing upon the affidavit, order the Sheriff or a constable of the County to take the same from the defendant, and deliver it to the plaintiff, upon receiving the undertaking mentioned in the following section.

Order for delivery.

§ 559. Upon the receipt of the affidavit, and order, with a written undertaking, executed by two or more sufficient sureties, approved by the officer, 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 officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or

When officers may take property.

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 within the County, or to his agent, from whose possession the property is taken, or if neither can be found within the County, by leaving them at the usual place of abode of either within the County, with some person of suitable age and discretion, or if neither have any known place of abode within the county, by putting them into the nearest post-office directed to the defendant.

Exceptions to plaintiff's sureties.

§ 560. The defendant may within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice before the Justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant may require return of property.

§ 561. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by 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 delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

Defendant's sureties to justify.

§ 562. The defendant's sureties, upon reasonable notice to the plaintiff, shall justify before the Justice; and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

Property concealed.

§ 563. If the property or any part thereof be concealed in a building, or enclosure, the Officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

Custody of property.

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

Claim of third party.

§ 565. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such

title or right, and serve the same upon the Officer, the Officer shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the Officer against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders of the County; and no claim to such property by any other person than the defendant or his agent shall be valid against the Officer, unless so made.

§ 566. The Officer shall return the order and affidavit, with his proceedings thereon, to the Justice within five days after taking the property mentioned therein. Return of order, &c.

§ 567. The qualification of sureties on the several undertakings required by this chapter, shall be as follows: Qualification of sureties.

1st. Each of them shall be a resident, and householder, or freeholder within the County:

2d. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

§ 568. For the purpose of justification, each of the sureties shall attend before the Justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner as the Justice, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the sureties, if required. Mode of justifying.

§ 569. If the Justice find the sureties sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and file the same, and the Officer shall thereupon be exonerated from liability. Allowance of sureties.

CHAPTER III.

PLEADINGS AND TRIAL.

§ 570. The pleadings in Justices' Courts shall be: Pleadings.

1st. The complaint by the plaintiff, stating the cause of action:

2d. The answer by the defendant, stating the ground of the defence.

§ 571. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is: When pleadings to be in writing and when oral.

1st. For the foreclosure of any mortgage or the enforcement of any lien on personal property:

2d. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions:

3d. To recover possession of a "mining claim." In other cases the pleadings may be oral or in writing.

Pleadings to be entered or filed. Their form.

§ 572. When the pleadings are oral, the substance of them shall be entered by the Justice in his docket; when in writing they shall be filed in his office, and a reference to them made in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Complaint.

§ 573. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

Answer.

§ 574. The answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defence, or a counter claim upon which an action may be brought by the defendant against the plaintiff in a Justices' Court.

What deemed a denial.

§ 575. A statement in answer that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, shall be deemed equivalent to a denial.

Cause of action, &c., on an instrument for the payment of money.

§ 576. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account to the Court, and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set-off. The Court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

What allegations taken as true.

§ 577. When the defendant answers the complaint, every material allegation therein, not denied by the answer, shall, on the trial, be taken to be true.

Objection to pleadings.

§ 578. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the Court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

What variance to be disregarded.

§ 579. A variance between the proof on the trial and the allegations in a pleading, shall be disregarded as immaterial, unless the Court be satisfied that the adverse party has been misled to his prejudice thereby.

Amendments.

§ 580. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The Court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the Court, not exceeding twenty dollars; but such payment shall not be required unless an adjournment is

made necessary by the amendment; nor shall an adjournment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

§ 581. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a Justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the Justice shall suspend all further proceedings in the action, and certify the pleadings; or if the pleadings be oral, a transcript of the same from his docket to the District Court of the county; and from the time of filing such pleadings or transcript with the County Clerk, the District Court shall have over the action the same jurisdiction as if it were originally commenced therein. *Provided*, that when the pleadings or transcript are certified to the District Court upon the answer of the defendant, he shall file an undertaking with two or more sufficient sureties, to be approved by the Justice, to the effect that they will pay all costs of the action if it be decided against him by the District Court.

Title to real property in question.

§ 582. Upon the return day of the summons, if a jury be required, or if the Justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows:

Adjournment.

1st. When a party who is not a resident of the County is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours:

2d. In other cases not to exceed five days:

If the trial be not adjourned, it shall take place immediately upon the return of the summons, or immediately after the termination of a pending trial.

§ 583. The trial may be adjourned by consent, or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows:

The like.

1st. The party asking the adjournment shall, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial:

2d. The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the justice, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness were produced.

§ 584. An adjournment may be had, either at the time of joining the issue, or at any subsequent time to which the cause may stand adjourned, on application of either party, for a period longer than ten

The like.

days, but not to exceed ninety days from the time of the summons upon return of the proof, by the oath of the party, or otherwise, to the satisfaction of the Justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for the want of material evidence, describing it; and that the delay has not been made necessary by any act or negligence on his part, since the action was commenced, and that he expects to procure the evidence at the time stated by him.

The like.

§ 585. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the Justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying.

Parties failing to appear.

§ 586. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may, nevertheless, proceed, at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

Trial by jury.

§ 587. A trial by jury shall be demanded at the time of joining issue; and shall be deemed waived, if neither party then demand it. When demanded, the trial of the case shall be adjourned, until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the Justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the Justice from the citizens of the city or township, and not from the bystanders.

The like.

§ 588. At the time appointed for the trial, the Justice shall proceed to call, from the jurors summoned, the names of the persons to constitute the jury for the trial of the issue. The jury by consent of the parties may consist of any number not more than twelve nor less than three.

The like

§ 589. If a sufficient number of competent and indifferent jurors do not attend, the Justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

Challenges to jurors.

§ 590. Either party may challenge the jurors. The challenges shall be either peremptory, or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause, on any grounds set forth in Section 162. Challenges for cause shall be tried by the Justice in a summary manner, who may examine the juror challenged, and witnesses.

CHAPTER IV.

JUDGMENT AND EXECUTION.

§ 591. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases : Judgment without prejudice, &c.

1st. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2d. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter :

3d. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or township, or city ; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment ; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

§ 592. When the defendant fails to appear and answer, judgment shall be given for the plaintiff as follows : Judgment on failure to answer.

1st. When a copy of the account, note, bill, or other obligation upon which the action is brought, was filed with the Justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons :

2d. In other cases the Justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just ; but in no case exceeding the amount specified in the summons.

§ 593. Upon issue joined, if a jury trial be not demanded, the Justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly. Trial without a jury.

§ 594. Upon a verdict the Justice shall immediately render judgment accordingly. When the trial is by the Justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody ; in other cases it shall be entered within four days after the close of the trial. Judgment on verdict, or decision of Justice.

§ 595. When the amount found due to either party exceeds the sum for which the Justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue. Entering remittitur.

§ 596. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued ; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided. Effect of offer.

Judgment on which defendant subject to imprisonment. Judgment to include costs.

§ 597. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

§ 598. When the prevailing party is entitled to costs by this chapter, the Justice shall add their amount to the verdict; or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

Transcript of Judgment may be filed with County Clerk.

§ 599. The Justice, on demand of the party-in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the Clerk of the County where the judgment was rendered. The time of the receipt of the transcript by the County Clerk shall be noted by him thereon, and entered in the docket; and from that time executions may be issued by the County Clerk on such judgments to the sheriff of any other county of the State, in the same manner as upon judgments recovered in the higher Courts. All process upon judgments recovered in Justices' Courts, to be executed within the same county, shall be issued by the Justice, or his successors in office.

Execution within five years.

§ 600. Execution for the enforcement of a judgment in a Justice's Court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Form of execution.

§ 601. The execution, when issued by a Justice, shall be directed to the sheriff or to a constable of the county, and subscribed by the Justice by whom the judgment was rendered, or by his successor in office, and shall bear date the day of its delivery to the office to be executed. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the Justice before whom, and of the county, and the township, or city, where, and the time when, it was rendered; the amount of judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the sheriff or constable as are required by the provisions of Title VII. of this Act, in an execution to the sheriff.

How executed.

§ 602. The sheriff or constable to whom the execution is directed, shall proceed to execute the same in the same manner as the sheriff is required by the provisions of Title VII. of this Act, to proceed upon executions directed to him; and the constable, when the execution is directed to him, shall be vested, for that purpose, with all the powers of sheriff.

CHAPTER V.

GENERAL PROVISIONS.

What provisions apply to Justices' Courts.

§ 603. Those provisions of this Act, and no other, which are referred to in this Title, and in respect to which no special provision is made in this Title, shall be applicable to Justices' Courts, and proceedings therein.

Justice's docket.

§ 604. Every Justice shall keep a book denominated "A Docket," in which he shall enter:

1st. The title of every action or proceeding :

2d. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand :

3d. The date of the summons, and the time of its return ; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of those facts :

4th. The time when the parties or either of them appear, or their non-appearance, if default be made ; a minute of the pleadings ; if in writing, referring to them ; if not in writing, a concise statement of the material parts of the pleading :

5th. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time :

6th. The demand for a trial by jury, when the same is made, and by whom made ; the order for the jury, and the time appointed for the trial and return of the jury :

7th. The names of the jury who appear and are sworn ; the names of all witnesses sworn, and at whose request :

8th. The verdict of the jury, and when received ; if the jury disagree, and are discharged, the fact of such disagreement and discharge :

9th. The judgment of the Court, specifying the costs included, and the time when rendered :

10th. The issuing of execution, when issued, and to whom ; the renewals thereof, if any, and when made ; and a statement of any money paid to the Justice, and when, and by whom :

11th. The receipt of a notice of appeal, if any be given.

§ 605. The several particulars of the last section specified shall be entered under the title of the action to which they relate, and at the time when they occur. Such entries in a Justice's docket, or a transcript thereof, certified by the Justice or his successor in office, shall be primary evidence to prove the facts so stated therein. Entries in docket to be evidence.

§ 606. A Justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names. Index to docket.

§ 607. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to be kept as public records. If the office of a Justice become vacant by his death, or removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such Justice shall be deposited with the County Clerk of the county, to be by him delivered to the successor in office of the Justice. Justice to deliver dockets to his successor in office.

§ 608. Any Justice with whom the docket of his predecessor is deposited, may issue execution on a judgment there entered and unsatisfied, Execution, after Justice out of office.

in the same manner and with the same effect as the Justice by whom the judgment was entered might have done.

Who deemed the successor of a Justice.

§ 609. The Justice elected to fill a vacancy shall be deemed the successor of the Justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same township, or city, from that time shall be deemed the successor.

The like.

§ 610. When two or more Justices are equally entitled under the last section to be deemed the successors in office of the Justice, the County Judge shall, by a certificate, subscribed by him and filed in the office of the County Clerk, designate which Justice shall be the successor of a Justice going out of office, or whose office has become vacant.

Summons, &c., not to be issued with blanks.

§ 611. The summons, execution, and every other paper made or issued by a Justice, except a subpoena, shall be filed without a blank left to be filled by another, otherwise it shall be void.

Disabilities of Justice.

§ 612. In case of the sickness, other disability, or necessary absence of a Justice on a return of a summons, or at the time appointed for a trial, another Justice of the same township or city may, at his request, attend in his behalf, and shall thereupon become vested with the power, for the time being, of the Justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending Justice, subscribed by him, shall be made in the docket of the Justice before whom the summons was returnable. If the case be adjourned, the Justice before whom the summons was returnable, may resume jurisdiction.

Justice may specially appoint a person to serve process, &c.

§ 613. A Justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendant, or with or without a writ of attachment. Such deputation shall be in writing on the process.

Authority of person so appointed.

§ 614. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Constable may complete execution of process after term of office expires.

§ 615. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he still continued in office, and his sureties shall be liable to the same extent.

Power to punish for contempt.

§ 616. A Justice may punish as for contempt, persons guilty of the following acts, and no other :

1st. Disorderly, contemptuous, or insolent behavior towards the Justice while holding the Court, tending to interrupt the due course of a trial, or other judicial proceeding :

2d. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Justice, or in the immediate vicinity of

the Court, held by him, tending to interrupt the due course of a trial, or other judicial proceeding :

3d. Disobedience or resistance to the execution of a lawful order, or process, made or issued by him :

4th. Disobedience to a subpoena duly served, or refusing to be sworn, or answer as a witness :

5th. Rescuing any person or property in the custody of any officer, by virtue of an order or process of the Court held by him.

§ 617. When a contempt is committed in the immediate view and presence of the Justice, it may be punished summarily, for which an order shall be made reciting the facts, as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Justice, a warrant of arrest may be issued by such Justice, on which the person so guilty may be arrested and brought before the Justice immediately, when an opportunity to be heard in his defence or excuse shall be given. The Justice may thereupon discharge him, or may convict him of the offence. A Justice may punish for contempts, by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

Contempts how punished.

§ 618. The conviction specifying particularly the offence and the judgment thereon, shall be entered by the Justice in his docket.

Conviction to be entered.

§ 619. Justices of the Peace may issue subpoenas in any action or proceeding in the Courts held by them, and final process on any judgment recovered therein, to any part of the County.

Power to issue subpoenas.

§ 620. Justices of the Peace may issue commissions to take the depositions of witnesses out of this State, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of Title XI. of this Act, so far as the same are consistent with the jurisdiction and powers of Justices' Courts, shall be applicable to Justices' Courts, and to actions and proceedings therein.

Commissions to take testimony.

§ 621. In actions respecting "Mining Claims," proof shall be admitted of the customs, usages, or regulations established and in force at the bar, or diggings, embracing such claim; and such customs, usages, or regulations, when not in conflict with the Constitution and Laws of this State, shall govern the decision of the action.

Proof respecting "Mining Claims."

§ 622. A new trial may be granted by the Justice, on motion, within ten days after the entry of judgment, for any one of the following causes :

New trial.

1st. Accident or surprise, which ordinary prudence could not have guarded against.

2d. Excessive damages, appearing to have been given under the influence of passion : or,

3d. Insufficiency of the evidence to justify the verdict or other decision.

4th. Newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

Application for new trial.

§ 623. The application shall be made upon affidavit and notice. The affidavit shall be filed with the Justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Appeal.

§ 624. Any party dissatisfied with a judgment made in a Justice's Court, may appeal therefrom to the County Court of the county, any time within three months after the rendition of the judgment.

Statement of case, &c.

§ 625. The party intending to appeal shall, within five days after judgment, prepare a statement of the case, and file a copy with the Justice. Within five days thereafter the adverse party may file amendments to such statement. The proposed statement and amendments shall be settled by the Justice. If no amendments be served, the original statement shall be adopted. The statement thus adopted, or as settled by the Justice, with a copy of the docket of the Justice, shall constitute the papers to be used on the hearing of the appeal before the County Court.

Appeal, how taken.

§ 626. An appeal shall be taken by filing a notice of appeal with the Justice, and serving a copy on the adverse party. The motion shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part.

Copy docket to be transmitted to Appellate Court.

§ 627. Upon receiving the notice of appeal, and on payment of his fees, and filing an undertaking as required in the next section, the Justice shall transmit to the Clerk of the County Court a copy of his docket in the case, and the statement as admitted or settled, and the notice of appeal received.

Undertaking to be filed.

§ 628. The Justice shall not transmit to the County Court a copy of the docket, and the statement and notice of appeal, until an undertaking be filed with two or more sufficient sureties thereon, in the sum of one hundred dollars for the payment of the costs; or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, for the payment of the costs and the judgment, provided the appeal be affirmed by the County Court; or if affirmed only in part, then to the extent in which it may be affirmed.

Stay of proceedings by appeal.

§ 629. If an execution be issued, on the filing of the undertaking, staying all proceedings, the Justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property, or proceeds thereof, as may be necessary to pay the same.

Appellant to furnish copies of papers.

§ 630. The party appealing shall furnish to the County Court a

copy of the papers to be used on the hearing of the appeal, certified by the Justice to be correct.

§ 631. Costs shall be allowed to the prevailing party in a Justice's Court, as follows :

1st. To the plaintiff, ten per cent. on the amount of the money, or the value of the property recovered, if the action was litigated ; five per cent. if the action was not liquidated :

2d. To the defendant, ten per cent. on the amount or the value of the property claimed by the plaintiff in his complaint.

§ 632. In addition to the costs, as allowed by the last section, the prevailing party shall be allowed his money disbursements in the action. Additional allowance.

§ 633. Justices of the Peace shall receive from the Sheriff or Constables of their county, all moneys collected on any process or order issued by their Courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor. Justices to receive moneys from Sheriffs and Constables.

§ 634. Justices of the Peace may, in all cases, require a deposit of money, or an undertaking, as security for costs of Court, before issuing a summons. Security for costs.

§ 635. The provisions of sections 519, 520, 523, 525, 526, 527 531, and 532, shall be applicable to Justices' Courts and actions therein. Provisions made applicable.

TITLE XVII.

Of Proceedings in Civil Cases in Recorders' and Mayors' Courts.

§ 636. Civil actions in Recorders' and Mayors' Courts shall be commenced by filing a complaint, setting forth the violation of the ordinance complained of, with such particulars of time, place, and manner of violation, as to enable the defendant to understand distinctly the character of the violation complained of, and to answer the complaint. The ordinance may be referred to by its title. The complaint shall be verified by the oath of the party complaining, or of his attorney, or agent. Actions in Recorders' and Mayors' Courts, how commenced.

§ 637. Immediately after filing the complaint, a summons shall be issued, directed to the defendant, and returnable either immediately, or at any time designated therein, not exceeding four days from the date of its issuance. Summons to be issued.

§ 638. On the return of the summons the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer, or denial, may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment be granted. Plea, answer or denial.

§ 639. In all actions for violation of an ordinance where the fine, forfeiture, or penalty imposed by the ordinance is less than fifty dollars, Trial, how had.

the trial shall be by the Court. In actions where the fine, forfeiture, or penalty imposed by the ordinance is over fifty dollars, the defendant shall be entitled, if demanded by him, to a jury of six persons.

Appeal to
County Court.

§ 640. From a judgment in a civil action in a Recorder's or Mayor's Court, an appeal may be taken to the County Court. The appeal shall be taken and the proceedings thereon conducted in the same manner as appeals are taken from a judgment in a civil action in a Justice's Court, and as the proceedings thereon are conducted.

Actions, how
conducted.

§ 641. All proceedings in civil actions in Recorders' and Mayors' Courts, except as herein otherwise provided, shall be conducted in the same manner as in civil actions in Justices' Courts.

To what Courts
these provisions
to apply.

§ 642. The provisions of this Title shall be applicable to civil actions in Recorders' and Mayors' Courts already established, or which may hereafter be established in any incorporated city of this State.

TITLE XVIII.

Miscellaneous Provisions.

Courts to make
rules.

§ 643. The Supreme Court may make rules not inconsistent with the Constitution and laws of the State, for its own government, and the government of the District Courts, and the Superior Court of the City of San Francisco; but such rules shall not be in force until thirty days after their adoption and publication.

County Clerk.

§ 644. The County Clerk shall be the Clerk of the County Court, the Court of Sessions, and the Probate Court of his County. Until otherwise provided by law, the Clerk of the Superior Court of the City of San Francisco shall be appointed by the said Court.

Clerk of Superior
Court of San
Francisco.
Action against
Sheriff.

§ 645. If an action be brought against a Sheriff for an act done by virtue of his office, and he give written notice thereon to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties; and the Court or Judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Service of
process on party
not
understanding
the English
language.

§ 646. Whenever a summons, or other process, is served upon a party who is unable to read, or who does not understand the English language, it shall be the duty of the officer making the service to explain to such party the nature of the summons, or other process. In the Counties of Santa Clara, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Contra Costa, Los Angeles, and San Diego, it shall be the duty of the officer to give to the defendant, if said defendant shall require it, a copy of the summons or other process in the Spanish language; and in the Counties of Santa Barbara, San Luis Obispo, Los Angeles, and San Diego, it shall be lawful, with the consent of both parties, to have the process, pleadings, and other proceedings in a cause in the Spanish language.

Interpretation
clause.

§ 647. Words used in this Act in the present tense shall be deemed

to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription, to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

§ 648. The following Statutes, namely: the Act entitled "An Act to regulate proceedings in Civil Cases in the District Court, the Superior Court of the City of San Francisco, and the Supreme Court," passed April twenty-second, eighteen hundred and fifty; the Act entitled "An Act to regulate proceedings against Debtors by Attachment," passed April twenty-second, eighteen hundred and fifty; the Act entitled "An Act providing for the collection of demands against Vessels and Boats," passed April tenth, eighteen hundred and fifty; the Act entitled "An Act to regulate proceedings in Courts of Justices of the Peace in Civil Cases," passed April tenth, eighteen hundred and fifty; and the Act entitled "An Act to regulate proceedings in the County Courts in Cases of Appeal from the Courts of Justices of the Peace," passed April eleventh, eighteen hundred and fifty; the Act entitled "An Act respecting set-offs," passed [April] twenty-second, eighteen hundred and fifty, are hereby repealed; but such repeal shall not invalidate any judgment rendered, or order made, or any proceeding already taken by virtue of said Statutes.

Statutes repealed.

§ 649. This Act shall take effect on the first day of July of the present year.

When act to take effect.

Chap. 6.

AN ACT, *prescribing the mode of Assessing and Collecting Public Revenue.*

Passed May 1, 1851.

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

§ 1. A poll tax of three dollars shall be assessed upon, and collected at the time of assessment, from each male inhabitant of this State, over the age of twenty-one years, and under the age of fifty years, as a State and County tax, two thirds of which shall be for the use and support of the State government, and one third for the use of the County; which assessment and collection shall be made by the Sheriff of the County under such rules and restrictions as are hereafter provided, and no other sum or sums for Poll tax shall be assessed and collected by any County in this State.

Poll tax to be levied.

§ 2. All property, both real and personal, within this State, shall be

All property to be taxed.

liable to a tax of fifty cents on each one hundred dollars' worth thereof, for State purposes, and not to exceed fifty cents additional upon one hundred dollars' worth for County purposes; subject, however, to the exceptions hereinafter stated.

"Real Estate" defined.

§ 3. The term "real estate," as used in this act, shall be construed to include all lands within the 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.

"Personal estate," &c., defined.

§ 4. The terms personal estate and personal property, as used in this act, shall be construed to include all household furniture, goods, chattels, horses, cattle and moneys, all ships, steamboats, vessels and water craft of any and every description whatever, 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 moneyed corporations in 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.

Persons and property exempt from taxation.

§ 5. The following persons and property shall be exempt from taxation. The polls of all Indians except those who may be lawfully entitled to vote. The poll or polls and property of any person that may be exonerated from taxation by any law of this State; the real and personal property of the United States, and of this State; all lands sold by the United States, until the term of five years from the day of sale, shall have expired. 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 grave-yard or cemetery, not exceeding fifty acres, or any greater number of acres that may be authorized by any general law hereafter enacted, incorporating cemeteries. Every building erected for the use of any literary, benevolent, charitable or scientific institution, or erected for the same purpose by any town, township, City, or County, and connected with or set apart for any of the purposes aforesaid. The personal property and real estate of any 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. The property of every widow and orphan child, to the extent of one thousand dollars.

Lands sold by the State to be assessed.

§ 6. Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

Stock in incorporated companies to be taxed.

§ 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.

Persons to be listed in county of residence.

§ 8. Every person shall be listed in the County where he resides, when the enlistment is for all real and personal estate owned by him,

including all real and personal estate in his possession or under his control, as trustee, guardian, executors or administrator.

§ 9. 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, who shall pay the taxes on the same, and for the taxes paid by such occupant he shall have his action against the owner.

In what name lands to be listed.

§ 10. Unoccupied land shall be listed in the name of the owner, if known, otherwise as lands of persons unknown. Lots or real property within the limits of any incorporated city, shall be listed separately, in accordance with the survey or plan.

Unoccupied lands, how listed

§ 11. The real and personal 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.

Estate of incorporated Company, how listed.

§ 12. 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 dividend of said company resides.

Bridges and ferries, how listed.

§ 13. When real or personal property is under mortgage, or in any manner pledged, it shall, for the purposes of taxation, be deemed the property of the party having possession thereof.

Mortgaged property, how taxed.

§ 14. The undivided real estate of deceased persons may be listed to the heirs, guardians, or administrators, as the case may be; and a payment of taxes made by either, as the case may be, shall bind all the parties in interest for their equal proportion.

Real estate of persons deceased, how taxed.

§ 15. Partners in mercantile or other business may be jointly listed in their partnership name in the County where the business is carried on, for their personal property employed in such business; and in case of being so jointly listed, each partner shall be liable for the whole tax.

Partners, how listed.

§ 16. The Assessors of the several Counties, between the first Monday of March and July of each year, shall proceed to ascertain by diligent inquiry, the names of all taxable inhabitants, in their respective Counties, and also all taxable property, real and personal, within the same, made subject to taxation, by virtue of the provisions of this Act; *Provided*, the Assessors shall have to the first Monday in August for the present year to ascertain the property taxable, and the names of inhabitants subject to taxation. They shall prepare a roll in a well bound book, alphabetically arranged, in which shall be set down in separate columns, and according to the best information in their power, the names of all taxable inhabitants; a concise description of all the real estate taxable to each, including city or town lots; the actual cash value of the same, with the improvements thereon; the actual cash value of personal estate taxable to each.

Assessors to ascertain names of all taxable inhabitants, &c.

§ 18. When any person is listed as trustee, guardian, executor, or

Listed Trust, es, &c.

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.

Lands and improvements, how valued.

§ 19. 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. In case of a doubt in the mind of the Assessor, as to the true value of any property, such doubt shall be always in favor of the party whose property is to be assessed.

Personal property, how valued.

§ 20. All personal property taxable under the provisions of this Act, shall be valued at its true cash value, upon the statement under oath of the owner, or the person having the custody and control thereof.

Money and bullion to be taxed.

§ 21. All moneys used in the business of banking, or in the purchase or sale of exchange or gold dust, all moneys on hand, all moneys loaned at interest, or used in any other way, all uncoined gold and silver, shall pay a tax of one dollar for each one hundred dollars of value thereof, which tax shall be assessed and collected at the same time and in the same manner that other taxes upon property are collected.

Penalty for refusing to state amount of money and bullion, &c.

§ 22. All persons who are owners of money, or who may be the agents of others who own money in this State, who shall refuse at the time prescribed by law to render under oath a correct statement to the assessor of taxes, of all moneys on hand or in use, or the amount of uncoined gold or silver on hand or in use, shall be fined by any court in this State, not less than fifty nor more than two hundred dollars, and shall pay double tax.

Tax payers to be sworn.

§ 23. It shall be the duty of the assessors of taxes in this State to administer an oath to any and all tax payers, and specifically in reference to the twenty-first section of this Act.

Manner of assessing value of property.

§ 24. It shall be the duty of the assessors in each county in this State to give ten days' notice of the time and place where they will meet in their respective counties to examine and assess all property subject to taxation. Such notice shall be given in each settlement where there are twenty persons and upwards; and in counties where there are cities and towns, then the notice shall be given to each ward thereof. All persons who will not attend and render a list under oath of all their taxable property, of whatever character, on the day or days advertised by the Assessor, shall pay to the Assessor one dollar extra for the expense and trouble of such Assessor in going to the house of such person to make such assessment; *provided, however*, that in all the counties where property is owned by native Californians, liable to taxation, the Assessors shall give such notice in the Spanish and English languages. The Assessors shall, between the times specified in this Act, and as soon after

the days set by his advertisement to meet the inhabitants in each settlement and ward, as above directed, call upon each and every person resident in his county, who have not met him and rendered a list of his taxable property, and demand a list under oath of all his or her taxable property, of whatever character; when any should be overlooked by an assessment in any one year, it shall be added to the next annual assessment.

§ 26. If the owner or owners of any property liable to taxation shall be unknown, or a non-resident, or absent, or unable, or shall affix a false value thereto, or refuse when called upon, either by advertisement, or by the Assessor, or his deputy, to give a list of his or her property, real or personal, subject to taxation, it shall be the duty of the Assessor or his deputy, in either 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 same force and effect as though the same had been made by the owner or owners under oath, of all property thus listed, and unless altered by the Board of Equalization in the manner set forth in this Act. And in the event of a refusal by the owner or agent, when called on to give in a list of his or her property, or shall knowingly affix a false value thereto, such property shall be subject to double taxation.

Unknown or non-resident owners, or owners giving false statements, &c.

§ 27. The Assessor of each county shall deposit in the office of the County Court, on or before the first Monday of July (except the present year, which deposit shall be made before the first Monday in August), in each year, his book containing the names of all the persons taxable in the county, together with the amount of taxable property, for the inspection of the Court of Sessions. *Provided*, it shall be the duty of the Assessor at any time previous to the — day of January next to assess and make full returns of any and all property subject to taxation in his county which has been overlooked in the former assessment.

Assessor to deposit list of tax payers with County Clerk.

§ 28. The Court of Sessions, or Board of Supervisors, when created by law, of each county, shall constitute a Board of Equalization, and shall for the first term after the first Monday in July, which term shall be during the month of July in each year, hear and determine all complaints respecting the valuation made by the Assessor, either by adding thereto, or deducting therefrom, and shall correct any list or valuation as they may deem proper; *provided always*, that the Court of Sessions shall in no case be authorized to alter the valuations made by the Assessor, except in case of complaint made under oath, either by the party interested in having his own assessment reduced, or by some other person or persons proving that the valuation of such property ought to be augmented, or on complaint of the County Attorney.

Board of Equalization.

§ 29. During the time the Board of Equalization is in Session, the Assessor, or one of his assistants, shall be in attendance and be allowed to make any statement to the Court, touching the question of Equaliza-

Assessor to attend at Board of Equalization.

tion before the Board; and the officer so attending shall be allowed three dollars per day, for each day so in attendance.

County Auditor to make out a duplicate of taxes assessed.

§ 30. The Auditor of each County shall annually, between the first and third Monday of August, make out a duplicate of taxes assessed in his 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 all lands, city or town Lots in his County, with the names of the owners, whether individual or bodies corporate or politic, in alphabetical order, and the value of the lands or lots, with the improvements thereon, all corporation stock and moneyed stock or private associations; all personal property subject to taxation; all moneys on hand, all gold or silver uncoined.

State and County tax in separate columns.

§ 31. The County Auditor of the County 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, and shall carry out the whole in a column of totals.

Copy of such duplicate to County Treasurer.

§ 32. 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.

Abstract of property listed, &c., to be sent to Comptroller.

§ 33. He shall make out and cause to be transmitted by mail or some other safe conveyance to the Comptroller of State, on or before the first day of October of each year, a complete abstract of the property listed in his County; the valuation thereof, 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.

Sheriff to collect State and County taxes.

§ 34. The Sheriff of the County, who is hereby declared to be the Collector of State and County tax, shall receive from the Board of Equalization a duplicate copy of the book which has been deposited in the office of the County Auditor by the Assessor, so soon as the Court of Sessions shall have examined the original, which original shall remain in the office of the Auditor of the County.

Where Sheriff to attend to receive taxes.

§ 35. Immediately on receiving such duplicate, the Sheriff shall proceed to collect the same, and for that purpose shall, before the first day of October in each year, attend one day at such place or places in the County, as the Court of Sessions may direct, and after the first day of October, until the first of November, he or his deputy shall for the same purpose attend at his office at the County Seat; *provided, however*, that in all cases after the first day of October the Sheriff may charge one dollar extra from each person failing to pay by the first day of October in each year.

Proviso.

Notice of attendance to receive taxes.

§ 36. The Sheriff shall cause notice in the English and Spanish language to be posted up at each of the places directed by the Court of Sessions, stating when and where he will attend to receive taxes, at least fifteen days after the time set forth in the notice, stating therein the amount of State and County tax charged on each one hundred dollars'

valuation thereof. In the event, however, that the Court of Sessions fail to designate the places as directed in this section, the Sheriff shall give such notice.

§ 37. In case any person, not being the owner of real estate, shall neglect or refuse to pay the tax imposed on him, the Sheriff shall proceed, after the first day of October, to collect the same together with five per cent. damages, including one dollar as provided in this Bill; where parties fail to pay at the proper time, ten days' notice of such sale shall be given, 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. Sales for taxes.

§ 38. Before making such sale, said Sheriff shall cause to be posted up in the English and Spanish languages, written or printed notices, giving the time and place of sale of the property to be sold, for the non-payment of taxes, according to the provisions of this Act, one in each precinct of the County, at least ten days prior to the day of sale, announcing in general terms that on a given day, set forth in such notice, he will sell at the Court House door, between ten o'clock, A.M., and four o'clock, P.M., of 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 five per cent. damages thereon. No property whatever, real or personal, shall be sold for the non-payment of taxes, unless a demand shall have been first made by the Sheriff or his deputy in person, for the payment, in whose name the property is assessed, his agent or attorney, at his usual place of business, or at his last place of residence; *provided, however,* that this section shall not apply to non-residents of the County. Notice of sale.
Proviso.

§ 39. In selling real estate the owner if present, and the Sheriff in the absence of the owner, 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 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. Real estate,
how to be sold.

§ 40. 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 Sheriff, as soon thereafter as practicable, to execute a certificate of conveyance to the purchaser, or purchasers thereof, and deposit the same in the office of the County Recorder, and when the time shall have expired for the redemption of property as provided in this Act, the Sheriff of the County shall make deeds for all property not redeemed in favor of the purchasers thereof. Deeds from him for property sold for taxes due municipal corporations, shall be as valid in all respects as deeds given for property sold for taxes due the State. Certificate to
purchaser.
Deed to
purchaser.

§ 41. Any person being the owner, or interested in any lands thus sold, may redeem the same within one year after the day of sale by pay- Who may
redeem lands
sold for taxes.

ing the amount of tax charged thereon, together with fifty per cent. damages to the purchaser, *Provided, however*, that minors shall have one year after attaining the age of majority, within which to redeem any lands thus sold, *Provided, however*, it shall be the duty of the Sheriff to give notice to the Court of Sessions of the sale of real estate belonging to minors.

Lien of the State for taxes.

§ 42. The lien of the State for all taxes for State and County purposes, shall attach on all real and personal estate, on the first day of March in each and every year; and such lien shall be to the exclusion of all other liens; and shall continue until all taxes thereon shall have been paid.

Continuance of Sheriff's power to collect taxes.

§ 43. The power to collect taxes shall continue in such Sheriff, after his return and settlement with the State and County Treasurers respectively; 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 and real estate shall be conducted as specified in this Act.

Sheriff to give receipt for taxes.

§ 44. Whenever any tax is paid to the Sheriff, he shall note the 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.

Sheriff to take receipt from County Treasurer.

§ 45. The Sheriff shall take from the County Treasurer duplicate receipts for all sums by him paid over to the Treasurer, which receipts shall be regularly numbered; the original within ten days thereafter shall be deposited by the Sheriff in the office of the County Auditor, to be examined by the Board of Equalization in connexion with the books deposited in the office of the County Auditor by the Assessor and Sheriff of the County.

Assessments to have the force of judgments.

§ 46. All assessments made in conformity with the provisions of this Act, shall remain as a judgment, and execution against the party; and the Sheriff is hereby authorized, and required, to seize and sell any and all property of whatever character, found in possession of such persons; by giving ten days' notice thereof in writing, in the English and Spanish languages; designating the time and place of sale, and the name of the owner of such property: which said notice shall be posted on the door of the Court House of said county, and in three of the most public and conspicuous places in the election precinct where said property is situated; said property shall, if personal property, be sold in the election precinct where said property is situated. If real property is sold, said sale shall take place at the Court House of said county.

In what funds taxes may be paid.

§ 47. All funds collected under the provisions of this Act shall be in the legal currency of the United States, or in foreign coin at the value fixed by the laws of the General Government, or in gold dust at sixteen dollars per ounce troy weight, or in Bonds of the State, with the interest due thereon, authorized by the Legislature at the session of one thousand eight hundred and fifty, which Bonds are known as the three per cent. Bonds, and the same shall be paid to the County

Treasurer, and receipt taken therefor, as provided in section forty-five. The Sheriff in his receipt given for taxes shall specify the character of the funds in which payments are made, and shall make a corresponding entry in the list, setting forth the collections which have been made by him.

§ 48. The Sheriff shall, on the first Monday of December in each year, attend at the office of the County Treasurer, and shall then and there present under oath a correct account of all his transactions as collector of taxes, and shall at the same time account for and pay over to the County Treasurer any and all funds in his hands, not previously paid over, of all taxes, which account shall be in writing, signed by the Sheriff and countersigned by the Auditor and Treasurer, and shall be filed in the office of the County Auditor.

Sheriff to render an account monthly.

§ 49. The Sheriff shall make a return in duplicate, to the County Treasurer, of all unpaid taxes for the year; with the names of all delinquent tax payers, if known; and thereupon the Sheriff shall proceed to collect and enforce the payment of all such unpaid taxes, in manner and form as is provided for the collection of taxes in this act; said duplicate return shall be placed on file, in the office of the County Treasurer. The County Treasurer shall make a return under oath to the State Treasurer of all State taxes remaining unpaid in his county, in conformity with the return made to him by the Sheriffs.

Return of unpaid taxes.

§ 50. The Sheriff shall be allowed for collecting and paying over the tax, as provided in this act, the following fees, to wit: For all sums where the total amount to be paid over from the County is of five thousand dollars and under, eight per cent.; where the total amount to be paid over from the County is of the sums of over five thousand and under ten thousand dollars, five per cent.; where the total amount to be paid over from the County, is of the sums of over ten thousand and under fifty thousand dollars, three per cent.; where the total amount to be paid over from the County is of a sum over fifty thousand dollars, two per cent. The County Treasurer shall also be allowed twenty cents per mile for travelling fees, in going to and returning from the seat of government; the distance to be computed by the Comptroller of State, according to the distance on the route most usually travelled. *Provided, however,* that the County Treasurer shall receive mileage for only two trips in each year.

Sheriff's fees for collecting.

§ 51. The revenue collected for the use of the County shall be settled with the County Treasurer, who in such settlement shall give the Sheriff credit for the amount of the delinquent list, founded on the amount assessed and allowed for County purposes, and deduct in a ratable proportion the Sheriff's fees for collecting. Said Sheriff shall be held liable for the balance, and shall pay the same out in the manner prescribed by law.

County taxes to be settled for with County Treasurer.

§ 52. If any County Treasurer shall refuse or neglect to make return to the Treasurer of State, or fail to pay over all moneys as required by

County Treasurer making default in payment.

law, he and his securities shall be held liable to pay the full amount of taxes charged on the duplicate, which he so neglects or refuses to make return, and pay over with twenty per cent. damages.

§ 53. In any case where the Sheriff or the County Treasurer shall fail to comply with the provisions of this act, it shall be the duty of the District Attorney, on being instructed so to do by the Comptroller of State, or by the Court of Sessions of the County, to cause suit to be instituted against such Sheriff, or the County Treasurer and his or their securities, and no stay of execution shall be allowed on a judgment rendered on execution issued in such suit.

Suits against
Sheriff or County
Treasurer.

§ 54. In all suits brought against the Sheriff of the County, or the County Treasurer, and securities, under the provisions of the law, 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.

Court of Sessions
to assess County
tax.

§ 55. The Court of Sessions of each County shall, on or before the fourth 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 and personal, levied for each specific object of County expenditure, 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 Sheriff, and the other to the County Treasurer of the County.

County Clerk to
add names of
delinquents to
tax list.

§ 56. It shall be the duty of the Clerk of the County Court, in the year one thousand eight hundred and fifty-two, to add to the list of taxable property, all delinquents for the year one thousand eight hundred and fifty-one, together with ten per cent. damages thereon, and annually thereafter it shall be the duty of the Clerk 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 discretion, at any time, cause said delinquents to be stricken from the roll.

Taxes on
billiard tables
and ten-pin
alleys.

§ 57. There shall be assessed and collected at the same time, and in the same manner as other taxes are collected in this State; for each billiard table one hundred and twenty dollars, and for each ten-pin alley, fifty dollars per annum.

Additional
security from
Sheriff or
County
Treasurer.

§ 58. The Court of Sessions of each County in this State shall be and they are hereby authorized at any time when in their judgment the security of the Sheriff or of the County Treasurer is insufficient on his bond as such Sheriff or County Treasurer, to demand additional security which additional security shall be given by the Sheriff, or by the County Treasurer, in ten days from the date of notice from the Court of Sessions; a failure on the part of the Sheriff or County Treasurer to comply with the notice of the Court of Sessions in the time specified, shall subject himself to a fine of one thousand dollars, for the use of the County, and a forfeiture of his office.

§ 59. It shall be the duty of the Comptroller and Secretary of State, in all settlements with the Sheriff, to administer an oath to said Sheriffs, requiring them to state whether the moneys paid by them to the Treasurer of State are the same which they collected, and that the bonds redeemed by them were redeemed at their par value, with interest due on said bonds. No State officer under this Act shall be allowed any interest on the State bonds receivable for taxes after the date said bonds were received by the Sheriffs.

Sheriff to account under oath.

§ 60. There shall be assessed and paid into the County Treasury, for County expenditures, the following license tax: for each license to vend goods, wares, and merchandise, of either foreign or domestic growth, or production, twenty dollars for one year; for each license to vend spirituous liquors, wines, or liquids, by retail, in less quantities than one pint, to be drunk when sold, fifty dollars for one year; *provided, however,* the Court of Sessions may authorize a license to be granted for retailing for a less period than one year, at the same rates.

License taxes for vending goods, &c.

Spirituous liquors, &c.

§ 61. Each travelling merchant, hawker, and pedlar, shall pay the sum of fifty dollars per annum under such rules and regulations as the Court of Sessions may determine.

Travelling merchant.

§ 62. 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 exhibition for reward, shall pay ten dollars per day.

Caravan, show, &c.

§ 63. For each license to vend wooden, brass, or composition clocks, fifty dollars per annum.

Clocks.

§ 64. 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.

License tax to be paid to County Treasurer.

§ 65. 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.

Penalty for transacting business without a license.

§ 66. It shall be the duty of the County Auditor, the Sheriff, and the Treasurer, to see that licenses are procured and paid for, by those who should obtain the same, and whenever any person shall commence business without a license to do so, the County Attorney shall take legal proceedings against them.

County Attorney to prosecute.

§ 67. Counties unorganized and attached to other Counties for judicial purposes, shall also be considered to be attached for revenue purposes, and the property within the Counties so attached shall be assessed, and the State and County tax be collected by the proper officers of the County to which the same is attached.

Counties attached for revenue purposes.

§ 68. Every person who shall vend by wholesale or retail any spirit-

Vending spirits, &c., without a license.

uous or malt liquors or wines, within any County in this State, without first obtaining a license so to do, as required in the sixty-fifth 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 fifty nor more than one hundred dollars.

Amendment
of previous
statute.

§ 69. The eighteenth Section of "An Act prescribing the mode of appointing Auctioneers and defining their duties," passed April twenty-second, one thousand eight hundred and fifty, shall be amended so as to read as follows: "Every County Treasurer shall pay over to the State Treasurer all moneys in his hands derived from Auction Sales, less his lawful commissions for receiving and paying over said sums of money; and all sums of money not paid over to the Treasurer of State, as above provided, shall be paid into the State Treasury, by the County Treasurer, on or before the third Monday of December of each year."

County
Treasurer
to make
settlement
quarterly.

§ 70. The County Treasurers of the Counties of San Francisco, Sacramento, San Joaquin, and Yuba, shall settle and pay over to the State Treasurer, on the third Monday of December, the third Monday of March, the third Monday of June, and the third Monday of September, any and all funds which shall come into their hands as County Treasurers, for the use and benefit of the State. The Treasurers of all other Counties shall settle and pay over to the State Treasurer all funds which shall come into their hands as County Treasurers, for the uses and benefits of the State on the third Monday of December, and on the third Monday of June in each year. The County Treasurers, in consideration of the safe keeping of the State funds, shall be entitled to receive one per cent. on the amounts paid by them to the Treasurer of State.

Sheriffs and
County
Treasurers not
to use moneys
collected.

§ 71. Neither the Sheriff nor County Treasurers shall use, employ, loan, or in any manner directly or indirectly place out of his or their possession, any of the funds which may come into his or their hands under the provisions of this Act; but shall safely keep said funds inviolate, to be paid over as herein provided. Any officer violating the provisions of this Section shall be deemed guilty of a misdemeanor and shall on conviction be fined in a sum not less than five thousand dollars for each offence, and imprisonment for a term of not less than two years, or both such fine and imprisonment, and shall at once be removed from office.

Fees of County
Treasurer, &c.

§ 72. The County Treasurer and the Sheriff, as Collector for the County of San Francisco, shall respectively receive for their services the same compensation as is allowed by law to the Treasurer and Collector of the city of San Francisco.

Cities may
levy certain
taxes.

§ 73. Nothing herein contained shall be so construed as to prevent any city or town Councils or authority from taxing any business or exhibition, specified in this Act, for corporate purposes.

Inconsistent
laws repealed.

§ 74. That all laws contrary to the provisions of this act be and they are hereby repealed.

Chap. 7.

AN ACT to amend an Act entitled, "An Act prescribing the mode of assessing and collecting Public Revenue."

Passed March 25, 1851.

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

§ 1. That the seventh subdivision of section five, which reads as follows : " All lands granted for the use of Common Schools, so long as the same shall remain unsold," be amended so as to read " All property of whatever description, granted for educational purposes, so long as the same shall remain unsold."

Amendment of
sec. 5, sub. 7.
1850: 4135

Chap. 8.

AN ACT to License Gaming.

Passed March 14, 1851.

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

§ 1. All banking games, and games having a per centage, are hereby prohibited within this State, except as hereinafter provided, and any person offending against this section shall, upon conviction, be deemed guilty of a misdemeanor, and shall, for each and every offence, be punished by a fine of not less than one hundred nor more than one thousand dollars, or with imprisonment in the County jail for not less than three nor more than six months.

Certain games
prohibited.

§ 2. Houses for gaming in any of the Counties of this State may be licensed by the County Treasurer of such County upon the following terms and conditions : Any person desirous to obtain a license to keep a house for gaming purposes shall make application in writing to the Treasurer of the County in which such house is situated, stating particularly the location of such house, the number of gaming tables therein, if the same amount to three tables, or less, and the names of the owners and proprietors of such house ; such license shall be made in favor of the person making the application, and shall be signed by the Treasurer. The Treasurer shall keep a memorandum of all such licenses issued by him in a book to be kept for that purpose.

Gaming houses
may be licensed.

§ 3. Before issuing any license mentioned in section second of this Act, the Treasurer shall demand and receive from the applicant therefor the following sums : For a house to contain any number of tables over three, the sum of fifteen hundred dollars for every three months, and for

Payments
for licenses.

a house to contain three tables or less, the sum of one thousand dollars for every three months, and no license shall be issued for any period less than three months. *Provided, however,* that the foregoing section shall apply only to San Francisco and Sacramento Cities. In all other Counties of the State the sum of thirty-five dollars per month shall be paid for each and every table used for gaming purposes, as provided in this Act.

License not to extend to certain games.

§ 4. No license issued under the provisions of this Act shall be so construed as to allow the playing of the game known as "French Monte" or "Three Card Game," or the game known as "Loop" or "String Game," or the game known as "Thimbles," or the game known as "Lottery," which are hereby expressly prohibited under the penalty mentioned in the first section of this Act. The provisions of this Act shall not extend to, or in any way affect, the games of billiards and ten-pins.

Further license fee may be levied.

§ 5. This Act shall not be so construed as to affect or in any manner invalidate the powers of municipal bodies, held by virtue of any legal charter, to assess and collect any further license by virtue thereof.

Application of money paid for licenses.

§ 6. Three fourths of all the moneys collected for licenses under the provisions of this Act shall be paid into the State Treasury, in the manner prescribed by law for the payment of other moneys by the Treasurers of Counties, and one fourth thereof shall remain in the County Treasury of the County in which the same may be collected, and be applied to the payment of the ordinary expenses of such county.

Treasurer of County of San Francisco.

§ 7. In the County of San Francisco the Treasurer of the City of San Francisco shall perform the duties of the County Treasurer as provided by this Act; said Treasurer shall pay three fourths of all moneys collected by him for licenses provided herein, into the Treasury of the State, in the manner provided by law for the payment of moneys by County Treasurers, and one fourth thereof shall remain in the Treasury of the City of San Francisco and be applied to the ordinary expenses of said City.

Chap. 9.

AN ACT to amend the third section of the Act entitled, "An Act to license gaming," passed March fourteenth, one thousand eight hundred and fifty-one.

Passed April 29, 1851.

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

Section 3, amended.

§ 1. The third section of the Act, entitled, "An Act to license gaming," passed March fourteenth, one thousand eight hundred and fifty-one,

which reads as follows: "Sec. 3. Before issuing any license mentioned in section second of this act, the Treasurer shall demand and receive from the applicant therefor the following sums: For a house to contain any number of tables over three, the sum of fifteen hundred dollars for every three months, and for a house to contain three tables or less, the sum of one thousand dollars for every three months; and no license shall be issued for any period less than three months; *provided, however*, that the foregoing section shall apply only to San Francisco and Sacramento cities. In all other Counties of the State, the sum of thirty-five dollars per month shall be paid for each and every table used for gaming purposes as provided in this Act," is hereby amended so as to read as follows: "Before issuing any license mentioned in section second of this act, the Treasury shall demand and receive from the applicant therefor the following sums: For a house to contain any number of tables over three, the sum of fifteen hundred dollars for every three months; and for a house to contain three tables or less, the sum of one thousand dollars for every three months; and no license shall be issued for any period less than three months; *provided*, that except in the limits of the cities of San Francisco, Sacramento, and Marysville, the sum of thirty-five dollars per month shall be paid for each and every table used for gaming purposes as provided in this act."

Chap. 10.

AN ACT concerning Toll Bridges.

Passed May 1, 1851.

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

§ 1. No person shall demand or receive compensation for the use of any bridge as a public highway; nor set up, and keep on any private road a toll bridge, ferry, or constructed ford, so as to receive any remuneration or promise of remuneration for crossing the same unless authorized so to do by license from the Court of Sessions of the County within which such bridge is in whole or in part situated. No unlicensed person to take toll.

§ 2. No license shall be issued as aforesaid unless it shall first have been made to appear to the satisfaction of the Court of Sessions that such bridge is necessary for the accommodation of the public, and is made or will be made of substantial and durable materials, and at least ten feet in width; except as hereinafter provided; railed in with a good and substantial railing at least four feet high. When license may issue.

§ 3. The Court of Sessions of any County shall issue no license as aforesaid unless application for the same shall have been filed in said Court at least ten days previous to the time of issuing such license; and The like.

unless it shall have been made satisfactorily to appear to the Court aforesaid, that written notices of such intended application shall have been posted up in at least three public places in the township in which such bridge is in whole or in part located, for at least thirty days previous to such application.

The like.

§ 4. No license shall be granted as aforesaid, until the person praying for the same shall have filed in the Court of Sessions, a bond in the penal sum of ten thousand dollars, payable to the State of California, with sureties to be approved by said Court, conditioned that he will at all times keep such bridge in good repair, and suitable for its purposes; and conditioned further that the obligor will pay to any person hindered, delayed, or injured, by reason of any defect, or insufficiency, or want of suitable repair in said bridge, all damages that such person may recover therefor, in any Court competent to try such action.

Delays arising by non-repair of bridges, &c.

§ 5. Any person injured, delayed, or hindered, through any defect, insufficiency, or want of necessary repair in such bridge, shall have a right to sue for and recover of the person having a license therefor, such damages as he may thereby have sustained, in any Court competent to try the same.

No bridge, &c., to be licensed within one mile of any one established.

§ 6. No license shall be issued for any bridge or ferry, within one mile immediately above or below any licensed bridge, or any bridge chartered by the Legislature of the State; or any bridge erected in pursuance of an Act of the Legislature, approved April 22d, eighteen hundred and fifty, entitled "An Act concerning Corporations," unless 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.

Penalty for violating Section 1.

§ 7. Any person who shall violate the first section of this Act shall be deemed guilty of a misdemeanor, and may upon conviction be punished by fine, not exceeding for the first offence, five hundred dollars, and for the second offence, in addition thereto, by imprisonment not to exceed thirty days; and in any case where persons allow travellers to cross streams by ferrics or bridges, contrary to the provisions of this Act, it shall be the duty of the Court of Sessions of that County, on the application of a keeper of a licensed bridge or ferry, to issue a writ of injunction to stop such trespass.

Certain bridges not affected.

§ 8. This Act shall not affect the right of persons owning and building toll bridges erected or licensed heretofore by order of the Court of Sessions of any County within this State.

Amount of toll.

§ 9. The Court of Sessions shall establish the amount of tolls to be charged or received for crossing all licensed bridges; which in all cases must be equitable and equal.

Section 2, not to apply to certain bridges.

§ 10. The provisions of section second of this Act shall not apply to bridges that have been built and licensed heretofore, by order of the Court of Sessions of any County within this State; nor shall it prevent the Court of Sessions upon application to license the erection of bridges across mountain streams where it is impracticable to travel with wag-

gons, of such dimensions as the Court in its discretion may determine.

§ 11. The owner or occupant of any toll bridge, licensed under this Act, shall enter in a book kept by him for the purpose, an account of the daily receipts of such bridge; which book shall be at all times open to the inspection of the Court of Sessions of the County, from which license as aforesaid may have issued. At the expiration of three months from the date of said license, and at the expiration of each successive period of three months, said owner shall file with the Clerk of the Court aforesaid a transcript of said account of receipts, verified by the oath of the person who shall have kept the account aforesaid, and shall at the same time file with the Clerk the receipt of the Treasurer of the County, entitled to the same for the payment of five per cent. of said receipts into the Treasury aforesaid; and such licenses shall be suspended until payment as aforesaid shall have been made; and no license shall be in force for a longer period than one year from the issuing thereof. The provisions of this section shall also apply to all toll bridges now licensed by any Court of Sessions as aforesaid.

Account of receipts for toll to be kept.

§ 12. In no case whatever shall either of the Judges of the Court of Sessions, of any county, be personally interested, directly or indirectly, in any bridge, ferry, or other crossing situated within the county in which they sit as Judges, nor shall they in any manner receive any profit arising out of any such bridge, ferry, or crossing, without license has first been granted to either or all said Judges by the District Court.

Members of Sessions not to be interested in any bridge.

§ 13. That when the Court of Sessions refuse to grant a license to any person to build a bridge, the person making such application shall have the right to apply to the District Judge for such license, and the District Judge may in his discretion grant such person license for good cause shown.

Appeal from decision of Sessions.

§ 14. The provisions of this Act shall not be applicable to bridges and ferries within the limits of an incorporated city.

Bridges in cities.

§ 15. This Act shall take effect and be in force from and after thirty days after its passage.

When act to take effect.

Chap. 11.

AN ACT to limit the terms of Leases.

Passed April 21, 1851.

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

§ 1. No lands within this State shall hereafter be conveyed by lease or otherwise except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for a longer time than twenty years.

Terms in leases limited.

Leases
when void.

§ 2. All leases hereafter made, contrary to the provisions of this Act, shall be void.

Chap. 12.

AN ACT to authorize the keepers of Warehouses to sell goods on storage after a certain period.

Passed May 1, 1851.

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

When goods
may be sold
for storage.

§ 1. It shall and it is hereby made lawful for any merchant or keeper of a warehouse in this State to sell by Public Auction any and all goods, wares, and merchandise, which may have been left in his store or on storage three months after the storage as agreed upon by the parties shall become due, by giving at least thirty days' notice of such sale, provided he shall only sell sufficient to pay the storage; *provided however*, that if no agreement shall have been made by the parties, twelve months shall be considered the time for goods to remain in store before the advertising of and sale for storage shall take place.

Sale to be
advertised.

§ 2. All goods offered for sale to pay storage as aforesaid shall be published in some newspaper published in such city, town, or place, or if there should not be any newspaper published in any such city, town, or place, then there shall be a notice posted in writing at three of the most public places in such city, town, or place, setting forth the kind of goods offered for sale, after which sale the party having them in store shall make out an account of the same, which sums shall be deducted from said sale; the residue shall be paid over to the order of the Treasurer of the State Hospital within the county, and in the county of San Francisco to the City Treasurer for Hospital purposes, to the credit of the party owning the goods so sold.

Surplus
proceeds,
after paying
storage, &c.

Sums paid to
State Hospital.

§ 3. All sums thus paid over to the Treasurer of the State Hospital shall go into the general fund of the State Hospital, until claimed by the rightful owner. In the event, however, that there is no such institution as a State Hospital within the county where such sale shall take place, then and in that case, all such sums of money may be used by the Court of Sessions for the use of the poor of said county, until called for by its proper owner.

Notice of sale
to Treasurer of
State Hospital.

§ 4. In all cases where goods, wares, or merchandise shall be offered for sale, as aforesaid, to pay charges for storage, it shall be the duty of the party offering the same to give written notice to the Treasurer of the State Hospital that such sale will take place, whereupon it shall be the duty of the Treasurer of the State Hospital to attend such sale, or appoint some one to attend such sale and make a settlement with the

party, as directed in this act; should there be no State Hospital in the County where such sale shall take place, then the County Treasurer shall attend such sales, and make a settlement with the party as directed in this act.

§ 5. In no case shall chests or trunks containing the wearing apparel of an individual be sold under the provisions of this Act, in less than twelve months from the time the same was stored, unless by express written agreement between the warehouse keeper and the owner of such chest or trunk, authority is given for the sale of the same at a time fixed. Chests of wearing apparel.

§ 6. That in case of the death of any person having goods sold under the provisions of this act, the executor or administrator of such deceased person shall be entitled to receive the surplus, if any, after the payment of the warehouse or other proper charges on the same. Where owner of goods dies.

§ 7. That in all cases of sale of chests or trunks, containing wearing apparel, under the provisions of this act, such chests or trunks shall be opened and the goods exposed to public view, so that purchasers may judge of the value of the articles so offered for sale: *Provided*, that all private papers of family relics, found in such chests or trunks, shall be deposited with the County Treasurers for safe keeping, until called for by the owner, or person properly authorized to receive the same. Chests of wearing apparel to be opened.
Private papers, &c.

Chap. 13.

AN ACT to regulate the coining of money by Individuals.

Passed April 21, 1851.

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

§ 1. Any person or company who shall make or cause to be made, within this State, any piece of gold or silver, whether pure or alloyed, in the form of coin or otherwise, and intended or calculated to circulate as money, shall be held responsible to the holder thereof, for the marked value thereof, or the rate at which such sum is uttered, and shall on presentation redeem all such coins at such rate with legalized coin of the United States. Liability of persons making coin.

§ 2. If any person making or uttering such coins shall refuse or neglect to redeem the same, in the manner prescribed in section one, he shall be deemed guilty of a misdemeanor, and shall be liable, on conviction, to be punished in each case by fine not less than five hundred dollars, nor more than five thousand dollars, or imprisonment for not less than six months, nor more than three years, or both such fine and imprisonment. Refusing to redeem coin.

§ 3. If any person shall hereafter make or utter any piece of gold or Date to be

stamped
on coin.

silver as described in section one, without stamping upon the same the day, month, and year, of its manufacture, he shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to the same penalty as is prescribed in section two.

Coin of less
than its
nominal value

§ 4. If any person shall hereafter make or utter any coin, or piece of gold or silver, such as is described in section one of this chapter, of less value than its marked or nominal value, or the value at which it is issued, he shall be deemed guilty of fraud, and on conviction thereof, shall be liable to the penalties mentioned in section second.

When act
to take effect.

§ 5. This Act shall take effect on the fifth day after its passage.

Chap. 14.

AN ACT *dividing the State into Counties, and establishing the Seats of Justice therein.*

Passed April 25, 1851.

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 this State.

§ 2. County of San Diego. Commencing on the coast of the Pacific at San Mateo point and running thence in a direction so as to include the Ranchos of Santa Margaurita and Lajuna Ternacala to the Rancho of San Jacinto and along its northern line to the north-east corner, and from thence in a parallel line with the southern boundary with Mexico to the Colorado river; thence down the middle of the channel of said river, to its junction with the boundary line of Mexico; thence following the boundary line to the Pacific Ocean, and three miles therein; thence in a north-westerly direction running parallel with the coast, to three miles due west from San Mateo point; thence east to the place of beginning. The seat of Justice shall be at San Diego.

Los Angeles.

§ 3. County of Los Angeles. Beginning on the coast of the Pacific, at a point parallel with the northern boundary of the Rancho, called Malaga; thence in a direction so as to include said Rancho, to the north-west corner of the Rancho, known as Triumpo, running on the northerly line of the same to the north-east corner; thence to the summit of the ridge of hills called Santa Susanna; thence in a direct line to the Rancho of Casteque and Lejon and along their northern line to the north-eastern corner, and from thence in a north-east line to the eastern boundary of the State, and along said boundary line to the junction of the northern boundary of San Diego County with the Colorado; thence following said line to the Pacific Ocean, and three miles therein; thence in a north-westerly direction parallel with the coast to

a point three miles from land, and opposite to the southern boundary of the Rancho called Malaga; and thence east to the place of beginning, including the islands of Santa Catalina and San Clement. The seat of Justice shall be at Los Angeles.

§ 4. County of Santa Barbara. Beginning at the south-west corner of Santa Barbara. Rancho Guadalupe and following the southern and eastern boundary of said Rancho to its intersection with a creek called Santa Maria or Arenal, and running up the middle of said creek to its source; thence north-east to the summit of the coast range; the farm of Santa Maria, falling within Santa Barbara County; thence following said range to its junction with the northern boundary of Los Angeles County; thence along the north-west boundary of said County to the Ocean, and three miles therein, and thence in a north-westerly direction parallel with the coast in a point due west of 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.

§ 5. County of San Luis Obispo. Beginning at the junction of the San Luis Obispo. Monterey, or Salinas and Nacisnicento rivers; thence up the Nacisnicento ten miles, following the meanderings of said river; thence due west to the ocean, and three miles therein; thence in a south-easterly direction, parallel with the coast, to the north-west corner of Santa Barbara County; thence along the northern line of said County, to the north-east corner thereof, on the summit of the coast range; thence in a north-westerly direction, following the summit of the coast range to a point due east of the mouth of the Nacisnicento river; thence west to the place of beginning. The seat of Justice shall be at San Luis Obispo.

§ 6. County of Monterey. Beginning at the mouth of Pagaro river on Monterey. 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 north-east corner of San Luis Obispo County; thence following the northern boundary of San Luis Obispo County to the Pacific Ocean, and three miles therein; and thence parallel with the coast to the place of beginning. The seat of Justice shall be at Monterey.

§ 7. County of Santa Cruz. Beginning in the ocean, three miles from Santa Cruz. 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, in a south-easterly 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 miles into the ocean; and thence in a north-westerly direction parallel with the coast, to the point of beginning. The seat of Justice shall be at Santa Cruz.

San Francisco.

§ 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 north-west of Golden rock; thence due south-east 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 miles therein; thence in a north-westerly 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.

Santa Clara.

§ 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 south-easterly direction, following the summit of the coast range, to the north-east corner of Monterey County; thence in a westerly direction, following the northern boundary of Monterey County, to the south-east corner of Santa Cruz County; thence in a north-westerly 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 San José.

Contra Costa.

§ 10. County of Contra Costa. Beginning at the mouth of Alameda creek, and running to the south-east 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 Picadero 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.

Sacramento.

§ 11. County of Sacramento. Beginning at a point ten miles due north 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 Dayler, thence due south to Dry Creek, thence down the middle of said Creek to its entrance into the Moquelumne river or into a large slough in the Tule marsh, thence down the middle of said slough to its junction with 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.

§ 12. County of San Joaquin. Beginning at the junction of the San Joaquin San Joaquin river, and the large slough which is the outlet of the Mokelumne 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 Lenrow'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 north-westerly direction following the summit of said range to the southern boundary of Contra Costa County; thence in a north-easterly 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.

§ 13. County of Calaveras. Beginning at the corner of Sacramento Calaveras. 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 line 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 westerly direction along said summit to the north fork of the Stanislaus river; thence down the north fork of the Stanislaus 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.

§ 14. County of Tuolumne. Beginning at the summit of the coast Tuolumne. 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 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 Sonora.

§ 15. County of Mariposa. Beginning on the summit of the coast Mariposa. range at the south-west 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 south-easterly direction following said boundary, to the northern boundary of Los Angeles County; thence along said boundary to the south-east corner of Santa Barbara County; and thence in a north-westerly direction along the summit of the coast range to the place of beginning. The Seat of Justice shall be at such a place as may be chosen by the qualified electors of the County at the next general election.

El Dorado.

§ 16. 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 the said fork to its source; thence in a due easterly direction to the boundary of the State; thence in a south-easterly direction following the boundary of the State to the north-east corner of Calaveras County; thence in a westerly direction along the northern boundary of said County to the south-east 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.

Placer.

§ 17. County of Placer. Beginning on the Sacramento river at the north-west corner of Sacramento County, and running thence up the middle of said river, to a point ten miles below the junction of Sacramento and Feather rivers; thence in a northerly direction in a straight line to a point in the middle of Bear Creek opposite Camp Far West; thence up the middle of said creek to its source; thence due east to the State line; thence southerly on the State line to the north-easterly corner of El Dorado County; thence westerly on the northerly line of El Dorado County to the junction of the north and south forks of the American River; thence westerly on the northerly line of Sacramento County to the place of beginning. The Seat of Justice shall be at Auburn.

Sutter.

§ 18. County of Sutter. Beginning at a point in the middle of Sacramento River ten miles below the junction of Sacramento and Feather Rivers, and running thence up the middle of Sacramento River to a point due west of the north point of the three Buttes; thence due east to the middle of Feather River; thence down the middle of Feather River to a point opposite the mouth of Bear Creek; thence east up the middle of said creek to a point opposite Camp Far West; thence in a southerly direction along the westerly line of Placer County, the place of beginning. The Seat of Justice shall be at Vernon.

Yuba.

§ 19. County of Yuba. Beginning at a point in the middle of Feather River, opposite the mouth of Bear Creek, and running thence east up the middle of said creek to a point due south from the mouth of Deer Creek; thence north to a point in the middle of Yuba River, opposite the mouth of said creek; thence up the middle of Yuba River to a point opposite the mouth of the middle branch of the Yuba; thence

up the middle of the said middle branch ten miles from its mouth; thence easterly in a straight line to the boundary line of the State; thence north, following said boundary line to a point opposite the dividing ridge between the Feather and Yuba Rivers, thence westerly to the said dividing ridge, and following the same to the source of the Honcut Creek; thence down the middle of Honcut Creek to a point in the middle of Feather River; thence down the middle of Feather River to the place of beginning. The Seat of Justice shall be at Marysville.

§ 20. County of Nevada. Beginning at the point in the middle of Nevada. Yuba River, opposite the mouth of Deer Creek, and running thence up the middle of Yuba River to a point opposite the mouth of the middle branch of Yuba, thence up the middle of said middle branch ten miles from its mouth; thence easterly in a straight line to the boundary of the State; thence south along the boundary line of the State to the north-east corner of Placer County; thence westerly on the northerly line of Placer County to the source of Bear Creek; thence down Bear Creek to a point due south of the junction of Deer Creek and Yuba River; thence north to the place of beginning. The Seat of Justice shall be at Nevada City.

§ 21. County of Butte. Beginning at a point in the middle of the Butte. Sacramento River, opposite the mouth of Red Bluff Creek below the Red Bluffs, 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 River above the Red Bluffs, thence following the top of the said ridge to the *Sierra Nevada*; thence due east to the boundary of the State, thence due south following said boundary to the north-east corner of Yuba County, thence following the north-western boundary of Yuba County to the Feather River; thence westerly 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 Hamilton City.

§ 22. County of Shasta. Beginning at a point in the middle of Shasta. Sacramento River opposite the mouth of Red Bluff Creek below the Red Bluffs, and running thence up the middle of said creek to its source in the coast range; thence west in a straight line to the summit of the coast range, thence in a northerly direction following the summit of the coast range to the parallel of forty-two degrees north latitude, thence due east along the northern boundary line of the State to the north-east corner of the State, thence south following the boundary line of the State to the north-east corner of Butte County; thence along the northerly line of Butte County to a point in the middle of the Sacramento River; thence up the middle of the Sacramento River to the place of beginning. The seat of Justice shall be at Shasta City.

§ 23. County of Marin. Beginning on the sea coast at the mouth Marin. of the inlet called Estero Americano, and running up the middle of said

Estero to its head : thence following the road which leads from Bodego to San Rafael, passing between the rocks known by the name of Don Piedros, to the Lajuana of San Antonio ; thence following down the middle of said Lajuana 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 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. The seat of Justice shall be at San Rafael.

Sonoma.

§ 24. 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 north-western 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 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 Segun, or Mare Island. The seat of Justice shall be at Sonoma.

Napa.

§ 25. County of Napa. Commencing in the Napa River at the mouth of Soscol 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.

Mendocino.

§ 26. County of Mendocino. Beginning on the parallel of forty degrees of north latitude at a point in the ocean three 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 Puta Creek, following up said creek to its source in the mountain called Mayacmas; 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 miles into the ocean; thence in a northerly direction parallel with the coast to the point of beginning. This County shall be attached, for Judicial and revenue purposes, to Sonoma County, until a County government shall be organized for the same in the manner prescribed by law.

§ 27. County of Solano. Beginning at the mouth of Napa Creek, and Solano. running up the middle of its channel to the mouth of Soscol creek; thence following up said creek to the eastern boundary line of Napa county; thence along said boundary line to the north-east corner of Napa County; thence in a direct line to the nearest point of Puta 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 Carquines, and thence through the middle of said Straits to the place of beginning. The seat of Justice shall be at Benicia.

§ 28. County of Yolo. Beginning on the summit of the coast range Yolo. at a point due west from a point in the Sacramento river ten miles, ten miles below the head of "Sycamore Slough," and running due east to the Sacramento river; thence down the middle of said river to the head of Merritt's slough; thence north-westerly 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, except it be removed as is provided in "An Act to provide for the permanent location of the seats of justice in the several counties."

§ 29. County of Colusa. Beginning at a point in the middle of the Colusa. Sacramento river, opposite the mouth of Red Bluff creek, below the Red Bluffs; and running thence up the middle of said creek to its source in the coast range; thence west in a straight line to the summit of the coast range; thence in a north-easterly direction following the summit of the coast range to the northern boundary line of Yolo County; thence east along the northern boundary line of Yolo County to a point in the middle of Sacramento river; thence up the middle of said river to the place of beginning. The seat of justice shall be at the town of Colusa.

§ 30. County of Trinity. Beginning at a point in the ocean three Trinity. miles due west from the mouth of Mad river, and running thence due east to the summit of the coast range; thence in a southerly direction along the summit of said coast range, to the parallel of forty degrees north latitude; thence due west to the ocean, and three miles therein; thence in a north-westerly direction parallel with the coast to the place

of beginning. The seat of justice shall be at such place as may be chosen by the qualified electors of the County at the first County election.

Klamath.

§ 31. County of Klamath. Beginning at the point in the ocean, three miles due west of the mouth of Mad river, and running thence due east along the north line of Trinity county to the summit of the coast range; thence in a northerly direction along the summit of said coast range to the parallel of forty-two degrees north latitude; thence due west to the ocean, and three miles therein; thence in a south-easterly direction parallel with the coast to the place of beginning. The seat of Justice shall be at such place as may be chosen by the qualified electors of the County at the first County election.

Repeal of
previous acts.

§ 32. The Act entitled "An Act subdividing the State into Counties and establishing seats of justice therein," passed February eighteenth, one thousand eight hundred and fifty; and the Act entitled "An Act amendatory of sections seven, eight, nine, ten, and fourteen of an Act subdividing the State into Counties, and establishing seats of justice therein," approved February eighteenth, one thousand eight hundred and fifty, passed April fifth, one thousand eight hundred and fifty; and the Act entitled "An Act amendatory of the twenty-eighth and thirtieth sections of the Act subdividing the State into Counties, and establishing seats of justice therein, approved February eighteenth, one thousand eight hundred and fifty," passed April eighteenth, one thousand eight hundred and fifty-one, are hereby repealed.

Chap. 15.

AN ACT to amend an Act entitled "An Act to regulate Elections," passed March twenty-third, one thousand eight hundred and fifty.

Passed April 26, 1851.

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

Section 1,
amended.

§ 1. Section first of the Act entitled "An Act to regulate elections," passed March twenty-third, one thousand eight hundred and fifty, which reads as follows: "There shall be held throughout this State, on the first Monday of the month of October of each year, an election for members of the 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," is hereby amended so as to read as follows: There shall be held throughout this State, on the first Wednesday in September of each year, an election for members of Assembly, and such other officers as may be required by law to be chosen at such election, to be called the General Election.

Section 2,
amended.

§ 2. Section second of said Act, entitled "An Act to regulate elections," which reads as follows: "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," is hereby repealed.

§ 3. Section fourth of said Act entitled, "An Act to regulate elections," which reads as follows: 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, is hereby amended so as to read as follows: All vacancies which are about to occur in office by the expiration of the full term thereof, shall be supplied at the general election.

Section 4,
amended.

§ 4. Section seventh and section twenty-first of the said Act entitled, "An Act to regulate elections," are hereby repealed.

Sections 7 and
21, repealed.

§ 5. Section fifteen of the said Act entitled, "An Act to regulate elections," which reads as follows: "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," is hereby amended so as to read: There shall be a precinct for holding elections in each township designated by the Court of Sessions; but the Court may, and the County Judge, in vacation, may, if the convenience of the people require it, create additional precincts in any township at places where there are thirty or more resident voters; *Provided*, there shall not be more than one precinct in each ward of a city; and *Provided, further*, that except within a city no two election precincts shall be nearer to each other than two miles.

Section 15,
amended.

§ 6. Section sixteenth of the Act entitled, "An Act to regulate elections," which reads as follows: "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, in the township in which such precinct lies," is hereby amended so as to read as follows: When an election is ordered, the County Judge shall appoint for each precinct, from the qualified electors of the township in which such precinct lies, one Inspector and two Judges, who shall constitute a board of Judges of election. In case said board be not appointed for any precinct by the County Judge, the electors present on the morning of the day of election, at the place where the polls were opened on the day of the last previous general election, may appoint a board of Judges for such precinct.

Section 16,
amended.

§ 7. Section seventeenth of the said Act, entitled, "An Act to regulate elections," which reads as follows: "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;" is hereby amended so as to read as follows: "It shall be the

Section 17,
amended.

duty of each Inspector to be at the place where the polls are to be opened in the precinct for which he is appointed, from eight o'clock in the morning until sunset on the day of the election. Should such Inspector not appear at eight o'clock in the morning, the electors present at the place where the polls are to be opened, may appoint an Inspector for the precinct."

Section 18,
amended.

§ 8. Section eighteenth of the Act, entitled, "An Act to regulate elections," which reads in the following words, "Each Inspector of elections shall, previously to the time of opening the election, select two qualified electors 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," is hereby amended so as to read as follows: "The Board of Inspectors for each precinct shall, before the time of opening the polls, appoint two suitable persons to act as clerks."

Section 22,
amended.

§ 9. Section twenty-second of the said Act, entitled, "An Act to regulate elections," which reads as follows: "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 election may take a recess of one hour, at any time they may think proper, during the day, before three o'clock, P.M.," is hereby amended so as to read as follows: "At all elections the polls shall be opened at eight o'clock in the morning, 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 in the afternoon."

Section 56,
amended.

§ 10. Section fifty-sixth of the said Act, entitled, "An Act to regulate elections," which reads as follows: "When any such electors 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:" is hereby amended so as to read as follows: "When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall within forty days after the return day of such election, file with the County Clerk 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 state-

ment shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true, as he verily believes."

§ 11. Section seventy-six of the said Act, entitled "An Act to regulate elections," which reads as follows: "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," is hereby amended so as to read as follows: "The person contesting such election shall, within twenty days after the issue of the certificate of 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." Section 76 amended.

§ 12. The said Act entitled, "An Act to regulate elections," is hereby amended by an additional section, to read as follows: Section one hundred and eight: But special provisions may be made by law, prescribing the mode of calling elections, of appointing the officers thereof, and of designating election precincts, otherwise than as provided in this act. Additional section.

Chap. 16.

AN ACT to amend an Act entitled "An Act creating and regulating Public Ferries," passed March eighteenth, one thousand eight hundred and fifty.

Passed April 29, 1851.

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

§ 1. The first section of the Act entitled "An Act creating and regulating public ferries," passed March eighteenth, one thousand eight hundred and fifty, is hereby amended so as to read as follows: No person shall keep a ferry without a license, except for his own personal use, or that of his family. Section 1, amended.

§ 2. The eighteenth section of the same act is hereby amended so as to read as follows: For the encouragement of ferry keepers, and in consideration of setting over public messengers and Expresses, exempt from payment of ferrage by this Act. All men while necessarily employed in attending 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 services on Juries. And if any person, or persons other than ferry keepers, licensed under the provisions of this act, shall set any person, or thing, over any river or creek wherein public ferries are established, or shall hire to any person or persons; a boat for that purpose, within two miles of such public ferry, he, she, or they, so offending, Section 18, amended.

shall forfeit the sum of one hundred dollars for such offence, to be recovered before any Justice of the Peace of the County where such offence shall be committed; said action to be brought upon complaint; and if the party charged with the offence aforesaid, shall be convicted of the same, said Justice shall require the amount of the judgment to be immediately paid into Court; or secured to the satisfaction of the Justice. And if the party convicted shall fail to comply with either of the above requirements, he, she, or they, shall stand committed until said judgment and costs of prosecution are paid. Said Justice may likewise order the boat, or boats, so used as aforesaid, to be seized and secured, so as to prevent their being used for the purpose of ferrying. And if any licensed ferry keeper shall be damaged in consequence of the running of a ferry boat, without authority of law, he, she, or they, running said boat, or participating in any manner in the same, shall be liable to such ferry keeper in an action, instituted before any tribunal having jurisdiction of the same.

Section 5,
amended.

§ 3. The fifth section of the same Act is hereby so amended as to read as follows: No ferry shall be established within two miles, immediately above or below a regularly established ferry, unless it be required by 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. Upon application by any person to establish another ferry within two miles of any regularly established ferry, notice of at least ten days of the time and place of such application, and of the grounds upon which the same is founded, shall be served on the proprietor of the ferry already established; and such application shall be made to the same Court by which the license to the ferry already established, was granted.

Renewal of
license.

§ 4. Any person having a license to keep a ferry, and who has kept such ferry in accordance with the law, shall be entitled to have such license renewed for one year, from the date of the expiration of the same.

Chap. 17.

AN ACT supplementary to an Act entitled "An Act concerning County Recorders," passed March, one thousand eight hundred and fifty-one.

Passed April 25, 1851.

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

County
Recorders of
Tuolumne and
Butte counties.

§ 1. The provisions of the act entitled "An Act concerning County Recorders," passed March, one thousand eight hundred and fifty-one, shall not apply to Tuolumne and Butte Counties, so far as such act

unites the office of County Recorder with that of County Clerk, but in said Counties the Office of County Recorder shall be separate and distinct from the Office of County Clerk.

§ 2. All the provisions of said Act concerning County Recorders, as The like. to the duties and responsibilities and continuance in office of the Recorders of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall apply in all respects to the Recorders of Tuolumne and Butte Counties.

§ 3. This Act shall take effect on the first day of May next. When Act to take effect.

Chap. 18.

AN ACT concerning the Costs of Criminal Actions removed before trial.

Passed April 29, 1851.

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

§ 1. In every case where a criminal action may have been or shall be removed before trial, the costs accruing upon such removal and trial shall be a charge against the County in which the indictment was or may be found. Costs of removal of criminal action.

§ 2. The Clerk of the County to which such action is or may be removed, shall certify the amount of said costs to the Auditor of his county, who shall audit the same and issue his draft therefor upon the Treasurer of the County from which such action was or may be removed. Certificate for suit costs.

Chap. 19.

AN ACT to repeal the one hundred and fifteenth section of the Act entitled "An Act concerning the Courts of Justice of this State and Judicial Officers."

Passed May 1, 1851.

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

§ 1. Section one hundred and fifteen of the Act entitled "An Act concerning the Courts of Justice of this State and Judicial Officers," Section 115 amended. which reads as follows: "A Judge of the Supreme Court, or of the District Court, or of the Superior Court of the City of San Francisco, or of the County Court, shall not absent himself from the State without the consent of the Legislature, if in Session, and during the recess of the

Legislature, without the consent of the Governor, previously obtained. The Governor of the State shall supply the temporary vacancy occasioned by the absence of a Judge of one of these Courts by appointment, which shall continue during such absence. Such temporary Judge shall draw the salary of the Judge whose place he fills during the absence of the last mentioned Judge ;" is hereby repealed.

Chap. 20.

AN ACT concerning Divorces.

Passed March 25, 1851.

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

District Courts to have exclusive jurisdiction of divorces.

§ 1. The several District Courts of this State, within their respective Districts, shall have exclusive jurisdiction to grant a divorce from bed and board, and from the bonds of matrimony.

What divorces may be granted.

§ 2. Divorces may be granted from bed and board, or from the bonds of matrimony.

Who may apply for divorce.

§ 3. No person shall be allowed to apply for a divorce under the provisions of this Act, who has not been a resident of this State for a period of six months, immediately preceding such application.

When divorces may be granted.

§ 4. Divorces from bed and board, or from the bonds of matrimony, may be granted.

1st. For natural impotence existing at the time of the marriage :

2d. When the female, at the time of the alleged marriage, was under the age of fourteen years, and the alleged marriage was without the consent of her parents, or guardian, or other person having the legal custody or charge of her person, and when such marriage was not voluntarily ratified on her part, after she had attained the age of fourteen years :

3d. By an act of adultery, by either of the parties ; but no divorce shall be granted upon the application of the party guilty of the act of adultery complained of, nor, if it shall appear to the Court, that the adultery complained of was by collusion of the parties ; nor when it shall appear that the parties have lived and cohabited together as man and wife, after knowledge of the act of adultery complained of :

4th. For extreme cruelty in either party ; or for habitual intemperance ; or for wilful and continued desertion, by either party, for the period of three years ; or for wilful neglect, on the part of the husband, to provide for his wife the common necessaries of life, having the ability to provide the same, for the period of three years :

5th. When the consent of either of the parties to the marriage,

was obtained by force or fraud, upon the application of the injured party :

6th. In case of the conviction of either party for a felony, after marriage, where the punishment is not less than imprisonment for two years.

§ 5. No action for a divorce, on the ground of natural impotency existing at the time of the marriage, shall be allowed except by the injured party ; nor unless instituted within two years after the solemnization of the marriage. Divorce for impotency.

§ 6. When a divorce is granted on the ground of adultery on the part of the wife, the legitimacy of any children born or begotten of her before the act of adultery complained of, shall not be affected by the divorce. Legitimacy of children.

§ 7. In any action for a divorce, the Court may, during the pendency of the action, or at the final hearing, or afterwards, make such order for the support of the wife, and the maintenance and education of the children of the marriage, as may be just, and may at any time thereafter annul, vary, or modify such order, as the interest and welfare of the children may require. Allowance to wife during suit.

§ 8. No divorce shall be granted in any action by default of the defendant, nor on the admission or statement of either party ; but in all cases the Court shall require proof of the facts alleged as the grounds for a divorce. No divorce by default.

Chap. 21.

AN ACT concerning *District Attorneys.*

Passed April 29, 1851.

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

§ 1. There shall be a District Attorney in each County of this State, who shall be elected by the electors of the County, at the general election of the present year, and at the general election every two years thereafter, and shall enter upon his duties on the first Monday of October subsequent to his election. District Attorney in each county.

§ 2. Before entering upon the duties of his office, he shall execute and file with the County Clerk, a bond to the State, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties. To give bonds.

§ 3. The District Attorney in each County shall be the public prosecutor therein. To be Public Prosecutor.

§ 4. He shall attend the District Courts held in his County, and the Courts of Sessions in his County, held for the transaction of criminal To conduct prosecutions.

business, and conduct on behalf of the people all prosecutions for public offences.

Deputy may be appointed.

§ 5. If he fails to attend any term of those Courts, the Court shall designate some other person to perform the duties of District Attorney during his absence from the Court, who shall receive a reasonable compensation, to be certified by the Court, and paid from the County Treasury.

Proceedings before magistrates.

§ 6. The District Attorney, when not in attendance upon the District Court, or Court of Sessions, shall institute proceedings before Magistrates, for the arrest of persons charged with, or reasonably suspected of public offences, when he has information that any such offence has been committed; and for that purpose shall attend upon the Magistrates in cases of arrest when required by them, and shall attend before, and give advice to the Grand Jury, whenever cases are presented to them for their consideration.

To draw indictments, &c.

§ 7. The District Attorney shall draw all indictments when required by the Grand Jury; shall defend all suits brought against the State or his County; shall prosecute all recognizances forfeited in the District Court, or Court of Sessions; and all actions for the recovery of debts, fines, penalties, and forfeitures, accruing to the State, or his County; and he shall also perform such other duties as may be required of him by law.

To give receipt for moneys received.

§ 8. When he receives money or property in his official capacity, he shall deliver a receipt therefor to the person from whom he receives it, and file a duplicate thereof with the County Treasurer.

To account on cash.

§ 9. He shall on the first Mondays of January, April, July, and October, in each year, file in the office of the County Treasurer, an account in writing verified by oath, of all moneys received by him in his official capacity, during the preceding three months, and shall, at the same time, pay it over to the County Treasurer.

Refusing to account.

§ 10. If he refuse, or neglect to account for, and pay over money so received by him as required by the last section, the County Treasurer shall bring an action against him for the recovery thereof in the name of the county, and may recover in such action in addition to the amount so received, fifty per cent. damages and interest. For such refusal or neglect he shall also be deemed guilty of a misdemeanor in office.

To give opinion without fee.

§ 11. 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 their respective offices.

When not to act in civil action.

§ 12. The District Attorney shall not act as counsel in a civil action or in a special proceeding of a civil nature for a private party, against whom a criminal action for a felony is pending.

To keep a register of his official business.

§ 13. 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 therein, which shall, upon the expiration of his term of office, be turned over to his successor.

§ 14. The District Attorney may be indicted for a 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. Punishment for neglect of duty, &c.

§ 15. 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 recognizances. He shall also be entitled to receive for all amounts collected by him for the State or county by action, ten per cent. on the amount collected, and for all criminal actions successfully prosecuted by him, such fees as may be allowed by law, to be paid by the defendant. Salary.

§ 16. The act entitled "An Act concerning the office of District Attorney," passed March 27th, 1850, and the act entitled "An Act concerning the office of County Attorney," passed March 27th, 1850, are hereby repealed, and the office of County Attorney is hereby abolished. Previous acts repealed.

§ 17. This act shall take effect on the first Monday of October next, except that the first section, so far as it directs an election of a District Attorney at the general election of the present year, shall take effect immediately. When act to take effect.

Chap. 22.

AN ACT to extend the time for County Treasurers to make their Returns.

Passed March 28, 1851.

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

§ 1. The Treasurers of the several Counties of this State are hereby allowed until the first day of June, one thousand eight hundred and fifty-one, to make their final settlement with the Comptroller of State for State Revenue collected by them for the year one thousand eight hundred and fifty. All sales of real or personal property for State or County taxes, that may have been made since the first Monday of November, one thousand eight hundred and fifty, and all that may be made prior to the fifteenth day of May, one thousand eight hundred and fifty-one, by said County Treasurers, be and the same are hereby legalized as if such sales had been made at the time prescribed by law. County Treasurers allowed to June 1, 1851, to settle.

Chap. 23.

AN ACT concerning Sheriffs.

Passed April 29, 1851.

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

ARTICLE I.

SHERIFFS.

Their election ; their duties in general ; their offices and their office hours.

Sheriff in each county.

§ 1. There shall be a sheriff in each of the Counties of this State, to be elected in the manner prescribed by law.

To take oath of office and give bond.

§ 2. Before entering upon the discharge of his duties, each sheriff shall take the oath of office and give a bond to the State in the form prescribed by the "Act concerning the official bonds of officers," conditional for the faithful performance of the duties of his office. The penalty of the bond to be given shall be as follows : in the Counties of San Francisco and Sacramento the sum of one hundred thousand dollars ; in the Counties of Santa Clara, El Dorado, and Yuba, the sum of fifty thousand dollars : in all the other counties, except San Luis Obispo, and Santa Barbara, the sum of twenty-five thousand dollars ; and in San Luis Obispo, and Santa Barbara Counties, twelve thousand dollars.

To be conservator of the peace. Sheriff's duty.

§ 3. The sheriff shall be a conservator of the peace in his county.

§ 4. It shall be the duty of the sheriff within his county :

1st. To arrest and take before the nearest magistrate for examination, all persons who commit, or attempt to commit, a public offence in his presence, or who have committed a public offence :

2d. To prevent and suppress all arrays, breaches of the peace, riots, and insurrections, which may come to his knowledge.

3d. To execute the process, writs, warrants, and order of the Courts of Justice, or of Judicial Officers, when delivered to him for that purpose.

4th. To attend in person, or by deputy, all Courts except Justices', Probate, and Recorders' Courts, at their respective terms, held within his county, and to obey their lawful orders and directions.

5th. To serve at the request of a party to any action or proceeding, notices and papers therein.

6th. In the execution of these duties, to command the aid of as many male inhabitants of his county as he may think proper and necessary.

To endorse on process time when received.

§ 5. When any process, writ, or order, shall be delivered to the sheriff to be executed, he shall endorse upon it the year, month, day, and hour, of its reception, and shall give to the person delivering it, if

required, on payment of his fee, a written memorandum signed by him, specifying the names of the parties in the process, writ, or order, the general nature thereof, and the time it was received. He shall also deliver to the party served a copy thereof, without charge to such party.

§ 6. A sheriff to whom any process, writ, order, or paper, shall be delivered, shall execute it with diligence according to its command, or as required by law, and shall return it without delay to the proper Court or officer with his certificate endorsed thereon of the manner of its service or execution, or if not served or executed, the reasons of his failure. For a failure to do so he shall be liable in an action to the party aggrieved for the sum of two hundred dollars, and for all damages sustained by him.

To execute process with diligence.

§ 7. When any process, writ, order, or paper, is to be returned to a 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 be discharged from liability for a failure to return it.

May return process by mail.

§ 8. If the sheriff to whom a writ of execution is delivered shall neglect or refuse, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ, which is liable to be levied upon and sold, he shall be liable on his official bond to the creditor for the value of such property.

Refusing to levy.

§ 9. If a 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, after deducting his legal fees, 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 by such person from him and the sureties on his official bond, on application, upon five days' notice to the Court in which the action is brought, or the Judge thereof in vacation.

Refusing to pay over moneys collected.

§ 10. The Sheriff shall keep an office at the County Seat of his County.

To keep office at county seat.

§ 11. The Sheriff's office shall be kept open on all days except Sundays, between the hours of nine and twelve in the forenoon, and between the hours of two and five in the afternoon.

Office hours.

§ 12. Service of a paper upon the Sheriff may be made by delivering it to himself in person, or by delivering it to the under Sheriff, or to one of his deputies, or to a person belonging to, and in the office during office hours, or if no such person be there, by leaving it in a conspicuous place in the office.

Service of paper on Sheriff.

ARTICLE II.

UNDER AND DEPUTY SHERIFFS.

§ 13. Each of the present Sheriffs within thirty days after the passage of this act, and each Sheriff hereafter elected, immediately after entering upon the duties of his office, shall appoint an under Sheriff to hold the office during his pleasure, and shall make a similar appointment as often as a vacancy occurs in the office of under Sheriff. He may

Under sheriffs may be appointed.

also appoint as many deputies as he thinks proper, to hold their offices during his pleasure.

Appointment to be in writing.

§ 14. The appointment of an Under Sheriff and of Deputy Sheriff and also the nomination of any such appointment, shall be in writing, and filed in the office of the County Clerk. The Sheriff may require of each person appointed Under Sheriff, and of each of his deputies, a bond, with sureties for the faithful performance of his duties, but the Sheriff shall be responsible for the official acts of the Under Sheriff and his Deputies. Before entering upon their respective duties, the Under Sheriff and each of the Deputies shall take the oath of office, which shall be endorsed on their respective appointments.

Under Sheriff to give bond, and take oath of office.

When Under Sheriff to act for Sheriff.

§ 15. During the absence of the Sheriff from his County; or when the Sheriff, from sickness or any other cause, is unable to discharge the duties of his office, the Under Sheriff shall exercise the powers and perform the duties of that officer, and at other times shall perform such services relating to the duties of the Sheriff as may be required of him by that officer. A Deputy Sheriff shall execute all orders, writs, and process of a Court, or Judicial Officer, and may perform every act incidental thereto.

Sheriff liable for neglect of Under Sheriff.

§ 16. The neglect, or misconduct in office of the Under Sheriff, or any deputy, shall be a breach of the official bond of the Sheriff by whom they are appointed.

ARTICLE III.

COUNTY JAILS.

The keeping of Prisoners therein, and the protection thereof.

County jail to be used as a prison.

§ 17. The County Jail shall be kept by the Sheriff and used as a prison.

1st. For the detention of persons committed as witnesses in a criminal action.

2d. For the detention of persons committed for trial for a public offence.

3d. For the confinement of persons committed upon civil process: and

4th. For the confinement of persons sentenced to confinement therein, upon conviction for a public offence, or for examination, charged with having committed a public offence.

Keeper of jail.

§ 18. The Sheriff may appoint a Keeper of the County Jail, for whose acts, as such, he shall be responsible.

County jail may be erected.

§ 19. The Court of Sessions of the County shall cause a County Jail to be erected at the County seat, in case such Jail has not been already erected, or shall provide some suitable place for the safe keeping of prisoners, which place, until the erection of a Jail, is considered in this, Act as the County Jail. The County Jail, or the place provided as such shall contain a sufficient number of rooms:

1st. For the confinement of persons committed for trial in criminal actions, separate and distinct from prisoners under sentence.

2d. For the confinement of prisoners under sentence.

3d. For the confinement of persons committed on civil process, or as witnesses in criminal actions, separate from those mentioned in the last two subdivisions.

§ 20. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, shall on no pretence whatever be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room. Prisoners to be classified.

§ 21. When there is no Jail in the county, or when the Jail becomes unfit or unsafe for the confinement of prisoners, the County Judge may, by a written appointment filed with the County Clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment. When jail of a contiguous county may be used.

§ 22. A copy of the appointment certified by the County Clerk shall be served on the Sheriff and Keeper of the jail designated, who shall receive into his jail and safely keep all prisoners authorized to be confined therein, pursuant to the last section, and who shall be responsible for the safe keeping of the persons so committed in the same manner and to the same extent as if he was Sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he shall be deemed the Sheriff of the county from which they were removed. Keepers of jail in contiguous county to receive prisoners.

§ 23. When a jail shall be erected in the county for whose use the designation was made, or its jail shall be rendered fit and safe for the confinement of prisoners, the County Judge of that county shall by a written revocation, filed with the County Clerk thereof, declare that the necessity for the designation has ceased and that it is revoked. When jail in contiguous county to cease to be used.

§ 24. The county Clerk shall immediately serve a copy of the revocation upon the Sheriff of his county, who shall thereupon remove his prisoners to his own jail. Prisoners to be returned to proper county.

§ 25. When a County Jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the Sheriff or Jailor shall remove them to a safe and convenient place and there confine them, so long as it may be necessary to avoid the danger. Prisoners may be removed in case of fire.

§ 26. When a pestilence or contagious disease breaks out in or near to a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the County Judge may by a written appointment designate a safe and convenient place in the county, or the jail of a contiguous county, as the place of their confinement. The appointment shall be filed in the office of the County Clerk and shall authorize the Sheriff to remove the prisoners to the place or jail designated, and Or pestilence.

there confine them until they can be safely returned to the jail from which they were taken.

Physician
to jail.

§ 27. The Court of Sessions of each County shall from time to time appoint a physician to the jail of the county.

Papers served
on jailor
for prisoner.

§ 28. A Sheriff or Jailor upon whom a paper in a judicial proceeding directed to a prisoner in his custody is served, shall forthwith deliver it to the prisoner with a note thereon of the time of its service. For a neglect to do so he shall be liable to the prisoner for all damages occasioned thereby, and for a wilful omission in this respect shall be deemed guilty of a misdemeanor.

Guard for jail.

§ 29. The Sheriff when he shall deem it necessary may, with the assent in writing of the County Judge, or in a city of the Mayor thereof, employ a temporary guard for the protection of the County Jail or for the safe keeping of prisoners, the expenses of which shall be a county charge.

Sheriff to receive
all persons
duly committed.

§ 30. The Sheriff shall receive all persons committed to jail by any competent authority, and shall provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation to be determined by the Court of Sessions or Board of Supervisors, and except as provided in the next section, paid out of the County Treasury.

Prisoners on
civil process
when not
to be received.

§ 31. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this State are a party thereto, the Sheriff shall not be bound to receive such person, unless security be given on the part of the party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section shall not apply, however, to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of the Court.

ARTICLE IV.

Escapes and the Liabilities of Sheriff therefor.

What is
an escape.

§ 32. A prisoner committed to the County Jail for trial or for examination or upon conviction for a public offence, shall be actually confined in the Jail until he is legally discharged, and if he be permitted to go at large out of the Jail except by virtue of a legal order or process, it shall be an escape, and the Sheriff or Jailor permitting it shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding twenty thousand dollars.

Penalty
for permitting
an escape.

§ 33. A Sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, shall be liable as follows :

1st. When the arrest is upon an order to hold to bail, or upon a surrender in exoneration of bail before judgment, he shall be liable to the plaintiff as bail.

2d. When the arrest is on an execution or commitment to enforce the payment of money, he shall be liable for the amount expressed in the execution or commitment.

3d. When the arrest is on an execution or commitment, other than to enforce the payment of money, he shall be liable for the actual damages sustained.

4th. The Sheriff, upon being sued for damages for an escape, may exhibit proofs in mitigation and exculpation.

§ 34. The Sheriff shall be liable for a rescue of a person arrested in a civil action equally as for an escape, provided he may show circumstances in exculpation. Sheriff liable for a rescue.

§ 35. An action shall not, however, be maintained against the Sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner return to the jail or be retaken by the Sheriff. No action for escape or rescue after a recapture.

ARTICLE V.

Transfer of the Jail and of Prisoners and Process to a new Sheriff.

§ 36. When a new Sheriff is elected, and has qualified and given the necessary security required by law, the County Clerk shall give a certificate of that fact under his seal of office, upon the service of which on the former Sheriff his powers shall cease, except as otherwise provided in this act. When Sheriff's powers to cease.

§ 37. Within three days after the service of the certificate upon the former Sheriff he shall deliver to his successor : What the Sheriff is to deliver to his successor.

1st. The Jail of the County with its appurtenances, and the property of the County therein :

2d. The prisoners then confined in the County Jail :

3d. The process, orders, and other papers in his custody, authorizing or relating to the confinement of the prisoners :

4th. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed.

5th. All executions, attachments, and final process, except those which he has executed or has begun to execute, by the collection of money or a levy on property.

§ 38. He shall also, at the same time, deliver to the new Sheriff a written transfer of the property, process, papers, and prisoners delivered, specifying the process or order by which each prisoner was committed and detained. The new Sheriff shall thereupon acknowledge in writing upon a duplicate of the transfer, the receipt of the property, process, papers and prisoners therein specified. The like.

§ 39. Notwithstanding the election and qualification of a new Sheriff, the former Sheriff shall return all process and orders before and Sheriff to complete execution of final process.

after judgment, which he has fully executed, and shall complete the execution of all final process which he has begun to execute.

Neglecting to deliver process, &c., to successor.

§ 40. If the former Sheriff neglect or refuse to deliver to his successor the Jail process, papers, and prisoners in his charge, the new Sheriff may, notwithstanding, take possession of the Jail and of the prisoners confined therein, and the County Court or County Judge may, upon application, order the delivery of the process and papers.

ARTICLE VI.

Miscellaneous Provisions respecting Sheriffs and their Officers.

Sheriff to receive prisoners committed by U. S. Courts.

§ 41. The Sheriff shall receive and keep in the County Jail any prisoner who shall be committed thereto by process or order issued under the authority of the United States, until he be discharged according to law, as if he had been committed under process issued under the authority of this State; *provided* provision be made by the United States for the support of such prisoner.

Sheriff or jailor answerable for safe keeping of such prisoners.

§ 42. A Sheriff or Jailor to whose custody a prisoner is committed as *provided* in the last section, shall be answerable for his safe keeping in the Courts of the United States, according to the laws thereof.

Officer may command assistance.

§ 43. When an officer finds, or has reason to apprehend that resistance will be made to the execution of process delivered to him for service, he may command as many male inhabitants 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.

Who liable to be called on to assist.

§ 44. Every able-bodied male person over the age of eighteen and under the age of sixty, commanded by an officer to assist him in the execution of process as provided in the preceding section, who without lawful cause refuses or neglects to obey the command, may be fined by the Court upon proof thereof, in a sum not exceeding two hundred dollars.

Directions to Sheriff must be in writing.

§ 45. No direction or authority by a party or his Attorney to a Sheriff, or to an under or deputy Sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, shall be available to discharge or excuse the Sheriff from a liability for neglect or misconduct, unless it be contained in a writing signed by the party to be charged or affected thereby or his Attorney.

When office of Sheriff deemed vacant.

§ 46. When the Sheriff is committed to the custody of another Sheriff or of a Coroner, under an execution or commitment for not paying over money received by him, by virtue of his office, and remains committed for sixty days, his office shall be declared vacant.

Compensation to Sheriff for extra services.

§ 47. When the Sheriff or other officer is legally required to perform a service in behalf of the people of this State, which is not chargeable to his County, or a private person, his account thereof shall be audited

by the Comptroller of State, and shall be paid by the Treasurer of State.

§ 48. A Sheriff or other ministerial officer shall be justified in the execution of all process and orders regular on their face, and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

When Sheriff justified in executing process.

§ 49. The officer executing a process, warrant, or order of any kind, shall be bound then and at all times subsequent so long as he retains it upon request to show same, with all papers attached, to any person interested therein.

Officer to exhibit process.

§ 50. The Sheriff or deputy in attendance upon Court shall act as the crier thereof to call the parties and witnesses and all other persons bound to appear at the Court, and make proclamation of the opening and adjournment of the Court and of any other matter under its direction.

Sheriff to act as crier.

§ 51. A Sheriff, under or deputy Sheriff, is prohibited during his continuance in office from acting or having a partner who acts as an attorney or counsellor.

Sheriff, &c., not to have a partner practicing law.

§ 52. Every Sheriff shall be liable to the party injured on his official bond for neglect or mal-performance of any duty imposed upon him by law.

Liability for neglect of duty.

§ 53. Every Sheriff who is guilty of wilful negligence in the discharge of his duties, or who in the execution or under color of his office is guilty of any oppression or extortion, shall upon conviction thereof be fined in a sum not exceeding five thousand dollars, and may be removed from office.

Wilful neglect of duty.

ARTICLE VII.

Execution of Process or Orders where a Sheriff is a party, and in case of vacancy in the office of Sheriff.

§ 54. When the Sheriff is a party to an action or special proceeding, the process and orders therein, which it would otherwise be the duty of the Sheriff to execute, shall, except when otherwise provided by this Act, be executed by the Coroner of the County.

When process to be executed by Coroner.

§ 55. In case of a vacancy in the office of Sheriff by death, resignation, or otherwise, the powers and duty of Sheriff shall devolve upon the Coroner of the County, and be exercised by him until a new Sheriff be elected and qualified.

Vacancy in office of Sheriff.

§ 56. Whenever a Coroner acts as a Sheriff, he shall be invested with the powers, duties, and responsibilities of the Sheriff, and shall be entitled to the same fees for similar services.

Coroner's fees, &c.

§ 57. Process and orders in an action or proceeding may be executed by a person residing in the County, designated by the Court, and denominated an elisor, in the following cases: First, When the Sheriff and Coroner are both parties; and, Second, When either of these officers is

Elisors, when appointed.

a party, and the process or orders are against the other for a disobedience of an order or process therein.

How to
execute process.

§ 58. When process is delivered to an elisor, he shall execute it in the same manner as the Sheriff is required to execute similar process in other cases.

When a house
considered a
county jail.

§ 59. If the Sheriff on being arrested by a Coroner, or if a Sheriff or Coroner on being arrested by an elisor, or if another person on being arrested in an action in which both the Sheriff and Coroner are plaintiffs upon an order of arrest in a civil action, neglect to give bail or make a deposit of money instead thereof, or, if he be arrested on execution against his body, or on a warrant of attachment, he shall be confined in a house other than the house of the Sheriff or the County jail, in the same manner as the Sheriff is required to confine a prisoner in the County jail; the house in which he is thus confined shall thereupon become for that purpose the County jail.

Powers, &c.,
of Elisors.

§ 60. An elisor appointed to execute process and orders in the cases mentioned in this Act, shall be invested with the powers, duties, and responsibilities of the Sheriff in the execution of the process or orders, and in every matter incidental thereto.

Repeal of
former acts.

§ 61. The Act entitled "An Act to prescribe the duties of Sheriff," passed April 17, 1850, and the Act entitled "An Act concerning Jails and Jailors," passed March 27, 1850, are hereby repealed; but nothing in this section shall be deemed to affect any action already commenced, or any proceeding already taken under said Acts, or any responsibilities incurred thereunder.

When act
to take effect.

§ 62. This Act shall take effect on the first day of July next.

Chap. 24.

AN ACT to amend the Second, Third, and Seventh Sections of the Act entitled "An Act concerning Notaries Public," passed March twenty-seventh, one thousand eight hundred and fifty.

Passed April 5, 1851.

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

Section 2,
amended.

§ 1. The second section of the "Act concerning Notaries Public," passed March twenty-seventh, one thousand eight hundred and fifty, which reads as follows: "Each Notary Public, before entering upon the duties of his office, shall take the oath of office, which shall be endorsed upon 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," is hereby amended so as to read as follows: 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 execute a 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, if such County be organized, but if such County be not organized then by any County Judge in the State.

§ 2. The third section of the said "Act concerning Notaries Public," which reads as follows: "The bond together with a certificate of the oath shall be filed and recorded in the office of the County Clerk of such County," is hereby amended so as to read as follows: The bond together with the certificate of the oath shall be filed and recorded in the office of the Recorder of such County, if such County be organized, but if such County be not organized then the same shall be filed in the office of the Secretary of State. Section 3.
amended.

§ 3. The seventh section of the said "Act concerning Notaries Public," which reads as follows: "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 thereof," is hereby amended so as to read as follows; Each Notary Public shall keep a fair record of all his official acts except acknowledgments or proofs which he may take of deeds, mortgages, and other instruments of writing, and except of depositions, oaths, or affirmations, and when required shall give a certified copy of any record in his office to any person upon the payment of the fees therefor. Section 7,
amended.

Chap. 25.

AN ACT concerning County Recorders.

Passed March 26, 1851.

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 the State, to be styled the Recorder's Office. Recorder in
each county.

§ 2. The office of the Recorder, in the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall be at the County seats of those Counties respectively. In the other Counties of this State, the County Clerk shall be the Recorder, and his office the Recorder's Office. Location of
Recorder's office.
County Clerk
to be Recorder.

§ 3. The Recorders of the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall be chosen by the Electors of those Counties respectively, at the General Election, in the year one thousand eight hundred and fifty-two, and at the General Election Election
of Recorders.

every two years thereafter ; and shall enter upon their duties on the first Monday of October, subsequent to their election.

Office hours.

§ 4. The office of Recorder shall, in the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, be kept open for the transaction of business, every day in the year, except Sundays, Christmas, New Years, and the Fourth of July, between the hours of nine and twelve in the morning, and two and five in the afternoon ; and in the other Counties of the State, on the same days, but at such hours as the Court of Sessions may direct.

To keep suitable books.

§ 5. The Recorder shall keep suitable and well bound books, wherein shall be recorded, in a fair, large, and legible hand, all instruments of writing, authorized and required to be recorded.

To take oath of office and give bond.

§ 6. Before entering upon the duties of their offices, the Recorders of the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, and the County Clerks, as Recorders of the other Counties, shall take the Constitutional oath of office, and shall enter into bonds in the penal sum of not less than five, nor more than fifty thousand dollars, at the discretion of the County Judge, of their respective Counties, with two or more sufficient sureties, to be approved by said Judge, conditioned for the faithful performance of their duties as Recorders. The bonds of the County Clerks as Recorders, shall be in addition to, and distinct from, their bonds as such Clerks.

Disposition of bonds.

§ 7. The bonds of the Recorders of the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall be filed with the Clerks of those Counties respectively. The bonds of the County Clerks, as Recorders of the other Counties, shall be deposited with the County Treasurer of their Counties respectively.

Recorders may appoint deputies.

§ 8. The Recorder of each County may 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 the Recorder ; and the Recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties, by such Deputy.

Office of Recorder vacant.

§ 9. In case of a vacancy in the office of Recorder, or his absence, or inability to perform the duties of his office, the Deputy shall perform the duties of Recorder during the continuance of such vacancy, absence, or inability.

Sessions to audit Recorders accounts.

§ 10. It shall be the duty of the Courts of Sessions to audit and settle the accounts of the Recorders of their respective Counties, for books and safes purchased for the use of their offices, and in the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin to allow such sums as may be just, as rent for their offices ; *Provided*, suitable rooms for them be not provided by those Counties respectively.

To preserve records, &c.

§ 11. The Recorders shall have the custody of, and shall safely keep, and preserve, all the books, records, maps, and papers, deposited in their offices.

§ 12. It shall be the duty of the Recorders, upon the payment of their fees for the same, to record, or cause to be recorded correctly, in large and strong bound books, and in a fair large and legible hand : What to be recorded.

1st. All deeds, mortgages, or real estate, releases of mortgages, powers of attorney to convey real estate, and leases for a longer period than one year ; which shall have been proved or acknowledged according to law.

2d. All certificates of marriage, and marriage contracts.

3d. All wills admitted to probate.

4th. All official bonds required by law to be recorded in their offices.

5th. All notices of mechanics' liens.

6th. All transcripts of judgments, which by law are made liens upon real estate.

7th. All notices of attachment upon real estate.

8th. All notices of the pendency of an action affecting real estate.

9th. All instruments describing or relating to the separate property of married women.

10th. All notices of pre-emption claims.

§ 13. The several classes of instruments of writing mentioned in the several subdivisions of the preceding sections, shall be recorded in separate books. Separate book for each class of instruments.

§ 14. Every Recorder shall keep in separate volumes :

1st. An index of deeds labelled "Grantors," each page of which shall be divided into four columns, as follows : Names of grantors, names of grantees, date of deeds, where recorded. Indexes to be kept by Recorders.

2d. An index of deeds labelled "Grantees," each page of which shall be divided into four columns, with heads to the respective columns, as follows : Names of grantees, names of grantors, date of deeds, where recorded.

3d. An index of mortgages, labelled "Mortgagors," each page of which shall be divided into five columns, with heads to the respective columns, as follows : Names of mortgagors, names of mortgagees, date of mortgages, where recorded, when discharged.

4th. An index of mortgages, labelled "Mortgagees," each page of which shall be divided into five columns, with heads to the respective columns, as follows : names of mortgagees, names of mortgagors, date of mortgages, where recorded, when discharged.

5th. An index of releases of mortgages, labelled "Releases of Mortgages,—Mortgagors," each page of which shall be divided into six columns, with heads to the respective columns, as follows : Parties releasing, to whom releases are given, date of releases, where releases are recorded, date of mortgages released, where mortgages released are recorded.

6th. An index of releases of mortgages, labelled "Releases of Mortgages,—Mortgagees," each page of which shall be divided into six

columns, with heads to the respective columns, as follows: Parties whose mortgages are released, parties releasing, date of releases, where recorded, date of mortgages released, where mortgages released are recorded.

7th. An index of powers of Attorney, labelled "Powers of Attorney," each page of which shall be divided into five columns, with heads to the respective columns, as follows: Names of parties executing the powers, to whom powers are executed, date of powers, date of recording, where powers are recorded.

8th. An index of leases, labelled "Leases," each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of lessors, names of lessees, date of leases, when and where recorded.

9th. An index of leases, labelled "Lessees," each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of Lessees, names of lessors, date of leases, when and where recorded.

10th. An index of marriage certificates, labelled "Marriage Certificates—Men," each page of which shall be divided into six columns, with heads to the respective columns, as follows: Men married, to whom married, when married, by whom married, where married, where certificates are recorded.

11th. An index of marriage certificates, labelled "Marriage Certificates—Women," each page of which shall be divided into six columns, with heads to the respective columns, as follows: Women married (and under this head placing the family names, of the women), to whom married, when married, by whom married, where married, where certificates are recorded.

12th. An index of assignments of mortgages and leases, labelled "Assignments of Mortgages and Leases—Assignors," each page of which shall be divided into five columns, with heads to the respective columns, as follows: Assignors, assignees, instruments assigned, date of assignments, when and where recorded.

13th. An index of assignments of mortgages and leases, labelled "Assignments of Mortgages and Leases—Assignees," each page of which shall be divided into five columns, with heads to the respective columns, as follows: Assignees, assignors, instruments assigned, date of assignments, when and where recorded.

14th. An index of wills, labelled "Wills," each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of testators, date of wills, date of probate, when and where recorded.

15th. An index of official bonds, labelled "Official Bonds," with each page divided into five columns, with heads to the respective columns, as follows: Names of officers, names of offices, date of bonds, amount of the bonds, when and where recorded.

16th. An index of notices of mechanics' liens, labelled "Me-

chanics' Liens," with each page divided into three columns, with heads to the respective columns, as follows: Parties claiming liens, against whom claimed, notices when and where recorded.

17th. An index to transcripts of Judgments, labelled "Transcripts of Judgments," with each page divided into seven columns, with heads to the respective columns, as follows: Judgment debtors, judgment creditors, amount of judgments, where recovered, when recovered, when transcript filed, when judgment satisfied.

18th. An index of attachments, labelled "Attachments," with each page divided into five columns, with heads to the respective columns, as follows: Parties against whom attachments are issued, parties issuing attachments, notices of attachments, when recorded, where recorded, when attachments discharged.

19th. An index of notices of the pendency of actions, labelled "Notices of Actions," with each page divided into three columns, with heads to the respective columns, as follows: Parties to the actions, notices when recorded, where recorded.

20th. An index of the separate property of married women, labelled "Separate property of Married Women," with each page divided into five columns, with heads to the respective columns, as follows: Names of married women, names of their husbands, nature of instruments recorded, when recorded, where recorded.

21st. An index of pre-emption claims, labelled "Pre-emption Claims," with each page divided into four columns, with heads to the respective columns, as follows: Claimants, notices, when received, date of notices, when and where recorded.

§ 15. The names of the parties in the first column in the several indexes shall be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution, shall both be inserted in the index, and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, shall be inserted in the index.

Indexes,
how arranged.

§ 16. When any instrument, paper, or notice, authorized by law to be recorded, shall be deposited in the Recorder's office for record, the Recorder or his deputy shall endorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and shall record the same, or cause the same to be recorded, without delay, together with the acknowledgments, proofs, and certificates, written over or under the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was delivered for a record in a fair and a large and legible hand, and shall note at the foot of the record the year, month, day, hour, and minute of its reception, and the name of the person at whose request it was recorded.

Recorder's
duty, on receipt
of instrument,
to be recorded.

Recorded
instruments
to be endorsed.

§ 17. The Recorder shall endorse upon each instrument, paper, and notice, the book and page, or pages of the book, in which it is recorded, and the year, month, day, hour, and minute when recorded, and after the same is recorded, shall deliver it upon request, to the party leaving the same for record, or to his order.

Recorders to
make searches.

§ 18. It shall be the duty of Recorders, upon the application of any person, and upon the payment or tender of the legal fees therefor, to make searches for conveyances, mortgages, and all other instruments, papers, or notices, recorded or filed in their respective offices, and to furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute, they were recorded or filed, the extent in which they affect the property to which they relate, and the book and page, or pages, where they are recorded.

Penalty for
neglect of
certain duties.

§ 19. If any Recorder to whom any instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, shall be delivered for record, shall :

1st. Neglect or refuse to record such instrument, paper, or notice, within a reasonable time after receiving the same: or

2d. Record any instruments, papers, or notices, untruly or in any other manner than as hereinbefore directed; or if any Recorder,

1st. Neglect or refuse to keep in his office such indexes as are required by this act, or to make the proper entries therein, or

2d. Neglect or refuse to make the searches, and to give the certificate required by this act; or if such searches or certificate be incomplete and defective in any important particular affecting the property, in respect to which the search is requested: he shall be liable to the party aggrieved for double the amount of the damages which may be occasioned by such neglect or refusal, or by such incompleteness or defect in the searches and certificate, and an action may be brought on his official bond by the party aggrieved.

Wilful neglect
of duty.

§ 20. 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, may be punished by fine in a sum not exceeding one thousand dollars, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. If the Recorder shall alter, change, or obliterate any records deposited in his office, or insert any new matter therein, he shall be liable on his official bond to the party aggrieved, for double the amount of the damages which may be occasioned by such neglect, refusal, or alteration.

Certified copies
to have the
force of originals.

§ 21. Copies of all papers duly filed in the Recorder's office, and transcripts from the books of records kept therein, certified by the Recorder to be full, true, and correct copies, or transcripts, shall be

received in all courts, and in all actions and proceedings, with the like effect as the original instruments, papers, and notices, recorded or filed, could be if produced.

§ 22. All books of record, and all indexes in the Recorder's office, and all maps, charts, surveys, and other papers on file therein, shall during all office hours be open for the inspection of any person who may desire to inspect them, and may be inspected without charge, and the Recorder shall arrange the books of record and indexes in his office, in such suitable places as to facilitate their inspection.

Records to be open to inspection.

§ 23. Whenever the office of Recorder in the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, 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 an elector to fill such vacancy, and the person so appointed shall give bond, and take the oath in like manner as required of County Recorders in the sixth section of this act, and shall hold his office until his successor is chosen and qualified; such successor shall be chosen at the next annual election.

Vacancy in office of Recorder.

§ 24. The County Clerks of the Counties of this State, except of the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall enter upon their duties as County Recorders, on the first day of May of the present year.

When County Clerks to enter on duties.

§ 25. The Recorders of all the Counties, except San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, shall, on the first day of May of the present year, deliver to the County Clerks of their Counties respectively, and all County Recorders on going out of office shall deliver to their successors all books, papers, documents, maps, records, stationery, and furniture, belonging to their respective offices, 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 office.

Books, &c., to be delivered to his successor.

§ 26. The County Recorders are hereby authorized and empowered, to take within their respective Counties the acknowledgment and proof of all instruments and papers which may be by law recorded.

Empowered to take acknowledgment of deeds.

§ 27. The Recorder shall not be bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same as prescribed by law, are paid, or tendered.

Fees to be prepaid.

§ 28. The Recorders of the Counties of San Francisco, Sacramento, Santa Clara, El Dorado, and San Joaquin, and the County Clerks as Recorders of the other Counties, shall be ex-officio County Auditors of their respective Counties, until otherwise provided by law.

Certain Recorders to be ex-officio County Auditors.

§ 29. The County Auditor of each County shall keep an account current with the Treasurer of his County, and when any person shall

County Auditor to keep account with County Treasurer.

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.

County Auditor
to settle
accounts.

§ 30. 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 demands against such County, the amount of which is fixed by law, the County Auditor shall issue orders on the Treasurer of such County, payable to the several persons entitled thereto.

Orders of
Auditor to be
numbered.

§ 31. All orders issued by the Auditors during the year commencing with the first day of May in each year, 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.

Auditor to settle
with County
Treasurer.

§ 32. 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.

Previous law
repealed.

§ 33. The Act entitled "an Act establishing Recorders' offices, and defining the duties of the Recorder and County Auditor," passed April fourth, one thousand eight hundred and fifty, is hereby repealed; but nothing in this section shall affect the validity of any records made, papers or notices filed, or any acts of the Recorders done by virtue of said law, or which may be done by virtue thereof, up to the first day of May of the present year.

Chap. 26.

AN ACT concerning the office of Public Administrator, and making it Elective.

Passed April 15, 1851.

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

Public
Administrator
for each County.

§ 1. There shall be elected in and for each of the organized Counties of this State, by the electors thereof, a Public Administrator, who shall continue in office until his successor is qualified.

To give bond.

§ 2. Before entering upon the duties of his office, he shall execute a bond, with sureties to the approval of the Probate Judge, in a sum not less than thirty thousand dollars, and which may at any time be increased in the discretion of the Probate Judge, conditioned for the faithful performance of all the duties enjoined upon him by law, and particularly, that he will account for, and pay over all moneys and property that may come to his hands as such administrator.

§ 3. He shall perform such duties and receive such compensation as may be prescribed by law. Duties and compensation.

§ 4. No Public Administrator now in office, or hereafter elected under this Act, shall be interested directly or indirectly in expenditures of any kind made on account of any estates of deceased persons; nor shall he be associated in business or otherwise with any person who shall be so interested, and he shall annex to his report every six months as required by this Act, an affidavit taken before a county or district Judge to that effect. Not to be interested.

§ 5. The Public Administrator shall once every six months make to the Probate Judge under oath a return of all estates of deceased persons which have come into his hands, of the value of the same, the expenses if any paid thereon, and the balance if any remaining in his hands; said return to be published six times in some newspaper in the county, or if there be no newspaper, to be posted, legibly written or printed, in the office of the County Clerk of the County. To make semi-annual returns.

§ 6. It shall be the duty of the present Public Administrators, each to account for, pay over, and deliver, to his successor within twenty days after he shall have qualified, all moneys, papers, and other property, belonging to the estates of deceased persons which may have come into his possession as such Administrator, or be held by him by virtue of his office. Said report shall be made under oath and shall contain a full and accurate statement of all the estates which have been administered by him: showing what moneys or effects have been received in each case, and from what sources; the sums expended and for what purposes. Duty on retiring from office.

§ 7. If any person now holding the office of Public Administrator, shall fail to comply with the requirements of this Act, he shall be liable on his official bond, to any person injured thereby; and may be indicted as for misdemeanor, and punished by fine not to exceed the sum of five thousand dollars, or imprisonment not to exceed two years, or by both such fine and imprisonment. Penalty for neglect of duty.

§ 8. The first election under this Act shall be held in all the Counties of this State at the general election for State officers—except in the County of San Francisco, where the said election shall be held on the fourth Monday of April. Election, when to be held.

§ 9. Should a vacancy occur in the office of Public Administrator for any county, it shall be the duty of the District Judge in whose District said County is situated, to appoint some suitable person to fill the same. Vacancies, how filled.

§ 10. All provisions of law conflicting with this Act are hereby repealed. Inconsistent provisions repealed.

Chap. 27.

AN ACT, to provide a Revenue for the State Marine Hospital at San Francisco.

Passed May 1, 1851.

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

Vessels arriving at San Francisco to be reported.

§ 1. Within forty-eight hours after the arrival of any and all vessels at the port of San Francisco, or within the bay thereof, from any port or place without the United States, and before such vessel shall leave said port or bay of San Francisco, for any other port or place, the master or commander thereof shall make a report in writing, on oath or affirmation, to the Treasurer of the State Marine Hospital at San Francisco, which report shall state the name, age, size, complexion, and such other description of the person or persons named in said report, as will enable them to be known, and the whole number of cabin and steerage passengers on board of such vessel, and also the name and residence of the owner or owners and consignees of such vessel. If any master or commander shall refuse or neglect to report fully, as aforesaid, or shall make a false report or statement, he shall forfeit and pay not less than five hundred dollars for each refusal or false report, for which the master, owner, or owners, of such vessel shall be liable, jointly and severally, and which may be sued for and recovered, in any Court of competent jurisdiction, in the name, and for the use and benefit of the State Marine Hospital at San Francisco. *Provided, however,* that nothing in this section shall be so construed as to require the master or commander in his report to render the name of any citizen of the United States, who may come direct en route from any other State into this State.

Master, &c., of vessels arriving at San Francisco to give bond.

§ 2. It shall be the duty of the Treasurer of the State Marine Hospital at San Francisco, to require the master, owner, or owners of all vessels on which said passengers have arrived, to give a several bond to the State Marine Hospital at San Francisco, in a penalty of two hundred dollars, for each and every passenger included in the report required to be made by the first section of this act; conditioned to indemnify and save harmless the State Marine Hospital at San Francisco, and each and every city, township, and County of this State, from any cost or charge which the said Hospital or such city, township, or county shall incur for the relief, support, or medical care of the person named in the bond, within two years from the date of the bond. Each bond so given shall be secured by two or more sufficient sureties, being residents of this State, each of whom shall prove to the satisfaction of the Treasurer of said Hospital that he is the owner of a freehold in this State, of the

value of three hundred dollars, over and above any claim or lien thereon against him, including any contingent claim, which may accrue from or upon any former bond, given under the provisions of this act. *Provided, however,* that the master, owner, or owners may commute for the bond above required, by the payment in money for each cabin passenger, according to the first section of this act, five dollars; for each deck passenger, according to the first section of this act, three dollars. If any master, owner, or owners of any vessel, shall refuse or neglect to give a bond, as prescribed in this section, or pay the commutation money, he or they shall forfeit and pay a sum not less than five hundred, nor more than two thousand dollars, to be sued for and collected in any Court having jurisdiction of the same for the use and benefit of the State Marine Hospital at San Francisco.

Commutation.

§ 3. The Treasurer of said Hospital shall give to the master, owner, or owners who may have paid commutation money, a receipt containing all the names of passengers, for whom such commutation shall have been paid; and all sums of commutation money thus received, shall form part and parcel of the funds of the State Marine Hospital at San Francisco.

Receipt for commutation money.

§ 4. It shall be the duty of the Tax Collector of taxes in the County of San Francisco to make a distinct report of all moneys received by him, on account of licenses to hawkers and pedlars, and also, all moneys received on account of auction sales, and for licenses for gaming; which report shall be given to the County Treasurer; and upon the receipt of the money thus collected, and paid over, it shall be the duty of the County Treasurer to place to the credit of the State Marine Hospital at San Francisco half of the amounts so received; which shall be paid over monthly to the State Marine Hospital at San Francisco upon the order of the Trustees of said Institution; *Provided,* such amount does not exceed thirty thousand dollars.

Tax Collector to report all moneys received.

§ 5. It shall be the duty of all ship brokers and agents, or shipping masters, to make out a monthly statement under oath, of any and all passengers shipped by any and all vessels, and any and all sailors and marines, as the case may be, engaged to go on board of any vessel leaving the port of San Francisco, bound for any port out of this State: such report shall be made to the Treasurer of the State Marine Hospital at San Francisco; and shall pay to the Treasurer fifty cents for each passenger shipped, or sailor or marine engaged to go on board of any vessel. Which sum, or sums of money, shall form part and parcel of the funds of the State Marine Hospital at San Francisco.

Ship brokers, &c., to render a statement, on oath, of all passengers shipped, &c.

§ 6. It shall be the duty of the master or commander of each steamer, or other vessel of any kind, running to and from the port of San Francisco, to have placed in some conspicuous part of the cabin, or cabins, one or more cards; which shall be furnished by the Treasurer of the State Marine Hospital at San Francisco, upon the application of the master of said vessels for the same; informing all persons who may

Hospital cards, and box, to be placed in cabins.

desire it that they can, by the payment of five dollars to either the Treasurer of the State Marine Hospital at San Francisco, or to the master of said vessel, obtain admission into the State Marine Hospital at San Francisco, at any time within a year from the date of the receipt of the Treasurer, or master, as the case may be. It shall be the duty of the master of all vessels to call the attention of his passengers to these Hospital cards, at least once on each voyage. It shall also be the duty of the master of any and all steamers, or other vessels, to provide a box, which shall be called the Charity Hospital box; and place the same in the cabin of said steamer, or vessel, labelled—The Charity Hospital Box; into which any and all persons who are desirous of so doing, may deposit any contribution whatever for the use and support of said Hospital. It shall be the duty of all masters of steamers, and other vessels plying as aforesaid to and from the port of San Francisco, to make a report under oath of all sums of money received; giving the names, age, size, and otherwise describe the individual paying the same; so as to correspond with the receipt given them and the amounts which may be deposited in the Charity Hospital box, twice in each month; and pay over all such sums to the Treasurer of the State Marine Hospital at San Francisco. In all receipts given by the master of any vessel for moneys received for said Hospital, such receipt shall specify the name, age, size, and otherwise describe the individual paying the same; so that he, she, or they may at any time within twelve months be admitted into the State Marine Hospital at San Francisco, as a patient, upon the production of said receipt. If any master of any steamer, or other vessel navigating the waters or running to and from the port of San Francisco, shall refuse or neglect to comply with the provisions of this act, he or they shall forfeit, and pay, not less than five hundred dollars, for each and every refusal or neglect; to be sued for, and collected as in other cases, for the use and benefit of the State Marine Hospital at San Francisco.

Sick and disabled persons to be sent to State Marine Hospital.

§ 7. The corporate authorities of the city of San Francisco are hereby authorized to send the sick and invalids of the city to the State Marine Hospital at San Francisco, upon such terms as the city authorities, and the Trustees of the State Marine Hospital at San Francisco, may agree; *Provided*, the amount shall not exceed fifty thousand dollars per annum, for such purpose. It shall also be lawful for the Collector of the port at San Francisco, to send all sick and disabled seamen to the State Marine Hospital at San Francisco, upon such terms, and under such rules and restrictions, as shall be agreed upon between the Collector and the Trustees of the State Marine Hospital at San Francisco.

Chap. 28.

AN ACT to Prohibit Lotteries.

Passed March 11, 1851.

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

§ 1. All lotteries are hereby prohibited in this State.

Lotteries
prohibited.
Penalty for
setting up
a lottery.

§ 2. Any person who shall set up or promote any lottery, for money or property of real value, real or personal, and any person who shall aid, either by printing or writing, or shall in any way be concerned in the setting up, managing, or drawing of any such lottery, or who shall in any building, owned or occupied by him, or under his control, knowingly permit the setting up, managing, or drawing of any such lottery, shall be deemed guilty of a misdemeanor, and on conviction thereof, be punished by fine not less than five hundred dollars, nor more than five thousand dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment.

§ 3. Any person who shall sell, or offer for sale, or who shall have in his possession, with intent to sell, or offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in selling, negotiating, or disposing of any lottery ticket or tickets, or any share or part of any lottery ticket, or design, in the nature of a lottery ticket, within this State, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished in the same manner as is provided in the preceding section.

Penalty
for selling
lottery tickets.

§ 4. All sums of money and other valuable things drawn as a prize, or share of a prize, in any lottery, or device in the nature of a lottery, by any person being a resident or inhabitant within this State, and all moneys or other valuable things, received by any such person by reason of his being the owner or holder of any ticket, or share of a ticket, in any such lottery or device, shall be forfeited to the use of the State, and may be recovered by information to be filed, or by an action to be brought by the Attorney General, or by any District Attorney, in the name and on behalf of the State.

Prizes forfeited
to State.

§ 5. This Act shall take effect from and after the first Monday of April, A. D., one thousand eight hundred and fifty-one.

When act
to take effect.

Chap. 29.

AN ACT to regulate Proceedings in Criminal Cases.

Passed May 1, 1851.

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

- Division of act.** § 1. This Act is divided into seven parts :
- 1st. The first embraces general definitions and provisions.
 - 2d. The second relates to the prevention of public offences.
 - 3d. The third relates to proceedings for the removal of public officers, by impeachment or otherwise.
 - 4th. The fourth relates to proceedings in criminal actions prosecuted by indictment.
 - 5th. The fifth relates to proceedings in Justices', Recorders', and Mayors' Courts.
 - 6th. The sixth relates to special proceedings.
 - 7th. The seventh relates to costs in criminal proceedings.

PART I.

GENERAL DEFINITIONS AND PROVISIONS.

- Crime defined.** § 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. 1st. Death. 2d. Imprisonment. 3d. Fine. 4th. Removal from office, or, 5th. Disqualification to hold or enjoy any office of honor, trust, or profit under this State.
- Public offences.** § 3. Public offences are divided into, 1st. Felonies, and 2d. Misdemeanors.
- Felony.** § 4. A felony is a public offence punishable by death, or by imprisonment in a State Prison.
- Misdemeanor.** § 5. Every other public offence is a misdemeanor.
- Mode of punishment.** § 6. No person can be punished for a public offence, except upon legal conviction in a Court having jurisdiction thereof.
- Mode of prosecuting.** § 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 Justices', Recorders', and Mayors' Courts.
- Criminal action.** § 8. The proceedings by which a party charged with a public offence is accused and brought to trial and punishment, shall be known as a criminal action.
- How prosecuted.** § 9. A criminal action shall be prosecuted in the name of the People

of the State of California as a party, against the party charged with the offence.

§ 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 : Rights of defendant.

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, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down by question and answer in the presence of the defendant, who has either in person or by counsel cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has either in person or by counsel cross-examined, or had an opportunity to cross-examine the witness, the deposition of such witness may be read upon its being satisfactorily shown to the Court that he is dead or insane, or cannot with due diligence be found within the State.

§ 12. No person shall be subject to a second prosecution for a public offence, for which he has once been prosecuted or duly convicted or acquitted. Second prosecution.

§ 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. Self-crimination.

§ 14. No person can be convicted of a public offence, unless by a verdict of a jury accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and sixty-six. Mode of conviction.

PART II.

OF THE PREVENTION OF PUBLIC OFFENCES.

TITLE I.

Of Lawful Resistance.

§ 15. Lawful resistance to the commission of a public offence may be made : Lawful resistance. When it may be made.

1st. By the party about to be injured :

2d. By other parties.

§ 16. Resistance sufficient to prevent the offence may be made by the party about to be injured : By 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.

By other persons.

§ 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.

Prevention of offences by officers.

§ 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 other persons.

§ 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.

Complaint for threatening a breach of the peace.

§ 20. A complaint may be laid before any of the Magistrates mentioned in section one hundred and four, that a person has threatened to commit an offence against the person or property of another.

Complainant and witnesses to be examined.

§ 21. When the complaint 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 appears 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 the State, reciting the substance of the complaint, and commanding the Officer forthwith to arrest the person complained of, and bring him before the Magistrate.

Hearing.

§ 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.

Dismissing complaint.

§ 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.

Ball may be required

§ 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 bond in such sum, not exceeding five thousand dollars, as the Magistrate may

direct, with one or more sufficient sureties, to keep the peace towards the people of this State, and particularly towards the complainant. The bond shall be valid and binding for six months, and may, upon the renewal of the complaint, be extended for a longer period, or a new bond may be required.

§ 26. If the bond 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. Discharge on bail.

§ 27. If the person complained of be committed for not giving the bond required, he may be discharged by any Magistrate upon giving the same. The like.

§ 28. A bond given, as provided in section twenty-five, must be filed by the Magistrate in the office of the Clerk of the County. Bond to be filed.

§ 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 twenty-fifth, or if he refuse to do so, may be committed, as provided in section twenty-sixth. Breach of the peace in magistrate's presence.

§ 30. A bond to keep the peace shall be broken on conviction of the person complained against of a breach of the peace. Bond when forfeited.

§ 31. Upon the District Attorney's producing evidence of such conviction to the Court of Sessions of the County, the Court shall order the bond to be prosecuted, and the District Attorney shall thereupon commence an action on the same, in the name of the people of this State. Bond to be prosecuted.

§ 32. In the action the offence stated in the record of conviction shall be alleged as a breach of the bond, and shall be conclusive evidence thereof. Evidence of breach.

§ 33. No security to keep the peace or be of good behavior shall be required except as prescribed in this Chapter. When security to be required.

CHAPTER III.

Police in Cities and Towns and their attendance at exposed places.

§ 34. The organization and regulation of the Police in the cities and towns in this State are governed by special laws. Police, how regulated.

§ 35. 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.

§ 36. When a Sheriff or other public officer authorized to execute process shall find or have reason to apprehend that resistance shall be Sheriff may command assistance.

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.

Resisters to be presented.

§ 37. 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.

Refusing to assist.

§ 38. Every person commanded by a public officer to assist him in the execution of process as provided in section 36, who shall without lawful cause refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.

Military to aid Sheriff.

§ 39. 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 Military force from any other county or counties as shall be necessary.

Riotous assembly may be commanded to disperse.

§ 40. Where six 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 Constable 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.

Persons riotously assembled may be arrested.

§ 41. 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 Sheriff.

§ 42. 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 or officer neglecting to act in quelling riot.

§ 43. If a Magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section forty, neglect to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor.

Magistrate to disperse assembly.

§ 44. 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.

Armed force, by whose orders to act.

§ 45. 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.

§ 46. When there is an unlawful or riotous assembly with the 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 the Judge of the Supreme or District Court, or County 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.

Order for troops to aid civil officers.

§ 47. 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 per inspection, and shall execute any order that they shall then and there receive according to law.

Such order to be forthwith obeyed.

§ 48. 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 such papers 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.

Governor may proclaim county in state of insurrection.

§ 49. 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 inanner as he shall direct.

Revoking such proclamation.

§ 50. Any person who shall after the publication of the proclamation authorized by section forty-eight, 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 imprisoned in a State Prison for a term not less than two years.

Resisting authorities, after such proclamation.

PART III.

OF PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT OR OTHERWISE.

TITLE I

Of Impeachments.

§ 51. The Governor, Lieutenant Governor, Secretary of State, Comp-

Who liable to impeachment.

troller, Treasurer, Attorney General, Surveyor General, Justice of the Supreme Court, and Judges of the District Courts, shall be liable to impeachment for any misdemeanor in office.

*Impeachments,
how tried.*

§ 52. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation.

*Impeachment for
misdemeanor
in office.*

§ 53. When a civil officer of the State is impeached by the Assembly for a misdemeanor in office, the articles of impeachment shall be delivered to the President of the Senate.

*Copy articles
of impeachment
to be served
on defendant.*

§ 54. The Senate shall assign a day for the hearing of the impeachment, and 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.

*Such copy,
how served.*

§ 55. 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 may deem proper of a notice, requiring him to appear at a specified time and place and answer the articles of impeachment.

*Defendant
failing to
appear.*

§ 56. If the defendant do not appear, the Senate, upon proof of service or publication, as provided in the two last 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.

*Defendant's
answer.*

§ 57. 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 any article therein, or by denying the truth of the same.

*Objection to
sufficiency of
impeachment.*

§ 58. 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 journal.

*Denial
of truth of
impeachment.*

§ 59. If an objection to the sufficiency 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.

*Objection
to sufficiency
overruled.*

*Members
of court
to be sworn.*

§ 60. 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.

§ 61. 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. And to proceed with trial.

§ 62. 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. What necessary to convict.

§ 63. 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. Form of judgment.

§ 64. 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.

§ 65. 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. What judgment may be.

§ 66. 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. Judgment of suspension.

§ 67. No judicial officer shall exercise the office after being impeached until he is acquitted. When officer not to execute official duties.

§ 68. 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. Impeachment of Lieut. Gov'nor.

§ 69. If the offence for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment. Indictment barred by impeachment.

TITLE III.

Of the Removal of Civil Officers otherwise than by Impeachment.

§ 70. An accusation in writing against any District, County, or Township officer for wilful or corrupt misconduct in office may be presented by the Grand Jury of the County for which the officer accused is elected or appointed. Accusation of certain officers.

§ 71. The accusation shall state the offence charged in ordinary and concise language and without repetition. What to state.

§ 72. The accusation shall be delivered by the foreman of the Grand Jury to the District Attorney of the County, 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 at the next term, and answer the accusation. The original accusation shall then be filed with the Clerk of the District Court. To be delivered to Grand Jury.

§ 73. The defendant must appear at the time appointed in the notice, and answer the accusation, unless for some sufficient cause the Defendant to appear.

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.

Proceeding
by defendant.

§ 74. 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 sufficiency
of accusation.

§ 75. 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.

§ 76. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

Objection
overruled.

§ 77. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

Court to
convict, or
proceed to try.

§ 78. 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.

Trial to be
by jury.

§ 79. The trial shall be by a jury and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Attendance
of witnesses.

§ 80. 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 a trial of an indictment.

Judgment
on conviction.

§ 81. 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.

Appeal
from judgment.

§ 82. From a judgment of removal an appeal may be taken to the Supreme Court in the same manner as from a judgment in a civil action, but until such judgment be reversed the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of vacancy.

Proceedings
on accusation
against District
Attorney.

§ 83. The same proceedings may be had on like grounds for the removal of a District Attorney, except that the accusation shall be delivered to the District Judge of the District, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the District Attorney of an adjoining County, and require him to conduct the proceedings.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

TITLE I.

Of the Local Jurisdiction of Public Offences.

Who liable
to punishment.

§ 84. Every person, whether an inhabitant of this or any other State,

or Country, or of a Territory or district of the United States, shall be liable to punishment by the laws of this State for a public offence committed by him therein, except where it is by law cognizable exclusively in the Courts of the United States.

§ 85. When the commission of a public offence commenced without the State, is consummated within the boundaries thereof, the defendant shall be liable to punishment in this State though he were without the State at the time of the commission of the offence charged :

Offences committed out of State.

Provided, he consummated the offence through the intervention of an innocent or guilty agent without this State, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offence is consummated.

§ 86. When an inhabitant or resident of this State shall, by any previous appointment or engagement, fight a duel or be concerned as a 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 the State, the jurisdiction of the offence shall be in the county where the death shall happen.

Death by duelling out of State.

§ 87. 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 shall be in either county.

Offences committed in separate counties.

§ 88. When a public offence is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

On boundary of two counties.

§ 89. 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 shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

On vessels.

§ 90. 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 any other 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, 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 the use of another, without the free will and consent of such negro, mulatto, or colored person, shall be, 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,

Jurisdiction of indictment for abduction.

procuring, promoting, aiding in, or being accessory to the commission of the offence, or in abetting the parties therein concerned.

For bigamy
or incest.

§ 91. When the offence either of bigamy or incest is committed in one county and the defendant is apprehended in another, the jurisdiction shall be in either county.

For burglary, &c.

§ 92. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offence shall be in either county. But if at any time before the conviction of the defendant in the latter he be indicted in the former country, 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 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 receipt, be exonerated from all liability in respect to the custody of the offender.

Against
accessory.

§ 93. In the case of an accessory before or after the fact in the commission of a public offence, the jurisdiction shall be in the county where the offence of the accessory was committed, notwithstanding the principal offence was committed in another county.

Acquittal
out of state,
a bar to
indictment.

§ 94. When an act charged as a public offence is within the jurisdiction of another State or territory as well as of this State, a conviction or acquittal thereof in such State or territory shall be a bar to a prosecution therefor in this State.

Acquittal in
one county,
a bar to an
indictment.

§ 95. When an offence is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

TITLE II.

Of the time of commencing Criminal Actions.

No limitation
for murder.

§ 96. There shall be 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.

Limitation
for felony.

§ 97. An indictment for any other felony than murder must be found within three years after its commission.

For
misdemeanor

§ 98. An indictment for any misdemeanor must be found within one year after its commission.

Term of absence
not reckoned.

§ 99. 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 defendant is not an inhabitant of, or usually resident within the State, shall be a part of the limitation.

When
indictment
found.

§ 100. 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 Complaint and Proceedings thereon, to the Commitment inclusive.

CHAPTER I.

The Complaint.

§ 101. The complaint is the allegation made to a Magistrate that a person has been guilty of some designated offence. Complaint defined.

§ 102. A Magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offence. Magistrate defined.

§ 103. The following persons are Magistrates : Who 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 of Cities ; and,
- 6th. The Mayors of Cities, upon whom are conferred by law the powers of Justices of the Peace.

CHAPTER II.

Warrant of Arrest.

§ 104. When a complaint is laid before a Magistrate of the commission of a public offence, triable within the County, he must examine on oath the complainant 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. Magistrate to examine complainant, &c., on oath.

§ 105. The deposition 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.

§ 106. 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. Warrant to arrest defendant.

§ 107. 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 defined. Its form.

County of

The People of the State of California to any Sheriff, Constable, Marshal, Policeman in this State, or the County of
a complaint upon oath having been this day laid before me, by A. B., that the crime of (designate 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 and most accessible Magistrate in this County.

Dated at this day of 18

Defendant's name, how stated.

§ 108. 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.

Warrant, by whom to be executed.

§ 109. The warrant must be directed to and executed by a Peace officer.

Peace officers enumerated.

§ 110. Peace officers are Sheriffs of Counties, and Constables, Marshals, and Policemen, of cities and towns respectively.

Warrant, to whom directed.

§ 111. 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.

The like.

§ 112. 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].

Endorsement on warrant.

Endorsement, when it may be made.

§ 113. 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 creditable 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.

Proceedings on arrest for felony.

§ 114. 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 one hundred and eighteen.

The like for misdemeanor.

§ 115. 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.

Fact of admitting to bail to be certified on warrant, and defendant discharged.

§ 116. 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 recognizance 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 recognizance to the Clerk of the Court at which the defendant is required to appear.

Defendant to be

§ 117. If on the admission of the defendant to bail, as provided in

section one hundred and fifteen, 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. taken before magistrate.

§ 118. 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 shall, at the same time, deliver to the Magistrate the warrant with his return, endorsed and subscribed by him. Before what magistrate to be taken.

§ 119. The defendant must in all cases be taken before the Magistrate without unnecessary delay. To be without delay.

§ 120. If the defendant be brought before a Magistrate in the same county other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such Magistrate, or if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew. When defendant demands a hearing.

§ 121. When a complaint 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 complaint 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 complainant 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. Proceedings on complaint for offence triable in another county

§ 122. 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. The like.

§ 123. If the offence charged in the warrant issued pursuant to section one hundred and twenty-one be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a Magistrate of the County in which the said warrant is issued, who shall hold the defendant to bail, and immediately transmit the warrant, depositions, and recognizance, to the Clerk of the Court in which the defendant is required to appear. The like

CHAPTER III.

Arrest by an Officer under warrant.

§ 124. Arrest is the taking of a person into custody that he may be held to answer for a public offence. Arrest defined.

- By whom.** § 125. 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.
- Who to aid arrest.** § 126. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.
- Arrest for felony.** § 127. 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 shall not be made at night, unless upon the direction of the Magistrate endorsed upon the warrant.
- Arrest, how made.** § 128. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer.
- No unnecessary restraint.** § 129. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.
- Officer to state his authority, &c.** § 130. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant if required.
- Flight or resistance, after arrest.** § 131. If after notice of intention to arrest the defendant, he either flee or forcibly resists, the officer may use all necessary means to effect the arrest.
- Power of officer.** § 132. 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.
- The like.** § 133. 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.

- When officer may arrest without warrant.** § 134. A peace officer may, without a warrant, arrest a person :
- 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 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.
- Power to break doors, &c.** § 135. 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 arrest at night.** § 136. 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.

§ 137. 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, &c.

§ 138. 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. Persons arrested while breaking the peace.

§ 139. 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. Offence committed in presence of Magistrate.

CHAPTER V.

Arrest by a private Person.

§ 140. A private person may arrest another: First, for a public offence committed or attempted in his presence. Second, when the person arrested has committed a felony, although not in his presence. Third, when a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it. When a private person may make an arrest.

§ 141. 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. To state cause of arrest.

§ 142. 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, &c.

§ 143. 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. Duty, after making arrest.

CHAPTER VI.

Retaking after an Escape or Rescue.

§ 144. 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 at any place within the State. Power of recapture.

§ 145. 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. The like.

CHAPTER VII.

Examination of the Case and Discharge of the Defendant, or holding him to answer.

§ 146. 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 Defendant to be informed of the charge against him.

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 be allowed
time to
procure counsel.

§ 147. 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 the defendant, require a peace officer to take a message to such counsel within the township or city as the defendant may name. The officers shall, without delay and without fee, perform that duty.

Proceeding
to hearing.

§ 148. The Magistrate shall immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

Examination
to be had
at one session,
unless, &c.

§ 149. The examination must be completed at one session unless the Magistrate for good cause shown 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.

Commitment
for examination.

§ 150. 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 this Act, as security for his appearance at the time to which the examination is adjourned.

Commitment,
how made.

§ 151. 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 _____" If the Sheriff be not present the defendant may be committed to the custody of a peace officer.

Depositions
to be read to
the defendant.

§ 152. 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 subpoenas for any witnesses required by the prosecutor or the defendant, as provided in section five hundred and forty-eight.

Subpoenas
for witnesses.

Witnesses, how
to be examined.

§ 153. 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 rights.

§ 154. When the examination of 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 fact 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.

Where
defendant
waives his
right to make
a statement.

§ 155. 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.

Proceedings

§ 156. 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."

where defendant makes a statement.

§ 157. 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 to be the truth.

Defendant's answers to be read to him.

§ 158. The statement must be reduced to writing by the Magistrate, or under his direction, and authenticated in the following form:

Statement to be reduced to writing.

1st. It must set forth in detail that the defendant was informed of his rights as provided by section one hundred and fifty-four, 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 section one hundred and fifty-seven, and one hundred and fifty-six.

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.

§ 159. 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.

§ 160. 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 may be ordered out of court, &c.

§ 161. The Magistrate shall also upon the request of the defendant exclude from the examination every person except his clerk, the prosecutor and his counsel, the Attorney General, the District Attorney of the County, the defendant and his counsel, and the officer having the defendant in custody.

The like.

§ 162. The testimony given by each witness must be reduced to writing as a deposition by the Magistrate, or under his direction: and

Testimony to be reduced to writing.

1st. It must contain the name of the witness, his place of residence, and his business, or profession.

2d. If required by the defendant, or by the District Attorney, or prosecutor, it must be taken by question and answer, and when so taken each answer must be distinctly read to the witness as it is taken down, and corrected or added to, until it is made conformable to what he declares to be the truth.

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3d. If a question put be objected to on either side and overruled, or the witness decline answering it, that fact with the ground on which the question was overruled must be stated.

4th. It must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated as he gives it; and -

5th. It must be signed and certified by the Magistrate. .

When
defendant to
be discharged.

§ 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 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."

When to be
held to answer

§ 164. If, however, it appear from the examination that a public offence has been committed, and 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 A. B. guilty thereof, I order that he be held to answer to the same."

When offence
not bailable.

§ 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 —."

When
offence bailable.

§ 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 recognizance hereto annexed."

Committal
until bail given.

§ 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."

Commitment
to be delivered
to officer..

§ 168. If the Magistrate order the defendant to be committed as provided in section 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.

Form of
commitment

§ 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, and as near as may be the time when, and the place where the same was committed) you are commanded to receive him into your custody, and detain him until he be legally discharged. Dated, this — day of —, 18—.

§ 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 recognizance, to the effect that he 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.

Witnesses to be recognised.

§ 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 recognizances to appear and testify, unless security be required, he may order the witness to enter into a written recognizance with such sureties and in such sum as he may deem meet for his appearance as specified in the last section.

Witnesses to give security for attendance.

§ 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.

The like.

§ 173. If a witness required to enter into recognizance 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.

Or be committed.

§ 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 forthwith conditionally examined on behalf of the people; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing Magistrate is required by this act to be conducted, and the witness shall therefore be discharged.

Witnesses unable to give security for appearance, to be examined conditionally.

§ 175. The last section shall not apply to the prosecutor or to an accomplice in the commission of the offence charged.

Exceptions.

§ 176. 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 shall return without delay to the Clerk of the Court at which the defendant as [is] required to appear, the warrant if any, the depositions, the statement of the defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses taken by him.

Magistrate to return warrant, &c.

TITLE IV.

Of Proceedings after Commitment and before Indictment.

CHAPTER I.

Preliminary Proceedings.

§ 177. All public offences prosecuted in the District Court and the

All prosecution

to be by indictment.

Courts of Session, must be prosecuted by indictment, except as provided in the next section.

Accusations against certain officers.

§ 178. When the proceedings are had for the removal of District, County, or Township officers, they may be commenced by an accusation in writing, as provided in section seventy and eighty-three.

The like.

§ 179. All accusations against District, County, and Township officers, and all indictments must be found in the Court of Sessions.

CHAPTER II

Formation of the Grand Jury.

Formation of Grand Jury. Challenge to jury.

§ 180. The formation of Grand Juries is prescribed by special statutes.

§ 181. 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.

Challenge to panel.

§ 182. 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 law.

2d. The notice of the drawing of the Grand Jury was not given as prescribed by law.

3d. That the drawing was not had in the presence of the officers or officer designated by law.

Challenge to the polls.

§ 183. 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 prosecutor upon a charge against the defendant.

5th. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

6th. That he has formed or expressed a decided opinion that the defendant is guilty of the offence for which he is held to answer.

Challenges, how made.

§ 184. The challenges mentioned in the 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.

Decision on challenge.

§ 185. The Court shall allow or disallow the challenge, and the Clerk shall enter its decisions in the minutes.

Effect of allowing challenge.

§ 186. 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.

The like.

§ 187. If a challenge to an individual Grand Juror be allowed, he shall not be present or take part in the consideration of the charge against the defendant who interposed the challenge or the deliberations of the Grand Jury thereon.

§ 188. 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. Violating preceding sections.

§ 189. 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 section. Objection to jury can only be by challenge.

§ 190. 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 the person already appointed is excused or discharged before the Grand Jury is dismissed. Foreman of Grand Jury.

§ 191. 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 have or can obtain legal evidence. You shall present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." Oath to Foreman of Grand Jury.

§ 192. 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." Oath to Grand Jurors.

§ 193. The Grand Jury being empanelled and sworn, shall be charged by the Court. In doing so, the Court shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the Court or likely to come before the Grand Jury. The Court need not, however, charge them respecting violations of any particular statute. Grand Jury to be charged.

§ 194. The Grand Jury shall then withdraw to a private room, and inquire into the offences cognizable by them. To retire.

§ 195. 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 shall be discharged by the final adjournment of the Court. To be discharged.

§ 196. 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. When another Grand Jury may be summoned.

§ 197. An order shall thereupon be made out by the Clerk and directed to the Sheriff, requiring him to summon twenty-four persons qualified to serve as Grand Jurors to appear forthwith, or at such time as may be appointed by the Court. Order therefor.

§ 198. The Sheriff shall execute the order, and return it with a list of the names of the persons summoned. Sheriff to execute order.

List of jurors to be called.

§ 199. 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.

Grand Jury and trial jury, how formed.

§ 200. At the first, and at all subsequent terms of the Court of Sessions, until an assessment roll in each county shall be made out and returned, so that a Jury list may be formed and a Jury drawn as required by law, the grand Jury and the Trial Jury shall be formed in the following manner.

Order for jury.

§ 201. 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 thirty-six persons from the citizens of the county, and not from the bystanders, to appear forthwith or at such time as may be named.

Execution, and return of order.

§ 202. 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.

Time for return enlarged.

§ 203. 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.

Jury to be empanelled.

§ 204. 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 a Trial Jury in like manner as if such persons had been empanelled upon a regular drawing of a Jury.

CHAPTER III.

Powers and Duties of the Grand Jury.

Power of Grand Jury.

§ 205. The Grand Jury has the 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 by indictment.

Indictment defined.

§ 206. An indictment is an accusation in writing, presented by the Grand Jury to a competent Court, charging a person with a public offence.

Presentment defined.

§ 207. 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.

Oath to witnesses.

§ 208. The foreman may administer an oath to any witness appearing before the Grand Jury.

What evidence to be received.

§ 209. 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, or the deposition of witnesses taken as provided in this Act.

§ 210. The Grand Jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. The like.

§ 211. 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. Evidence for defendant, &c.

§ 212. The Grand Jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial Jury. When indictment should be found.

§ 213. 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. Information by Grand Juror.

§ 214. 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. Inquiries to be made by Grand Jury.

§ 215. 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. To have access to prisons.

§ 216. The Grand Jury may, at all reasonable times, ask the advice of the Court, or any member thereof, and of the District Attorney. Unless his advice be asked, no member of the Court shall be permitted to be present during the sessions of the Grand Jury. The District Attorney of the County shall be allowed at all times to appear before the Grand Jury, on his request, for the purpose of giving information or advice relative to any matter cognizable by them; and may interrogate witnesses before them, when they shall deem it necessary. Except the District Attorney, no person shall be permitted to be present before the Grand Jury besides the witnesses actually under examination, and no person shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them. Advice of District Attorney

§ 217. 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. Who may be present in Grand Jury room.

§ 218. 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 Proceedings to be kept secret.

§ 219. 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 When Grand Juror may be examined as a witness.

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.

Acts, &c., of Grand Jurors not to be questioned.

§ 219. No Grand Juror shall be questioned for anything he may say, or any vote he may give in the Grand 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.

Presentment, when found.

§ 220. A presentment cannot be found without the concurrence of at least twelve Grand Jurors. When so formed it must be signed by the foreman.

To be presented to Court.

§ 221. 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.

Fact of presentment not to be published.

§ 222. No Grand Juror, 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 disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Violation of last section, how punished.

§ 223. A violation of the provisions of the last section shall be punished as a contempt and as a misdemeanor.

Bench warrant may issue.

§ 224. 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.

The like.

§ 225. 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.

Form of bench warrant.

§ 226. 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 Court of Sessions of the County of charging O. 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."

§ 227. 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 a complaint, except that when served in another county it need not be endorsed by a Magistrate of that county. How executed.

§ 228. The Magistrate, when the defendant is brought before him, shall proceed to examine the charges 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 complaint. Proceedings on arrest.

TITLE V.

Of the Indictment.

CHAPTER V.

Finding and Presentation of Indictment.

§ 229. An indictment cannot be found without the concurrence of at least twelve Grand Jurors; when so found it shall be entitled "A true bill," and the endorsement shall be signed by the foreman of the Grand Jury. Indictment, how found.

§ 230. If twelve Grand Jurors do not concur in finding an indictment against the defendant who has been held to answer, the deposition 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. When deposition to be returned.

§ 231. The dismissal of the charge shall not, however, prevent the 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. Effect of Grand Jury dismissing charge.

§ 232. 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 endorsed on indictment.

§ 233. An indictment when found by the Grand Jury shall be presented by their foreman in their presence to the Court, and shall be filed by the Clerk and remain in his office as a public record. Indictments to be presented to Court.

§ 234. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in section two hundred and sixty-eight, both inclusive, against a defendant who fails to appear for arraignment. Indictment against defendant not in custody.

CHAPTER II.

Form of Indictment.

§ 235. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this act. Forms of pleadings.

§ 236. The first pleading on the part of the people is the indictment. Indictment.

§ 237. The indictment shall contain the title of the action specifying What to contain.

the name of the Court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offence in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

Form.

§ 238. It may be substantially in the following form:

"The People of the State of California against A. B. in the Court of Sessions of the County of _____ 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, as designating it as 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.)

§ 239. The indictment must be direct and contain 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.

§ 240. 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.

§ 241. The indictment shall charge but one offence, but it may set forth that offence in different forms under different counts.

§ 242. The precise time at which it 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.

§ 243. When an offence involves the commission, 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.

§ 244. The words used in an indictment shall be construed in the 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.

§ 245. 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.

§ 246. 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 actually set forth.

Error in name of defendant.

Only one offence to be charged.

Time of committing offence not material to be stated.

What errors not deemed material.

Construction of indictments.

Indictment need not follow words of statute.

When indictment sufficient.

SECOND SESSION.

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 a 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 eighty-five to ninety-three, 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.

§ 247. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

Indictment not to be deemed insufficient.

§ 248. Neither presumption of law, nor matters of which judicial notice is taken, need be stated in an indictment.

What need not be stated.

§ 249. 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.

§ 250. 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 thereupon shall take judicial notice thereof.

Private statute how pleaded.

§ 251. 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.

§ 252. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the 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.

Misdescription of forged instrument, when immaterial.

§ 253. In an indictment for perjury or subornation of perjury it shall

Indictment, for perjury.

be sufficient to set forth the substance of the controversy, or matter in respect to which the offence was committed, and in what Court and before whom the oath alleged to be false was taken, and that the Court or the person before whom it was taken had authority to administer the same with proper allegations to 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.

Several defendants.

§ 254. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

No distinction between principal and accessory.

§ 255. 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.

Accessory after fact.

§ 256. An accessory after the fact to a commission of a felony, may be indicted and punished, though the principal felon may be neither tried nor indicted.

Compounding offence.

§ 257. 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 a reward or an agreement or understanding express or implied to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the persons guilty of the original offence have not been indicted or tried.

CHAPTER III.

Arraignment of the Defendant.

Defendant to be arraigned.

§ 258. When the indictment is filed the defendant shall be arraigned thereon, before the Court in which it is found, except in the cases mentioned in sections two hundred and seventy-nine and two hundred and eighty.

When defendant must appear personally.

§ 259. 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.

Defendant how arraigned.

§ 260. 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 failing to appear.

§ 261. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned, when his personal attendance is necessary, the Court in addition to the forfeiture of the recognizance, or of the money deposited, may direct the Clerk to issue a search warrant for his arrest.

Warrant for his arrest.

§ 262. 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.

§ 263. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form : Form of warrant.

“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 Court of Sessions, in 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.”

§ 264. 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, upon an examination upon a writ of Habeas Corpus. Proceedings on arrest of defendant.

§ 265. 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 to the indictment.” The like.

§ 266. 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.” The like.

§ 267. 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 the Magistrate of that County. Warrant, how served.

§ 268. 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 one hundred and fourteen to one hundred and seventeen, both inclusive. Bail, in another county.

§ 269. 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, on bail, may be ordered into custody.

§ 270. If such order be made and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench Defendant to be committed.

warrant shall be issued and proceeded upon in the manner provided for in this chapter.

Defendant to be asked if he desires counsel.

§ 271. 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.

§ 272. 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 asking him whether he pleads guilty or not guilty to the indictment.

Defendant to declare his name.

§ 273. 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 name given.

§ 274. If he give no other name, the Court may proceed accordingly.

Entry of name on minutes.

§ 275. 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.

Time to answer.

§ 276. 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.

Answer, &c.

§ 277. If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such future 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.

CHAPTER IV.

Setting aside the Indictment.

When indictment will be set aside.

§ 278. 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 this Act.

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 two hundred and sixteen.

The like.

§ 279. When 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.

§ 280. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the two last sections. When waived

§ 281. The motion shall be heard when it is made, unless for good cause the Court shall postpone the hearing to another time. Hearing of motion to set aside.

§ 282. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. Motion denied.

§ 283. 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 shall be refunded to him, unless it direct that the case be submitted to the same or another Grand Jury. Motion granted.

§ 284. 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.

§ 285. 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 two hundred and eighty-three. Order for defendant's discharge.

§ 286. An order to set aside an indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offence. Indictment set aside, no bar to future prosecution.

CHAPTER V.

Demurrer.

§ 287. The only pleading on the part of the defendant is either a demurrer or a plea. Pleadings by defendant.

§ 288. Both the demurrer and the plea must be put 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. Demurrer and plea, when to be put in.

§ 289. The defendant may demur to the indictment when it shall appear upon the face thereof, either — First: 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 legal jurisdiction of the County. Second: That it does not substantially conform to the requirement of sections two hundred and thirty-seven and two hundred and thirty-eight. Third: That more than one offence has been charged in the indictment. Fourth: That the facts stated do not constitute a public offence. Fifth: 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. When defendant may demur.

§ 290. The demurrer must be in writing, signed either by the defendant or his council, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded. Demurrer to be in writing. What to specify.

§ 291. Upon the demurrer being filed, the argument of the objec- Argument on demurrer.

tions presented thereby shall be had either immediately, or at such time as the Court may appoint.

Judgment on demurrer.

§ 292. 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.

Effect of allowance of demurrer.

§ 293. 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.

If case not re-submitted.

§ 294. 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 has deposited money instead of bail, the money shall be refunded to him.

Where case re-submitted.

§ 295. If the Court direct that the case be re-submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-four and two hundred and eighty-five.

Effect of disallowing demurrer.

§ 296. 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.

Objections, how must be taken.

§ 297. When the objections mentioned in section two hundred and eighty-nine 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.

Pleas.

Kinds of pleas.

§ 298. There are three kinds of pleas to an indictment. A plea of — First: GUILTY. Second: NOT GUILTY. Third: A former judgment of conviction or acquittal of the offence charged, which may be pleaded, either with or without the plea of "not guilty."

Plea to be oral.

§ 299. Every plea shall be oral, and shall be entered upon the minutes of the Court.

Form of entry of plea.

§ 300. The plea shall be entered in substantially the following form: First: if the defendant plead guilty, "the defendant pleads that he is guilty of the offence charged in this indictment." Second: If he plead not guilty, "The defendant pleads that he is not guilty of the offence charged in this indictment." Third: 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 offences charged in this indictment, by the judgment of the Court of — (naming it) rendered at — (naming the place) on the — day of —."

§ 301. A plea of guilty can in no place be put in, except by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put by counsel. Plea of guilty.

§ 302. 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. Withdrawing plea.

§ 303. The plea of not guilty shall be deemed a denial of every material allegation in the indictment. Effect of plea of not guilty.

§ 304. All matters of fact tending to establish a defence other than that specified in the third subdivision of section two hundred and ninety-eight, may be given in evidence under the plea of not guilty. What may be given in evidence, under plea of not guilty.

§ 305. 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. What not a former acquittal.

§ 306. When, 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 a former acquittal.

§ 307. 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 four hundred and twenty-four. Effect of former conviction or acquittal.

§ 308. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered. Defendant standing mute.

CHAPTER VII.

Removal of certain indictments from the Court of Sessions to the District Court.

§ 309. When an indictment is found in the Court of Sessions, for murder, manslaughter, or arson, it shall be transmitted by the Clerk to the District Court, sitting in the county for trial, except where the indictment is found against a person holding the office of District Judge. Certain indictments to be transmitted to District Court.

§ 310. All indictments found against a member of the Court of Sessions, or against any Justice of the Peace, shall also be transmitted to the District Court sitting in the county for trial. The like.

§ 311. Upon the filing with the District Court of an indictment transmitted from the Court of Quarter Sessions, the defendant shall be arraigned and the same proceedings had in the District Court as are required by this act upon indictments tried in the Court of Sessions. Proceedings thereon.

CHAPTER VIII.

Removal of the action to another County.

§ 312. A criminal action prosecuted by indictment may be removed from the Court in which it is pending, on the application of the defen- Criminal action may be moved to another county.

dant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

Application,
how made.

§ 313. The application must be made in the open Court, and in writing verified by the affidavit of the defendant, and a copy must be served on the District Attorney at least one day before the application is made to the Court.

Court may
make order.

§ 314. 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 Court of Sessions of a County which is free from the like objection, or if the indictment has been transmitted to the District Court of the County from the Court of Sessions, then the order for removal shall be made to the District Court of a county which is free from the like objection.

Order
to be entered
on minutes.

§ 315. 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 recognizances for the appearance of the defendant, and of the witnesses, to the Court to which the action is removed.

Order, what
to direct.

§ 316. 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.

Proceedings,
after removal.

§ 317. 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.

TITLE VI.

Of the Proceedings on the indictment before Trial.

CHAPTER I.

The Mode of Trial.

When issue
of fact arises.

§ 318. 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.

Issue of fact,
how tried.

§ 319. 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.

Appearance)
on trial.

§ 320. 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.

CHAPTER II.

Formation of the Trial Jury and the Criminal Docket.

§ 321. Trial Juries for criminal actions shall be formed in the same manner as trial juries for civil actions. Trial juries, how formed.

§ 322. 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. Docket of criminal actions.

§ 323. 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: Issues on docket, how disposed of.

1st. Indictment 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.

§ 324. 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.

§ 325. 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 the next term. Postponement of trial.

CHAPTER V.

Challenging the Jury.

§ 326. A challenge is an objection made to the trial jurors, and is of two kinds: Challenge defined.

1st. To the panel:

2d. To an individual juror.

§ 327. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein. Defendants must join in their challenges.

§ 328. The panel is, a list of jurors returned by a sheriff to serve at a particular Court or for the trial of a particular cause. Panel defined.

§ 329. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party. Challenge to the panel.

§ 330. 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 an intentional omission of the sheriff to summon one or more of the jurors drawn. On what founded.

§ 331. A challenge to a panel must be taken before a juror is sworn, When to be taken.

and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

Exception to challenge.

§ 332. If the sufficiency of the facts alleged as a ground of challenge be determined, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the Court.

Trial of challenge.

§ 333. Upon the exception, the Court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Exception may be withdrawn.

§ 334. 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.

Amendment of challenge.

§ 335. 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 and trial thereof.

§ 336. 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 grounds of challenge.

Who may be examined as witnesses.

§ 337. When the panel is formed from persons whose names are not drawn from the Grand Jury box, 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 obligation shall be made in the same form, and determined in the same manner as when made to a Juror.

Challenge for bias in summoning officer.

§ 338. If, either upon an exception to the challenge, or a denial of the fact, 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.

Effect of allowing challenge.
Effect of disallowance.

§ 339. 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.

Challenge to the panel, when to be taken.

§ 340. A challenge to an individual Juror is, either :

- 1st. Peremptory ; or,
- 2d. For cause.

When to be taken.

§ 341. 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.

§ 342. A peremptory challenge may be taken by either party, 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.

§ 343. If the offence charged be punishable with death, with imprisonment in a state prison for life, the defendant is entitled to twenty,

and the State to five peremptory challenges. On a trial for any other offence, the defendant is entitled to ten, and the State to three peremptory challenges.

§ 344. A challenge for cause may be taken by either party. It is an objection to a particular Juror, and is either : Challenges for cause.

1st. General, that the Juror is disqualified from serving in any case : or,

2d. Particular, that he is disqualified from serving in the cause on trial.

§ 345. General causes of challenge are :

General causes of challenge.

1st. A conviction for 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.

§ 346. Particular causes of challenge are of two kinds :

Particular causes of challenge.

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 trier, leads to the inference that he will not act with entire impartiality, and which is known in this Act as actual bias.

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

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 person 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.

§ 348. An exemption from service on a Jury is not a cause of challenge, but the privilege of the person exempted.

What must be alleged, on a challenge for bias.

§ 349. In a challenge for implied bias, one or more of the causes stated in section three hundred and forty-seven 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.

Excepting to challenge.

§ 350. 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 proscribed in sections three hundred and thirty-two and three hundred and thirty-three, except that if the exception be allowed, the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

Trial of challenge.

§ 351. 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.

Who to be triers.

§ 352. The triers shall be three impartial persons, not on the jury panels, appointed by the Court; all challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

Oath to triers.

§ 353. 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.

Juror may be examined.

§ 354. 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.

And other witnesses.

§ 355. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues, shall govern the admission or exclusion of testimony on the trial of the challenge.

Court to determine law and fact.

§ 356. On the trial of the challenge for an implied bias, the Court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes.

Instructions to triers of challenge.

§ 357. 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.

§ 358. The triers must thereupon find the challenge either true or not true, and the decision is final. If they find it true the juror shall be excluded. Triers' decision final.

§ 359. 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 challengers to each juror as he is called before the other begins. Order of taking challenges.

§ 360. 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 : The like.

- 1st. To the panel.
- 2d. To an individual juror for a general disqualification.
- 3d. To an individual juror for an implied bias.
- 4th. To an individual juror for an actual bias.

§ 361. If all the challengers on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted. Peremptory challenge, when it may be taken.

TITLE VII.

OF THE TRIAL.

CHAPTER I.

Trial.

§ 362. The jury having been empanelled and sworn, the trial shall proceed in the following order : Order of trial.

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 cause 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.

§ 363. When the state of the pleadings requires it, or in any other Order may be departed from.

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.

When two
counsel allowed
on each side.

§ 364. 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.

Innocence
presumed.

§ 365. 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.

Degree of guilt.

§ 366. 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.

Separate trials.

§ 367. 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 defendant
may be
discharged,
and called
as a witness.

§ 368. When two or more persons are indicted 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.

The like.

§ 369. 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
deemed
an acquittal.

§ 370. 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.

Evidence
to convict
of treason.

§ 371. 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.

The like.

§ 372. Upon a trial for treason evidence shall not be admitted for 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.

Conspiracy.

§ 373. 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.

Rape.

§ 374. Proof of actual penetration into the body is sufficient to sustain an indictment for rape or for the crime against nature.

Evidence
of accomplice.

§ 375. A conviction cannot be had upon the testimony of an accom-

plice, unless he be corroborated by such other evidence as shall tend to connect 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.

§ 376. 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. Evidence of false pretence.

§ 377. 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. Exception.

§ 378. 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. Evidence to convict of seduction.

§ 379. 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 superseded, 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. Where higher offence proved than that charged.

§ 380. If an indictment for a 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.

§ 381. 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 charged in the indictment do not constitute an offence punishable by law. When jury discharged.

§ 382. 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. Effect of discharging jury.

§ 383. 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 recognizance, with sufficient securities 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 par-

ticularly designated in the recognizance, 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 recognizance.

Copy indictment to be transmitted to proper county.

§ 384. 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.

When defendant to be discharged.

§ 385. If the defendant be not arrested, as provided in section three hundred and eighty-three, 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 recognizance shall be discharged.

Proceedings on arrest.

§ 386. 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.

Discharge of jury, because facts proved do not constitute an offence.

§ 387. 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.

Case submitted anew.

§ 388. If the Court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-four and two hundred and eighty-five, both inclusive.

Court may advise an acquittal.

§ 389. 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 three hundred and sixty-eight, three hundred and sixty-nine, three hundred and seventy-nine, and three hundred and eighty-one.

View may be had.

§ 390. 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.

No person to speak to jury.

§ 391. 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.

Juror to disclose his knowledge of controversy.

§ 392. If a juror have any personal knowledge respecting a fact in a controversy in a case, he must disclose 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.

§ 393. 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 speak to them themselves on any subject connected with the trial, and to return them into court at the next meeting thereof.

Jury may separate, &c.

§ 394. 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.

On adjournment, jury to be admonished.

§ 395. 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 empannelled.

Juror taken sick.

§ 396. The Court shall decide all questions of law which shall arise in the course of the trial.

Court to decide questions of law.

§ 397. On the trial of an indictment for libel the jury shall have the right to determine the law and the fact.

In libel cases, jury may decide law and fact.

§ 398. 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.

In other cases, court to decide law.

§ 399. 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.

Charge to jury.

§ 400. 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.

Either party may present a written charge.

§ 401. 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.

Court to endorse such charge.

§ 402. 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, and not to permit any person to speak to

Delivery of verdict.

them, nor to 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 bail, may be committed to custody.

§ 403. 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 jury.

§ 404. 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.

Provision for jury, while deliberating.

§ 405. 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.

What papers jury may take out.

§ 406. 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.

The like.

§ 407. 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.

Bringing back jury into court.

§ 408. 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 being brought into Court, the information required shall be given in the presence of or after notice to the District Attorney and the defendant and his counsel.

Juror taken sick.

§ 409. 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.

When jury not to be discharged.

§ 410. 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 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.

Effect of

§ 411. 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. discharge of jury.

§ 412. 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. Adjournment, during absence of jury.

§ 413. A final adjournment of the Court discharges the jury. Final adjournment.

CHAPTER III.

The Verdict.

§ 414. When a jury have agreed upon a 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. Proceedings on return of jury.

§ 415. 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.

§ 416. 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.

§ 417. The Jury may either render a verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, file a special verdict. Verdict may be general or special.

§ 418. 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.

§ 419. 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 those conclusions of fact must be so presented as that nothing remains to the Court but to draw conclusions of law upon them. Special verdict.

§ 420. 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 to be in writing.

§ 421. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the Jury. Form of special verdict.

§ 422. The Court shall give judgment upon the special verdict, as follows: Judgment on special verdict.

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 four hundred and twenty-four, 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.

When
new trial
may be ordered.

§ 423. 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.

Of what
defendant may
be found guilty.

§ 424. 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.

Verdict as to
some defendants.

§ 425. 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.

§ 426. Where 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 when there is a verdict of acquittal, the Court cannot require the Jury to reconsider it.

The like.

§ 427. If the Jury render a verdict which is neither a general nor a special verdict, as defined in sections four hundred and eighteen and four hundred and nineteen, 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.

Judgment, on
informal verdict.

§ 428. 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.

§ 429. 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.

Recording
verdict.

§ 430. 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.

§ 431. 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 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 like effect as provided in section three hundred and eighty-seven and three hundred and eighty-eight.

Proceeding,
on verdict
of acquittal.

§ 432. 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 must be committed to the proper officers 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.

Proceeding,
on verdict
of guilty.

TITLE III.

OF THE PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

CHAPTER I.

Bill of Exceptions.

§ 433. 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:

Exceptions to
matters of law,
in what cases,
by defendant.

1st. In disallowing a challenge to the panel of the jury, or to an individual juror for an implied bias.

2d. On 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.

§ 434. 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.

The like,
on behalf
of the people.

§ 435. A bill containing the exceptions must be settled and signed by the Judge and filed with the Clerk within ten days after the trial of the cause, unless further trial be granted by said Judge or by a Judge of the Supreme Court.

Bill of
exceptions
to be settled.

§ 436. 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

What it
shall contain.

bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised.

To be filed.

§ 437. The bill of exceptions must be filed with the Clerk of the Court as soon as it is signed by the Judge.

Written charge to form part of record.

§ 438. When any written charge has been presented and given or refused, the question or questions presented in such charge are not to be excepted to, nor embodied in a bill of exceptions, but the written charge itself, with the endorsement 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 is presented in a bill of exceptions.

CHAPTER II.

New Trial.

New trial defined.

§ 439. 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 condition 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.

When new trial may be granted.

§ 440. The Court in which a new trial is had upon the issue of facts, 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 felony :

2d. When the jury has received any evidence out of Court other than that resulting from a view as provided in section three hundred and ninety :

3d. When the jury has 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 the jurors :

5th. When the Court has misdirected the jury in a matter of law :

6th. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

When to be applied for.

§ 441. The application for a new trial must be made before the judgment is entered in the cause.

CHAPTER III.

Arrest of Judgment.

Motion in arrest of judgment defined.

§ 442. 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 two hundred and eighty-nine.

§ 443. The Court may also on its own view of these defects arrest the judgment without motion. When judgment will be arrested.

§ 444. The motion must be made before or at the time when the defendant is called for judgment. When to be moved for.

§ 445. The effect of allowing a motion for an arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found. Effect of allowing.

§ 446. If from the evidence on the trial there is reason 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. When defendant may be re-committed.

TITLE IX.

OF THE JUDGMENT AND EXECUTION.

CHAPTER I.

The Judgment.

§ 447. After the 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. Appointing time for judgment.

§ 448. 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. What time to be appointed.

§ 449. For the purpose of judgment, if the conviction be for felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence. Presence of defendant.

§ 450. 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. When defendant in custody.

§ 451. 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. When on bail.

§ 452. The Clerk, on the application of the District Attorney, may Warrant to arrest defendant.

accordingly at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more Counties.

Form of warrant. § 453. 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 Court of Sessions, or the District Court (as the case may be), 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.”

Warrant,
how served.

§ 454. 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.

Arrest
of defendant.

§ 455. 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.

Proceedings,
where
defendant
appears.

§ 456. 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. <

Showing
cause against
judgment.

§. 457. He may show for cause against the judgment :

1st. 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 five hundred and eighty-four to five hundred and eighty-seven, both inclusive. If upon the trial of that question the Jury find that he is of sound mind, judgment shall be pronounced ; and 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 five hundred and ninety-one, he shall be brought before the Court for judgment :

2d. 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.

Judgment to
be rendered.

§ 458. If no sufficient cause be alleged, or appear to the Court why judgment should not be pronounced, it shall thereupon be rendered.

§ 459. 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 conviction of more than one offence.

§ 460. 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. Judgment to a fine.

§ 461. A judgment that the defendant shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action. Judgment to be a lien.

§ 462. When judgment upon a conviction is rendered, the Clerk shall enter the same in the minutes, stating briefly the offence for which the conviction had 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 [or] demurrer; Third, a copy of the minutes of any challenge which may have 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 the judgment; Sixth, the bill of exceptions, if there be one; Seventh, the written charges asked of the Court, if there be any. Entry of judgment.
Record.

CHAPTER II.

The Execution.

§ 463. Where a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officers whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof except where judgment of death is rendered. Authority for execution.

§ 464. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action. On judgment for a fine.

§ 465. If the judgment be imprisonment or a fine and imprisonment until it be satisfied, the defendant shall be forthwith committed to the custody of the proper officer, and by him detained until the judgment be complied with. The like, with imprisonment.

§ 466. When the 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. On judgment of death.

§ 467. The Judge of a Court at which a conviction requiring judg- Statement

of conviction
to Governor.

ment 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.

Proceeding
thereon.

§ 468. 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.

Who may
suspend
execution
of judgment
of death.

§ 469. No Judge, Court, or officer other than the Governor can suspend the execution of a judgment of death, except the Sheriff as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the Appellate Court and any Judge thereof in vacation may suspend the execution until the appeal is heard and determined.

Inquiry
into sanity
of defendant.

§ 470. 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.

Proceedings
on such inquiry.

§ 471. 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 in like manner as disobedience to process issued by that Court.

Certificate
of inquisition.

§ 472. 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.

Effect of
finding
of inquisition.

§ 473. 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 Court by which the judgment was rendered, directing the execution of the judgment.

The like.

§ 474. 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 appropriating a day for the execution of the judgment.

Inquiry
into pregnancy
of female
convicted.

§ 475. If there be good reason to suppose that a female, on 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 four hundred and seventy-one and four hundred and seventy-two shall govern the proceedings upon the inquisition.

Effect of inquiry.

§ 476. 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.

§ 477. 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.

§ 478. If for any reason a judgment of death shall not have been executed, and the same remain in force, the Court 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. Order to bring defendant before Court.

§ 479. 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 for execution of judgment.

§ 480. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead. Death penalty, how inflicted.

TITLE IV.

OF APPEALS.

CHAPTER I.

Appeals when allowed, and how taken.

§ 481. The party aggrieved in a criminal action, whether that party be the people or defendant, may appeal as follows; Appeal to and from what courts.

1st. To the Court of Sessions of the County from a final judgment of a Justice's, Recorder's, or Mayor's Court.

2d. To the District Court of the County from a final judgment of the Court of Sessions, or from an order granting or refusing a new trial in an action or proceeding commenced in the Court of Sessions, or which affects a substantial right in such action or proceeding.

3d. To the Supreme Court from a final judgment of the District Court in all criminal cases amounting to felony, whether such judgment be rendered in an action or proceeding originally commenced in the District Court, or transmitted from the Court of Sessions, or brought into the District Court on appeal. Also, from an order of the District Court granting or refusing a new trial, or which affects a substantial right in a criminal case, amounting to felony, commenced in the said District Court.

§ 482. The appeal to the District Court from the Court of Sessions, and to the Supreme Court from the District Court, can be taken on questions of law alone. Appeal on questions of law only.

§ 483. The party appealing shall be known as the appellant, and the adverse party as the respondent. Parties, how designated.

§ 484. Upon the appeal, any decision of the Court in an intermediate order or proceeding, forming a part of the record, may be revised. What may be revised.

- § 485. An appeal must be taken within one year after the judgment was rendered.
- Within what time.
- § 486. 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 appellant appeals from the judgment.
- How taken.
- § 487. 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.
- § 488. 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 due notice in some newspaper, and for such time as it may deem proper.
- Appeal, by people.
- § 489. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.
- When perfected.
- § 490. 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.
- § 491. 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 abide, as prescribed in section five hundred and fourteenth.
- The like.
- § 492. 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.
- Copy record to be transmitted to appellate court.

CHAPTER II.

Dismissing an Appeal for Irregularity.

- § 493. If the appeal be irregular in any substantial particular, but not otherwise, the Appellate Court may, on any interim or motion of the respondent upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.
- Dismissal of appeal, for irregularity.
- § 494. The Court may also upon like motion dismiss the appeal, if the return be not made as provided in section four hundred and ninety-two, unless for good cause it enlarge the time for that purpose.
- Or for want of a return.

CHAPTER III.

Argument of the Appeal.

- § 495. All appeals in criminal cases shall be tried and determined at the first term of the Appellate Court after the record is filed.
- Appeals, when determined.

§ 406. 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. Judgment, how given.

§ 407. Upon the argument of the appeal, if the offence be punishable with death, two Counsels 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 closing argument. Number of counsel.

§ 408. The Defendant need not appear in the Appellate Court. Defendant's appearance.

CHAPTER IV.

Judgment upon Appeal.

§ 409. After hearing the appeal, the Court shall give judgment without regard to technical error or defect, which does not affect the substantial rights of the parties. Technical errors.

§ 500. The Appellate Court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. Extent of judgment.

§ 501. When a new trial is ordered, it must be directed to be had in the Court of the County from which the appeal was taken. New trial.

§ 502. 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. Reversal of judgment.

§ 503. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the Appellate Court may direct. Judgment of affirmance.

§ 504. 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. Entry of judgment, &c.

§ 505. The papers returned to the Appellate Court shall there remain of record, and shall not be remitted to the Court below. Papers not to be remitted.

§ 506. After the certificate of judgment has been remitted, as provided in section five hundred and fourth, 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. When jurisdiction ceases.

TITLE XI.

OF BAIL.

CHAPTER I.

In what Cases the Defendant may be admitted to Bail.

§ 507. Admission to bail is the order of a competent Court or Admission to bail defined

Magistrate, that the defendant be discharged from actual custody upon the taking of bail.

Taking
of bail defined.

§ 508. The taking of bail consists in the acceptance by a competent Court or Magistrate, or the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of this State a specified sum.

When
defendant may
be admitted
to bail.

§ 509. A person charged with an offence may be admitted to bail before conviction, as follows:—First, as a matter of discretion in all cases where the punishment is death. Second, as a matter of right in all other cases.

When not.

§ 510. 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.

Bail
in discretion
of Court.

§ 511. 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.

Bail, after
conviction.

§ 512. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: First, as a matter of right where the appeal is from a judgment imposing a fine only. Second, a matter of discretion in all other cases.

Before
conviction.

§ 513. Before conviction a defendant may be admitted to bail: First, for his appearance before the magistrate, on the examination of the charge before being held to answer. Second, to appear at the Court to which the Magistrate is required, by section one hundred and seventy-six, to return the depositions and statement upon the defendant being held to answer after examination. Third, after indictment, either before the bench warrant issued for his arrest, or upon any order of the Court committing or enlarging the amount of bail, or upon his being surrendered 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.

On appeal.

§ 514. After conviction and upon an appeal the defendant may be admitted to bail as follows: First, if the appeal be from a judgment imposing a fine only on the recognizance 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. Second, if judgment of imprisonment have been given that he will surrender himself in execution of the judgment, upon its being confirmed or modified, or upon the appeal being diminished.

CHAPTER II.

Bail—upon being held to answer before Indictment.

Who may
admit to bail.

§ 515. When the defendant has been held to answer as provided in section one hundred and sixty-four, the admission to bail may be by the Magistrate by whom he is so held or by any Magistrate who has the power to issue the writ of Habeas Corpus.

§ 516. Bail is put in by a written recognizance 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. 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. (stating their place of residence), 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 hold 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 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).

§ 517. The qualifications of bail are as follows: First, Each of them must be a resident and a householder or freeholder within the State. Second, They must each be worth the amount specified in the recognizance exclusive of property exempt from execution, but the Court or Magistrate, on taking bail, may allow two or more bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

§ 518. 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 517.

§ 519. 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 Indictment before Conviction.

§ 520. 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 or in which he is arrested for the purpose of giving bail as prescribed in sections two hundred and sixty-fifth and two hundred and sixty-eighth.

§ 521. 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 two hundred and sixty-third.

§ 522. 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.

§ 523. The bail must be put in by a written recognizance executed by two sufficient sureties (with or without the defendant in the discre-

tion 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 Court of Sessions 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 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)."

Qualification,
&c., of bail.

§ 524. The provisions contained in Section five hundred and seventeenth to five hundred and nineteenth, 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.

Order to
admit to bail.

§ 525. In the cases in which the defendant may be admitted to bail upon an appeal as provided in section five hundred and twelfth, the order admitting him to bail may be made by any Magistrate having the power to issue a writ of Habeas Corpus.

Notice of
application
to be admitted
to bail.

§ 526. 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.

Qualification,
&c., of bail.

§ 527. The bail must possess the qualifications and must be put in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate Court upon the appeal.

CHAPTER V.

Deposit instead of Bail.

Deposit in
lieu of bail.

§ 528. 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, in
exonerated
of bail.

§ 529. If the defendant have given bail, he may at any time before the forfeiture of the recognizance in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail shall be exonerated.

§ 530. 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.

Disposal of deposit.

CHAPTER VI.

Surrender of the defendant.

§ 531. At any time before the forfeiture of their recognizance, 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 defendant.

§ 532. A certified copy of the recognizance 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. Second. Upon the recognizance 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 with a copy of the recognizance 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.

Bail, how exonerated.

§ 533. For the purpose of surrendering the defendant, the bail at any time before they are discharged, and at any place within the State, may themselves arrest him, or by a written authority endorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

Bail may authorize arrest of defendant.

§ 534. 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 Attorney with a copy of the certificate.

Surrender, after deposit.

CHAPTER VII.

Forfeiture of the Recognizance, or of the deposit of money.

§ 535. 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 recognizance or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

Recognizance, forfeited.

§ 536. If at any time before the final adjournment of the Court the defendant appear and satisfactorily excuse his neglect, the Court may

Discharge of forfeiture.

direct the forfeiture of the recognizance or the deposit to be discharged upon such terms as may be just.

Action on
recognizance.

§ 537. 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 recognizance.

Payment
of deposit
to County
Treasurer.

§ 538. If by reason of the neglect of the defendant to appear, as provided in section five hundred and thirty-fifth, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in section five hundred and thirty-sixth, 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

Re-commitment
of defendant.

§ 539. 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 five hundred and thirty-fifth :

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 two hundred and sixty-ninth.

Order for
re-commitment.

§ 540. 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.

Arrest, on
such order.

§ 541. 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.

The like.

§ 542. If the order recite as the grounds 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.

Court may fix
amount of bail.

§ 543. 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 affixed, which shall be specified in the order.

§ 544. 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 the defendant to answer before an indictment, as prescribed in section five hundred and fifteenth, or by any other Magistrate to be designated by the Court.

Who may take bail.

§ 545. When bail is taken upon the recommitment of the defendant, the recognizance 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 (insert the sum in which the defendant is admitted to bail).

Form of recognizance.

§ 546. The bail must possess the qualifications, and must be put in, in all respects, in the manner heretofore prescribed.

Qualification of bail.

TITLE XII.

OF MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

Compelling the Attendance of Witnesses.

§ 550. 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.

District Attorney may issue subpoenas.

§ 551. 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.

Clerk may issue subpoenas.

§ 552. 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. B., District Attorney," or "by order of the Court, L. M., Clerk," as the case may be).

Form of subpoena.

The like. § 553. 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, how served. § 554. 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.

The like. § 555. The service of a subpoena shall be by showing the original to the witness personally, and informing him of the contents.

Payment to witnesses. § 556. 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 recognizance, 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.

The like. § 557. 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.

Attending as witness, out of County of residence. § 558. 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 Attorney or prosecutor or of the defendant or his counsel, stating that he believes the 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 subpoena. § 559. 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.

Forfeiting recognizance. § 560. Where a witness has entered into a recognizance to appear, as provided in section one hundred and seventieth, upon his failure to do so his recognizance shall [be] forfeited in the same manner as recognizances of bail.

Penalty for disobeying subpoena. § 561. 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 examine witness before trial. § 562. When a defendant has been held to answer a charge for a public offence he may either before or after an indictment have witnesses examined on his behalf, as prescribed in this chapter and not otherwise.

§ 563. 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. Conditionally.

§ 564. 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. Commission defined.

§ 565. The commissioner shall either be a District Judge, County Judge, County Clerk, or Notary Public of the County to which the commission is issued. Who may be commissioner.

§ 566. The application must be made upon affidavit, showing: First, the nature of the offence charged. Second, the state of the proceedings in the action. Third, the name of the witness, and that his testimony is material to the defence of the action. Fourth, 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 not be able to attend the trial. Application for commission.

§ 567. 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. To whom made.

§ 568. 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. Order, when granted.

§ 569. 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. Stay of proceedings.

§ 570. 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. Interrogatories.

§ 571. The District Attorney may in like manner serve upon the defendant or his counsel cross-interrogatories to be annexed to the commission with the like notice. Cross-interrogatories.

§ 572. In the interrogatories, either party may insert any questions pertinent to the issue. What inserted in interrogatories.

§ 573. 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. Allowance of interrogatories.

Directions
to execute
commission.

§ 574. 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.

Commission,
how executed.

§ 575. The commissioner, unless otherwise specially directed, may execute the commission as follows: First, 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. Second, he shall cause the examination of the witness to be reduced to writing. He shall write the answers of the witnesses 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 unless it is made conformable to what he declares is the truth. Fourth, 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. Fifth, 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. Sixth, 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, seal, and address the same as directed on the commission. Seventh, if there be a direction on the commission to return it by mail, the 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.

What to
be annexed.

§ 576. A copy of the last section must be annexed to the commission.

Return of
commission.

§ 577. 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 hand of the commissioner, and that it has not been opened or altered since he received it.

The like.

§ 578. 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.

Filing return.

§ 579. 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.

§ 580. 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 otherwise directed. Return by mail.

§ 581. 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. Return open to inspection.

§ 582. 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 answer in the deposition, as if the witness had been examined orally in Court. Reading depositions on trial.

CHAPTER III.

Inquiry into the Insanity of the Defendant before trial or after conviction.

§ 583. 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 of insane persons.

§ 584. 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 be submitted to the regular jury, or may order a jury to be summoned as prescribed in section three hundred and forty-one, to inquire into the fact. Inquiry into defendant's sanity.

§ 585. 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. The like.

§ 586. The trial of the question of insanity shall proceed in the following order: Insanity, how tried.

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 shall be restricted to one counsel on each side :

6th. The Court shall then charge the jury, if requested by either party.

Charging jury.

§ 587. The provisions of section three hundred and ninety-nine, in respect to the charge of the Court to the jury upon the trial of an indictment, shall apply to the question of insanity.

Defendant found sane.

§ 588. 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.

§ 589. If the jury find that the defendant is insane, the trial or judgment shall be suspended till 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 redelivered by such person to the sheriff.

Exoneraton of bail.

§ 590. 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.

Return to sanity.

§ 591. If the defendant be received by the person so appointed, he must be detained by him until he becomes 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 detaining defendant.

§ 592. 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, when to be dismissed.

§ 593. 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.

Indictment, when to be dismissed.

§ 594. 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.

§ 595. 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 recognizance of bail for his appearance to answer the charge at the time to which the action is continued.

Continuance of action.

§ 596. 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 dismissal of prosecution.

§ 597. The Court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order any action or 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 of dismissal to be entered on minutes.

§ 598. Neither the Attorney General or the District Attorney shall hereafter discontinue or abandon a prosecution for a public offence, except as provided in the last section.

Discontinuance by Attorney General, or District Attorney.

§ 599. An order for the dismissal of the action, as provided in this chapter, shall be a bar to any other prosecution for the same offence, if it be a misdemeanor, but it shall not be a bar if the offence be a felony.

Bar to future prosecution.

CHAPTER V.

Entitling Affidavits.

§ 600. 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.

Entitling affidavits.

CHAPTER VI.

Errors and Mistakes in Pleadings and other Proceedings.

§ 601. Neither a departure from the form or mode prescribed by this Act 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.

Errors not to invalidate.

CHAPTER VII.

Disposal of Property, Stolen or Embezzled.

§ 602. 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.

Custody of stolen property.

§ 603. On satisfactory proof of the title of the owner of the property, the Magistrate to whom the information is laid, or who shall examine

Return of property to owner.

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.

The like. § 604. If the 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.

The like. § 605. If property stolen or embezzled have not been delivered to the owner, the Court before which a conviction is held for stealing or embezzling, may, on proof of his title, order it to be restored to the owner.

Unclaimed property. § 606. 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 the 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.

Receipt for property taken from defendant. § 607. When money or such other property is taken from a defendant arrested upon a charge of a public offence, the officer taking it shall at the time give public 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 depositions and statement must be sent, as provided by sections one hundred and seventy-six.

PART V.

OF PROCEEDINGS IN JUSTICES', RECORDERS', AND MAYORS' COURTS.

Proceedings to be commenced by complaint. § 608. All proceedings and actions before a Justice's, Recorder's, or Mayor's Court, for a public offence, of which said Courts have jurisdiction, shall be commenced by complaint setting forth the offence charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint.

Examination of complaint. § 609. When the complaint is laid before the Justice, Mayor, or Recorder, of the commission of a public offence, of which the Courts held by them have jurisdiction, he must examine on oath the complainant or prosecutor, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Warrant of arrest. § 610. If the Justice, Mayor, or Recorder, as the case may be, be satisfied therefrom that the offence complained of has been committed, he shall issue a warrant of arrest, which 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. Complaint upon oath having been this day made before me (Justice of the Peace, Mayor, or Recorder, as the case may be) 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 me forthwith at (naming the place).

“ Witness my hand and seal, at this day of
A. D., A. B.”

§ 611. On being arrested the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer, or denial, may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown, an adjournment shall be granted. If an adjournment be granted, the defendant may be held for bail. Proceedings on arrest.

§ 612. The defendant must in all cases be personally present before the trial shall proceed. Defendant to be present.

§ 613. A docket shall be kept by the Justice, Mayor, or Recorder, or in the Recorder's Court, by the Clerk of the Court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the Court therein. Justice's docket.

§ 614. The defendant shall be entitled, if demanded by him, to a Jury trial. The formation of the Juries is provided for by special statute. Jury trial.

§ 615. The same challenges may be taken by either party to the panel of Jurors, or to any individual Juror, as may be taken on the trial of an indictment for a misdemeanor; but the challenge shall in all cases be tried by the Court. Challenge to jurors.

§ 616. The Court shall 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.” Oath to jurors.

§ 617. 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 hear proofs, &c.

§ 618. The Court shall decide all questions of law which may arise in the course of the trial; but shall give no charge with respect to matters of fact. Court to decide questions of law.

§ 619. 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; 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 he [they] have so agreed.” Consideration of cause, by Jury.

- General verdict.** § 620. The verdict of the Jury shall, in all cases, be general.
- Delivery of verdict.** § 621. 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.
- Verdict against some of defendants.** § 622. 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.** § 623. 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 discharges them.
- New trial.** § 624. 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.
- Judgment.** § 625. 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 to pay fine.** § 626. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be paid or satisfied.
- Acquittal.** § 627. 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.
- Prosecutor to pay costs.** § 628. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, 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 in a civil action.
- Entry of verdict.** § 629. When a verdict is rendered, it shall be immediately entered upon the minutes.
- Appointment of time to render verdict.** § 630. 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 or 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.
- Motion for new trial.** § 631. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.
- New trial, when granted.** § 632. 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. When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

§ 633. The motion in arrest of judgment may be founded on any substantial defect in the complaint, 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.

§ 634. 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 to be pronounced.

§ 635. 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. Defendant to be discharged.

§ 636. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the Sheriff, Marshal, or other officer, which shall be a sufficient warrant for the execution of the same. Judgment of imprisonment.

§ 637. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine shall be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid. Imprisonment until payment of fine.

§ 638. Upon the payment of the fine the officer 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 or City Treasurer, according as the offence is prosecuted in a Justice's, or in a Mayor's, or Recorder's Court. Discharge, on paying fine.

§ 639. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section. Application of fine.

§ 640. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the District Court. Defendant failing to appear.

§ 641. In case of failure to appear for judgment, the Court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears or is brought before it. The lko.

PART VI.

OF SPECIAL PROCEEDINGS.

TITLE I.

Of Search Warrants.

Search
warrant defined.

§ 642. 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.

When
it may issue.

§ 643. 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.

The like.

§ 644. 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.

Complainant
to be examined
on oath.

§ 645. 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.

What
deposition
to set forth.

§ 646. The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

When
magistrate to
issue warrant.

§ 647. 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.

Form
of warrant.

§ 648. 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 been taken) that (stating the grounds of the application according to section six hundred and forty-four, or if the affidavit be not positive that there is probable cause for believing that, stating the ground of the application in the same manner) you are therefore commanded in the day time (or at any time of the day or night as the case may be, according to section six hundred and fifty-four) 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).

§ 649. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution. How served.

§ 650. 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. The Hkz.

§ 651. 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. The like.

§ 652. The Magistrate must insert a direction in the warrant that it be served in the daytime, 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. When to be served.

§ 653. 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. Return of warrant.

§ 654. 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. Receipt for property taken.

§ 655. When the property is delivered to the Magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections six hundred and three to six hundred and seven, both inclusive. Disposition of property.

§ 656. 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." Inventory of property taken.

§ 657. 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. Copy inventory to defendant.

§ 658. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto. Examination.

§ 659. The testimony given by each witness must be reduced to writing, and certified by the Magistrate. Testimony, how taken.

§ 660. If it appear that the property taken is not the same as that Property to be restored.

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, &c.,
to be returned
to sessions.

§ 661. The Magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the 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.

Maliciously
procuring
warrant.

§ 662. 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.

Officer exceeding
his authority.

§ 663. 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.

Defendant may
be searched.

§ 664. 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 in 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.

TITLE II.

OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Fugitives
may be
delivered up.

§ 665. 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.

Apprehension
of fugitive.

§ 666. 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.

Proceeding
or arrest.

§ 667. 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.

Commitment
of fugitive.

§ 668. 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 cus-

today 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.

§ 669. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the Governor of this State. May be admitted to bail

§ 670. Immediately upon the arrest of the person charged, the magistrate shall give notice to the District Attorney of the County, of the name of the person, and the cause of the arrest.

§ 671. 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. Notice to authorities, having jurisdiction.

§ 672. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the Governor of this State. When fugitive to be discharged.

§ 673. 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 recognizance of bail to be cancelled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance. Return of proceedings to sessions.

§ 674. 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. Expense of demanding fugitive.

TITLE III.

OF PROVISIONS APPLICABLE TO CRIMINAL PROCEEDINGS GENERALLY.

CHAPTER I.

Comprising certain Public Offences, by leave of the Court.

What offences may be compromised.

§ 675. When a defendant is held to answer on a charge of 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 when it is committed: First, By or upon any officer of Justice, while in the execution of the duties of his office. Second, Riotously. Third, With an intent to commit a felony.

Order after compromise.

§ 676. 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.

Bar to future prosecution.

§ 677. The order authorized by the last section shall be a bar to another prosecution for the same offence.

What not to be compromised.

§ 678. 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.

Fines, &c., how applied.

§ 679. 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.

Officer, &c., neglecting to account for fines, &c.

§ 680. 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.

§ 681. The term "oath" where used in this Act shall be deemed to include an affirmation.

§ 682. When a 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. Signature.

§ 683. 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. Order to bring prisoner before Court.

§ 684. Process issued by a Court or Magistrate shall be executed according to its terms. Execution of process.

§ 685. The term "Magistrate" when used in this Act, signifies any of the officers mentioned in section one hundred and third. "Magistrate" defined.

§ 686. The term "peace officer" when used in this Act, signifies any one of the officers mentioned in section one hundred and tenth. "Peace officer" defined.

PART VII.

Of the Costs in Criminal Actions and Proceedings.

§ 687. The only costs or fees allowed in a criminal action or proceeding shall be such as are prescribed by this Act. Costs and fees.

§ 688. The Magistrate, if he be a Justice of the Peace, or a Mayor, or a City Recorder, may receive for all the proceedings before him, and including his decision upon the question of discharging the defendant or holding him to answer, three dollars; for taking bail after a commitment by another Magistrate, one dollar. Of magistrates.

§ 689. The Clerk may receive on the trial of an issue, where the charge is felony, five dollars; on the trial of an issue, where the charge is a misdemeanor, two dollars; entering judgment, one dollar. 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. Of clerks.

§ 690. 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. Of peace officer.

§ 691. The Sheriff may also receive for summoning a panel of forty-eight jurors, twenty dollars; for summoning a panel of thirty-six jurors, fifteen dollars; for summoning a panel of twelve jurors, ten dollars; for executing a sentence of death, fifty dollars. Each juror shall receive for each day's attendance, two dollars, to be paid on the certificate of the Clerk, which shall be issued during the term. Of Sheriff.
Of Jurors.

§ 692. The District Attorney shall receive on each conviction for a felony, when the punishment is death, fifty dollars; on each conviction for Of District Attorney.

other felony, twenty-five dollars; on each conviction for a misdemeanor, fifteen dollars; for collecting money on a forfeited recognizance, ten per cent. on the amount collected.

Of Justices.

§ 693. The fees allowed to Justices of the Peace, and other officers having the jurisdiction and authority of Justices of the Peace, Clerks, Peace Officers, and District 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.

When County charges.

§ 694. 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.

Salaried officers to account for fees.

§ 695. Whenever any officer, except District Attorneys, mentioned in this act, receives a salary, he shall account for and pay over to the Treasurer of the City of which he is an officer, all fees collected by him under the provisions of this Act.

Repeal of former act.

§ 696. The Act entitled "An Act to regulate proceedings in Criminal Cases," passed April twentieth, eighteen hundred and fifty, is hereby repealed, but such repeal shall not affect any action or proceeding had or commenced before this Act shall take effect.

When act to take effect.

§ 697. This Act shall take effect the first day of July next.

Chap. 30.

AN ACT concerning Jurors.

Passed April 28, 1851.

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

ARTICLE I.

The Qualification and Exemption of Jurors.

Who may be a Juror.

§ 1. A person shall not be competent to act as a Juror, unless he be:

- 1st. A Citizen of the United States.
- 2d. An elector of the County in which he is returned.
- 3d. Over twenty-one and under sixty years of age, and
- 4th. In the possession of his natural faculties.
- 5th. Nor shall any person be competent to act as a Juror, who

has been convicted of a felony or a misdemeanor, involving moral turpitude.

Who exempt from serving as juror.

§ 2. A person shall be exempt from liability to act as a Juror if he be:

- 1st. A Judicial officer.

2d. Any other civil officer of this State or of the United States, whose duties are at the time inconsistent with his attendance as a Juror.

3d. An Attorney or Counsellor.

4th. A Minister of the Gospel, or a Priest of any denomination.

5th. A Teacher in a College, Academy, or School.

6th. A practising Physician.

7th. An officer, keeper, or attendant of an Alms' House, Poor House, Hospital, Asylum, or other charitable institution, created by or under the laws of this State.

8th. A Captain, Mate, or other officer, or any person employed on board of a steamer, vessel, or boat, navigating the waters of this State.

§ 3. A person may be excused from acting as a Juror, when for any reason his interests, or those of the public, will be materially injured by his attendance, when his own health, or the death or sickness of a member of his family, requires his absence. The like.

ARTICLE II.

Manner of forming the Jury List.

§ 4. The Court of Sessions of each County shall, on the second Monday of July of the present year, and thereafter on the second Monday of October in each year, make from the assessment roll of the County two lists, the one to be denominated the Grand Jury list, and the other the Trial Jury List, containing the names of persons to serve as Grand Jurors and Trial Jurors, until new lists be returned. Jury lists to be made.

§ 5. In preparing the Jury List, the names of those persons only shall be selected who are known or believed to be possessed of the qualifications prescribed in this act, and not entitled to exemption. Lists, how prepared.

§ 6. The Grand Jury list shall contain the names of not more than four hundred persons. The Trial Jury list shall contain the names of not over twelve hundred persons. They shall be apportioned among the different townships and cities, according to the number of persons on the assessment roll. What lists to contain.

§ 7. The Jury Lists shall each contain the christian and surname at length, and the place of residence and occupation of each person named therein, and shall be certified by the Judges of the Court, and filed with the Clerk of the County, within one week after the day on which it is required to be prepared. The like.

§ 8. The County Clerk shall keep in his office four sufficient boxes carefully secured, one of which shall be denominated the Grand Jury box, one the box of drawn Grand Jurors; one the Trial Jury box, and one the box of drawn Trial Jurors. Boxes to be kept by Clerk.

§ 9. On receiving the jury lists the Clerk shall destroy all ballots remaining in all the boxes, and shall prepare and deposit in the Grand Jury box separate ballots containing the name, place of residence, and occupation of each person embraced in the Grand Jury list, and shall prepare and deposit in the Trial Jury box separate ballots containing Duty of Clerk, on receipt of lists.

the name, place of residence, and occupation, of each person embraced in the Trial Jury list. Each ballot shall be folded as nearly alike as possible, so that the name cannot be seen.

ARTICLE III.

Manner of drawing and summoning Grand Jurors.

Drawing of
Grand Jury.

§ 10. There shall be drawn from the Grand Jury box, previous to each term of the Court of Sessions, the names of twenty-four persons to serve as Grand Jurors at such term.

Where to
take place.

§ 11. The drawing shall take place at the office of the County Clerk, not less than ten nor more than twenty days before the holding of the Court.

Notice
of drawing.

§ 12. At least two days' notice of the time and place of the drawing shall be given to the Sheriff of the County and to the County Judge, or to one of the Justices of the Peace of the County, before the time appointed for the drawing.

Who to
superintend
drawing.

§ 13. At the time appointed, the Sheriff or under Sheriff, and the Judge or Justice of the Peace upon whom such notice has been served as prescribed in the last section, shall attend at the office of the County Clerk to superintend the drawing.

The like.

§ 14. If the sheriff and one of the officers notified do not appear the Clerk shall adjourn the drawing to the next day, and shall by written notice request the delinquent officer to attend the drawing at that time. If the officers notified or either of them shall appear, the Clerk shall proceed in their or his presence to the drawing, and the Clerk shall adjourn the drawing from day to day until the attendance of at least one of said officers, when the drawing shall take place.

§ 15. The drawing 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 twenty-four 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 shall be drawn :

4th. If when the whole number of ballots required is drawn it shall satisfactorily appear that any person whose name is contained on any ballot is dead, or has become insane, or has removed from the county, that fact shall be entered in the minutes of the drawing, and the ballot containing the name shall be destroyed :

5th. Another ballot shall then be drawn in place of that destroyed, and the name contained thereon shall in like manner be entered in the minutes of the drawing, and the same proceedings shall be had as often as necessary to complete the requisite number :

6th. The minutes of the drawing shall then be signed by the Clerk and the attending officer, and forthwith filed in the Clerk's office.

§ 16. A list of the names of the persons drawn as Grand Jurors, with their places of residence and occupations respectively, shall then be made and certified by the Clerk and delivered without delay to the Sheriff of the County. Certified list of names drawn.

§ 17. At least five days before the opening of the Court, the sheriff shall summon the persons named in the list delivered to him to attend the Court by giving written notice to each of them personally, or by leaving the same at his place of residence with some person of suitable age and discretion. Summoning jury.

§ 18. The sheriff shall also return the lists to the Court at its opening, specifying the persons summoned and the manner in which each was notified. List to be returned to Court.

§ 19. At the opening of the Court the list shall be called over and the Court may impose a fine not exceeding one hundred dollars for each day a Grand Juror shall without cause neglect to attend. Jurors not attending.

§ 20. If however the notice to attend was not personally served, the fine shall not be imposed until upon an order to show cause an opportunity has been afforded the juror to be heard. Juror to be heard, before being fined.

§ 21. When of the persons summoned twelve or any number over twelve and not exceeding eighteen attend, they shall constitute the Grand Jury. If more than eighteen 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 from which he shall then draw eighteen names, and the persons whose names are thus drawn shall constitute the Grand Jury. Grand Jury, how formed.

§ 22. If of the persons summoned less than twelve attend, they shall be placed on the Grand Jury, and the Court shall order the Sheriff to summon from the body of the County, but not from the bystanders, a sufficient number of persons to complete the Grand Jury. When sufficient jurors do not attend.

§ 23. The County Clerk shall preserve the ballots containing the names of the Grand Jurors summoned until after the adjournment of the Court, and shall then, Duty of Clerk.

1st. Destroy the ballots containing the names of those who were discharged for the want of the requisite qualifications, or by reason of an exemption.

2d. Deposit in the Grand Jury box the ballots containing the names of those who did not appear or were discharged for any other reason than those mentioned in the last subdivision; and,

3d. Deposit in the box of drawn Grand Jurors the ballots containing the names of those who attended and served.

§ 24. When a person drawn as a Grand Juror has attended and performed his duty at one term of the Court during the year for which his name was returned, he shall not again be required to serve as a Grand Juror during that year, except as provided in the next section. Juror to serve only one term a year.

§ 25. If a new Grand Jury list be not returned to the County Clerk, Jurors drawn

from list of
previous year.

before the list for the year is exhausted, he shall draw the Grand Jurors from the box of drawn Grand Jurors, and persons so drawn shall be summoned and shall serve and shall be subject to the same penalties for neglect as if the year had not expired.

Court may order
additional jurors
to be summoned.

§ 26. If a challenge to the panel or to an individual Grand Juror be allowed, or if and as often as it becomes necessary from any other cause, the Court may order the Sheriff to summon, either immediately or for a day fixed, from the body of the County Court, but not from the bystanders, a sufficient number of persons, and whether their names be on the Grand Jury list or not, to complete the Grand Jury, or to form a new Grand Jury, as the case may be. The persons thus summoned shall be as competent Grand Jurors in all respects as if drawn and summoned as herein required, before the commencement of the term.

ARTICLE IV.

Trial Jurors and the Formation of Trial Juries, and Juries of Inquest.

Trial jury,
how drawn.

§ 27. A Trial Jury shall be drawn from the Trial Jury box of the County for every general term of the District Court, and for every term of the Court of Sessions held for criminal business.

The like.

§ 28. The Trial Jurors for the District Court and Court of Sessions shall be drawn and summoned in the same manner as Grand Jurors are required to be summoned by this Act, and the provisions of article three of this Act, as to the formation of Grand Juries, and the imposition of a fine upon Grand Jurors for non-attendance when summoned, and the discharge from further service for the year, after the performance of duty for one term and the disposition of the ballots at the end of the term, shall apply to the formation of Trial Juries and to Trial Jurors in those Courts, the word "trial" being substituted for "grand" in the sections of that article, and except that no Trial Jury shall consist of more than twelve Jurors.

Court may order
additional jurors
to be summoned.

§ 29. Where from any cause it becomes necessary during the term, the Court may order the Sheriff to summon, either immediately or for a day fixed from the citizens of the County, but not from the bystanders, a sufficient number of persons, and whether their names be on the Trial Jury List or not, to complete the Trial Jury or to form a new Trial Jury as the case may be. The persons thus summoned shall be as competent Trial Jurors in all respects as if drawn and summoned before the commencement of the term.

Jury for
Superior Court
of San Francisco.

§ 30. The Trial Juries for the Supreme Court of the City of San Francisco shall be formed in the manner prescribed in the eight succeeding sections.

Court
may direct to
be summoned.

§ 31. On the first or any subsequent day of the term, and as often as it may be necessary, the said Supreme Court shall, by an entry upon its minutes, direct an order to be issued to the Sheriff of the County of San Francisco, to summon from the citizens of the City of San Francisco

not less than twenty-four nor more than forty-eight persons to appear forthwith, or at such time as may be named.

§ 32. 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 a list of the names of the persons so summoned.

Summoning of.

§ 33. 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.

Enlarging time to return order.

§ 34. 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. 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.

Proceedings on return of order.

§ 35. 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. 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, how drawn.

§ 36. If there be not a sufficient number of the persons summoned to form one Jury, or if required two Juries, the Court may direct others to be summoned.

Other jurors may be summoned.

§ 37. At the end of the first week of the term, or at any subsequent time, the Court may discharge the whole Jury, and if there be two Juries in attendance, may discharge one or both of them; and whenever a Jury is discharged, another may be formed in the same manner as herein prescribed.

Discharging jury.

§ 38. A trial Jury shall be summoned for the County Court, and for the Probate Court, whenever specially ordered by those Courts. The trial Jurors shall be summoned and the trial Juries formed in the same manner as trial Jurors are required to be summoned, and trial Juries are required to be formed by this Act, for the Superior Court of the City of San Francisco, except that the Jurors for those Courts shall be summoned from the citizens of the County. All the provisions of this Act, as to Jurors for the Superior Court, the imposition of a fine for their non-attendance, their discharge, and the summoning of a new Jury, shall apply to Juries summoned for the County Court, and for the Probate Court.

Jury for County Court.

§ 39. A trial Jury shall be summoned for a Recorder's Court and for a Mayor's Court, from the citizens of their respective cities, and for a Justice's from the citizens of its city or township, whenever specially ordered by those Courts. The Jurors for a Recorder's or Mayor's Court shall be summoned by the Marshal of the city within which the

For Recorders', Mayors' and Justice's Courts.

Court is established, and the Jurors for a Justice's Court shall be summoned by its Constable.

Jurors, how summoned

§ 40. The Officer, when ordered by the Recorder's, Mayor's, or Justice's Court, shall immediately summon twelve persons as Jurors, by giving to each a verbal notice, requiring his attendance as a Juror, at the time and place specified in the order.

Officer's return of persons summoned.

§ 41. The Officer shall return to the Court a list of names of the persons summoned, with his certificate of the manner of service. The list shall be called over at the time appointed for the trial. If a sufficient number of competent and indifferent Jurors do not attend, or if any of them be excluded, exempted, or excused from any cause, the Justice, Recorder, or Mayor, as the case may be, shall direct the Officer to summon others from the vicinity, and not from the bystanders, sufficient to complete the Jury.

Juror not attending.

§ 42. The Justice, Recorder, or Mayor, before whose Court Jurors are summoned, may impose a fine not exceeding fifty dollars, for the neglect of a Juror, without reasonable cause, to attend.

The like.

§ 43. The Officer before whom a Jury of inquest is summoned may impose a fine upon any Juror for non-attendance, in the same manner, and subject to the same conditions, as Jurors may be fined for non-attendance in a Justice's Court.

Act, when to take effect.

§ 44. This Act shall take effect on the first day of July next.

Chap. 31.

AN ACT to exempt the Homestead and other Property from forced sale in certain cases.

Passed April 21, 1851.

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

Homestead exempt from execution.

§ 1. The Homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value the sum of five thousand dollars, to be selected by the owner thereof, shall not be subject to forced sale on execution or on any other final process from a Court, for any debt or liability contracted or incurred after thirty days from the passage of this act, or if contracted or incurred at any time in any other place than in this State.

To what exemption not to extend.

§ 2. Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien, or to any mortgage, lawfully obtained; but no mortgage, sale, or alienation of any kind whatever of such land by the owner thereof, if a married man, shall be valid without the signature of the wife to the same, acknowledged by her separately and apart from her husband: *Provided*, That the wife be a resident of this State, and that such signature

and acknowledgment shall not be necessary to the validity of any mortgage upon the land executed before it became the homestead of the debtor, or executed to secure the payment of the purchase money.

§ 3. Whenever any levy shall be made upon the land or tenements of a householder, whose homestead has not been selected and set apart, such householder may notify the officer at the time of making such levy with what he regards as his homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy. Officer to be notified of homestead.

§ 4. If the plaintiff in execution shall be dissatisfied with the lands and tenements selected and set apart as aforesaid, the matter shall be submitted to two appraisers, one to be selected by the plaintiff and the other by the defendant, who shall determine whether such land and tenements exceed in value the sum of five thousand dollars. If the appraisers so chosen cannot agree they shall appoint a third person to decide between them. If they cannot agree in the choice of a third person he shall be named by the officer. Appraisement of homestead.

§ 5. If the land selected as a homestead consist of a lot containing twenty-five hundred square yards or less, and the appraisers shall certify to the officer that such lot, together with the improvements thereon, exceeds in value the sum of five thousand dollars, the said officer may proceed to sell such excess or the whole at the option of the defendant in execution, in the manner provided in other cases for the sale of real property under execution. In case the excess only is sold, then such proceeds shall be applied to the satisfaction of the execution; and in case the whole amount of the property is sold, five thousand dollars of the proceeds of such sale shall be paid to the defendant in execution, and the excess shall be applied to the satisfaction of the execution: *Provided*, That no bid shall be received for a less sum than five thousand dollars. Sale of excess in value of homestead.

§ 6. In any case where the land selected and claimed as a homestead shall exceed in extent twenty-five hundred square yards, if the appraisers be of opinion that such land, together with the dwelling-house and its appurtenances, exceed in value the sum of five thousand dollars, they shall set apart a portion thereof, in a compact form, including the dwelling-house if possible, as the homestead; such homestead shall be, as near as may be, of the value of five thousand dollars, and the said appraisers shall cause the same to be surveyed. The expenses of such survey shall be chargeable on the execution and collected thereon. Setting apart portion of homestead.

§ 7. After the survey shall have been made the officer making the levy may sell the property levied upon and not included in the survey, as in cases of other sales of real estate under execution; and in giving a deed for the same he may describe it according to his original levy, excepting therefrom, by metes and bounds, according to the certificate of survey, the quantity set apart as aforesaid. Sale of part of homestead.

§ 8. The defendant in execution, at the time of making any levy, may also designate to the officer any article of personal property as being exempt from forced sale as specified in the act to regulate proceedings in Personal property exempt.

the Courts of Justice of this State: *Provided*, however, that nothing in this section shall be so construed as to exempt over and above that provided for in "Title Seven" "Chapter One" of "An Act to regulate proceedings in civil cases in Courts of Justice in this State."

Appraisers
to be sworn.

§ 9. Before proceeding to act, the appraisers mentioned in this Act shall be sworn by the officer to do justice between the parties. Their decision shall be delivered to the officer, shall be returned by him with the execution, and shall be conclusive between the parties, and for the protection of the officer against all liability. If the value of the real estate or personal property, as the case may be, do not exceed the amount made exempt by this Act, the cost of the proceedings shall be paid by the plaintiff in execution, otherwise by the defendant.

In case
of death
of owner
of homestead.

§ 10. The homestead and other property exempt from forced sale, upon the death of the head of the family, shall be set apart by the Probate Court for the benefit of the surviving wife and his own legitimate children, and in case of no surviving wife or his own legitimate children, for the next heirs at law: *Provided*, That the exemption as provided in this section shall not extend to unmarried persons, except when they have charge of minor brothers, or sisters, or both, or brothers' or sisters' minor children, or a mother, or unmarried sisters living in the house with them.

Exemption
not to extend
to unmarried
persons.

Not to sales
for taxes.

§ 11. Nothing in this Act shall be so construed as exempting any real or personal property from sale for taxes.

Chap. 32.

AN ACT to License Hawkers and Pedlers in this State.

Passed April 25, 1851.

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

Persons
not to hawk
goods without
a license.

§ 1. From and after the passage of this Act it shall not be lawful for any person or persons in this State to offer for sale any goods, wares, or merchandise, other than the growth, produce, or manufacture of this State in or upon the streets of any city or town, or upon the highway, until they shall have first applied for and obtained a license as hereinafter provided in this Act.

Hawking
without
a license.

§ 2. If any person shall be convicted of having offered for sale any goods, wares, or merchandise, other than the growth, produce, or manufacture of this State, in or upon the streets of any city or town, or upon the highway, without a license to do so, he shall be fined before any Justice of the Peace of this State, for the first offence, not less than ten dollars and not exceeding fifty dollars, and if convicted the second time not less than twenty dollars and not exceeding two hundred dollars, and be committed to jail until the fine in either case shall have been paid.

§ 3. It is hereby made the duty of the Clerk of the County Court in each of the Counties of this State, upon application being made to him, to grant and issue a license to any person applying for the same, granting them the right to offer and sell in the streets of the cities and towns and highways in this State goods, wares, and merchandise, setting forth in said license the character of goods to be sold.

County Clerk to issue licenses.

§ 4. For each and every license so issued the Clerk shall demand and receive the sum of fifteen dollars per month and two dollars for his own fees. It shall be the duty of the Clerk, on the first Monday of each month, to pay over to the County Treasurer all moneys collected by him for licenses issued as aforesaid, and take his receipt for the same; he shall also keep a book in which shall be entered the name of the party obtaining a license, the date issued, and setting forth character of goods to be sold, which book shall be open to the inspection of any and all citizens of the County.

License fees.

§ 5. It shall be the duty of the County Treasurer to pay over to the Treasurer of State, on or before the first Monday of January in each year, the half of the sums received for licenses as aforesaid; the other half remaining in the County Treasury for County purposes.

Application of fees

§ 6. It shall be the duty of the Sheriff and each one of the Constables of this State to demand and examine the license of any person or persons offering for sale any goods, wares, and merchandise in or upon the streets or highways as aforesaid, and whenever any person shall be found offering for sale any goods as aforesaid without a license, it shall be the duty of the officer to apprehend him or them and take them before some Justice of the Peace of said County, to be dealt with as this law directs; one half of the said fine shall be allowed and paid to the officer, and the other half paid into the County Treasury for County purposes.

Sheriffs and constables to examine licenses.

§ 7. The prohibition in this Act shall not extend to the sale of books, maps, charts, and stationery, and nothing in the preceding sections shall be deemed to impair the right of any incorporated city to grant licenses in the cases mentioned in this Act; their authority is confined to grant such licenses by its Act of Incorporation.

Exceptions from this act.

Chap. 33.

AN ACT concerning *Estray Animals*.

Passed May 1, 1851.

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

§ 1. Every person finding any stray horse, mare, colt, mule, jack, or jenny, or any number of these animals, upon his farm or premises shall, within five days, if said animal or animals remain on his farm or premises, go before some Justice of the Peace of his Township, and give under oath a full description of the marks and brands, color, and kind of

Finders of stray animals to describe same to Justice.

such animals, also the time and all necessary information that will lead to the cause of said animal or animals coming to his farm or premises that may have come to his knowledge; and that the marks and brands have not been altered since they came to his farm or premises: *Provided*, no animal shall be considered an estray, if the owner is known to the person finding it.

Justice to record such description.

§ 2. It shall be the duty of the said Justice to record the description as above required, together with the full information given by the taker up, and the Justice shall, within ten days, if the estray animals are not before proved by their proper owner, transmit a full transcript to the County Recorder of his County, and the said Recorder shall record the same in his estray book: said book shall be subject to examination by all persons making application to the Recorder, as also the estray books of the Justice of the Peace; and any person claiming and proving said stray animal or animals that have been posted by this Act shall have restitution of the property so claimed by paying all costs and such charges as may be awarded to the taker up by the Justice of the Peace of his County, if entitled to compensation under this Act.

Restitution to owner.

Penalty for violating this act.

§ 3. Any person knowing of any horse, mare, colt, mule, jack, or jenny, or any number of these animals running at large on his farm or premises, not knowing the proper owner, who neglects or refuses to comply with the requisitions of the foregoing sections, shall be subject to a fine not exceeding the value of the stock so neglected to be posted.

Using stray animals.

§ 4. No person shall be allowed any charges for the taking up of any animals described in the foregoing sections that has taken them into use or allowed it or them to be used by his consent, but the taker up shall be allowed to use said animal or animals within their County, and shall only be accountable for said estray animal or animals when taken out of the County in which they are posted, either by the taker up or by any other person with his consent, or for cruel or harsh treatment; in such cases the taker up shall be liable to the proper owner for all damages that may accrue thereby: *Provided*, that the taker up of any horse, mare, mule, jack, or jenny, shall not be made liable to any action for damages, by reason of taking either of these animals out of the County after the expiration of twelve months from the time said animal or animals were posted, but shall return the animal or animals to the proper owner or pay the value thereof when legally proved and charges paid as hereafter provided.

Duty of finder of stray cattle.

§ 5. Every owner, occupant, or superintendent of any farm in this State finding or knowing any stray cattle running on their farm or having knowledge of any stray sheep, goats, or hogs thereon, without knowing the proper owner, shall, within three months of the time of such knowledge, go before some Justice of the Peace of the proper Township, if said stray animals remain on his farm as aforesaid, and make oath of the time of their coming on the farm, their marks and brands, if any, and a full and fair description of such estrays, with such circumstances within his knowledge as may lead to the cause of their coming to the

farm. It shall be the duty of said Justice to record the same in full in his estray book. Any person failing or refusing to comply with the requisitions of the foregoing section shall be subject to a fine not exceeding the value of the stock so neglected to be posted, recoverable before any court having jurisdiction of the same.

§ 6. The owners of any stray animal which is legally taken up under the provisions of this Act shall not be permitted to take the lead or drive the same from the farm or possession of the person legally possessed of such animal, until proven and charges paid according to the provisions of this Act, and any person knowingly and wilfully violating the provisions of this section shall be subject to all the penalties that he would be subject to under the Statute law, provided he had no claim on said animal.

Removal of
stray animals
by owner.

§ 7. If any one shall remove any stray animal from any rancho contrary to the provisions of this Act, who shall not be the owner of the same, he shall be deemed guilty of a grand larceny.

By person,
not the owner.

§ 8. In all cases where services are performed by any officer or person under this Act, the same fees shall be allowed as are allowed for similar services under the "Act concerning water craft found adrift and lost money and property." All costs and charges accruing under this Act shall be paid by the person taking up the stray animal or animals, but shall be reimbursed by the owner upon proof and delivery of his property.

Fees
for services,
under this act.

§ 9. The Counties of San Diego, Santa Barbara, San Luis Obispo, Los Angeles, Monterey, Santa Cruz, Santa Clara, Marin, Sonoma, Mendocino, and Napa, are hereby excluded from the provisions of this Act.

Act
not to extend
to certain
counties.

Chap. 34.

AN ACT to Fund the Debt of the State.

Passed April 29, 1851.

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

§ 1. With a view to fund the present debt, and thereafter to collect the revenue of the State in gold and silver only, the Treasurer of the State of California shall cause to be prepared Bonds to the amount of seven hundred thousand dollars, in sums of five hundred dollars, bearing interest at the rate of seven per cent. per annum from the date of their issue. Three hundred and fifty thousand dollars of said Bonds shall be payable in the City of New York, on the first day of March, A. D. one thousand eight hundred and fifty-five, and the remaining three hundred and fifty thousand dollars shall be payable, also, in the City of New York, on the first day of March, A. D. one thousand eight hundred and sixty-one. The interest accruing on the said Bonds shall be due and payable on the first day of January next, after which time the interest

Bonds to
amount of
\$700,000 to
be prepared.

shall be due and payable on the first day of July and January of each year. The interest may be made payable either in the City of New York or at the office of the Treasurer of the State. Said Bonds shall be signed by the Governor and countersigned by the Comptroller, and endorsed by the Treasurer of the State, and shall have the Seal of the State affixed thereto.

Coupons,
for interest.

§ 2. Coupons for the interest shall be attached to each Bond so that the Coupon may be removed without injury or mutilation to the bond ; said Coupons shall be signed by the Treasurer of State, and it shall be his duty to advertise in one or more newspapers published in New York and San Francisco where the interest on said Bonds are made payable, at least twenty days immediately preceding the day on which the same shall be due, stating at what office or Banking house the said interest will be paid.

Record of
bonds issued.

§ 3. It shall be the duty of the Treasurer and Comptroller of the State each to keep a separate record of all such Bonds as may be issued, showing the number, date, and amount of each Bond, and to whom the same was issued.

Expense of
preparing bonds.

§ 4. The Treasurer shall pay out of any moneys in the Treasury, not otherwise appropriated, any and all expense that he may incur in having said Bonds prepared, the sum so paid out not to exceed two thousand dollars.

Creditors of
State to be
paid with
said bonds.

§ 5. From and after the passage of this act all persons having any indebtedness of this State, either in the form of bonds issued under the act of the Legislature of this State, entitled "An Act creating a temporary State Loan, approved February first, one thousand eight hundred and fifty, or of State warrants drawn by the Comptroller of this State upon the Treasurer, shall upon the presentation of the same to the Treasurer of the State of California, receive in exchange therefor a Bond or Bonds of the State of California, such as are provided for in the first section of this Act ; *Provided*, that the amount so presented shall not be less than five hundred dollars ; and *Provided*, that the said Bonds to be issued shall not be other than for the said sum of five dollars each. The Treasurer shall endorse on the back of each bond or warrant redeemed by him the date on which he redeemed the same, from whom received, and also keep a record of the same, giving the number of the bond or warrant, the date of the same, time when redeemed, and the amount.

Duty
of Governor
and Comptroller.

§ 6. It shall be the duty of the Governor and Comptroller to attend at least once in each month at the Treasurer's office, to examine all bonds and warrants received by the Treasurer as aforesaid, and to cause the same to be registered and cancelled in such manner as to prevent them from being reissued or put in circulation.

Revenue,
how to be
collected.

§ 7. From and after the first day of May next all the revenue of the State of every nature and description shall be collected in the legal currency of the United States, or gold dust at sixteen dollars per ounce, Troy weight : *Provided, however*, that in payment of the ordinary tax

for State purposes, the bonds issued under the aforesaid, "An Act entitled an Act creating a temporary State loan," shall be received as heretofore.

§ 8. From and after the first day of May next the moneys received into the State Treasury shall not be applied to the payment of State indebtedness that may have heretofore accrued, except as is herein provided. Application of moneys collected.

§ 9. In addition to the ordinary taxes for general State purposes, there shall this present year and annually thereafter, until the principal and interest of the said bonds to be issued shall be fully provided for by payment or otherwise as is hereinafter provided, be levied and collected in the same manner with the ordinary revenues of the State and by the same officers, a special tax to be called the interest tax of fifteen cents on each one hundred dollars' worth of taxable property, which tax shall be collected and paid over into the State Treasury in the legal currency of the United States or in gold dust at sixteen dollars per ounce, Troy weight only. The fund derived from this tax shall be applied only to the payment of the interest to accrue upon the bonds herein provided for: *Provided, however,* that should said fund furnish a surplus over and above what it requires for the payment of said interest, such surplus shall be turned over and paid into the sinking fund herein provided for. Interest tax to be levied.

§ 10. It shall be the duty of the Treasurer of this State to make certain arrangements for the payment of the interest on the said bonds when the same falls due at least sixty days before the time of payment; and in event that said interest fund is insufficient, the said Treasurer shall draw on the general fund for such purpose, and in the event that those funds prove inadequate, the said Treasurer is authorized and required to make such contracts and arrangements as may be necessary for the payment of said interest and the protection of the faith of the State. Provision for payment of interest.

§ 11. It shall be the duty of the said Treasurer to set apart a fund to be called the State Sinking Fund; into this fund shall be paid: State Sinking Fund.

1st. Any and all surplus of the interest as aforesaid.

2d. Any and all moneys received by the State of California from the United States Government on account of the Civil Fund.

3d. The proceeds of the sales of all lands now held or that may be hereafter acquired by this State in her own right, except those reserved by the Constitution for school purposes.

4th. Whatever surplus may remain in the General Treasury accruing from the sources specified in this act on the first day of May, A. D. one thousand eight hundred and fifty-two, and on the first day of May in every year thereafter, not otherwise appropriated by law; all of said payments to be continued until the said sinking fund shall be sufficient for the payment of the principal and interest of the bonds aforesaid.

§ 12. The moneys paid into the said sinking fund shall, as soon and as often as is practicable, be applied to the redemption of said bonds, or be Such fund, how applied.

converted by the Treasurer of this State into United States six per cent. stocks; and as soon as the United States Stocks belonging to the said sinking fund shall be equal to the entire issue of State Bonds under this Act, the payments to said sinking fund shall cease and all surplus remaining in said sinking fund shall be paid into the General State Treasury.

Account of
such fund.

§ 13. Full and particular account and record shall be kept by the Treasurer of the condition and business of said sinking fund, open at all times to the inspection of the Governor, Comptroller, and to any Committee appointed by the State Legislature or either branch thereof.

Credit of State
pledged for
payment of loan.

§ 14. The faith and credit of the State of California is hereby pledged for the payment of the said Bonds and the interest thereon, and that the provisions and appropriations in this act made and provided, shall be maintained and applied to the just payment of said Bonds and interest.

Employees to
give security.

§ 15. The Treasurer of the State having occasion to employ or trust any person or persons in or about the business of the said sinking fund, may take for his own security, and for the security of the State, bond and mortgage to be approved by the Governor to himself, which bond and mortgage to be approved by the Governor shall be good and sufficient in law, and may be prosecuted in the name of the obligee for his own use, or for the use and benefit of the State of California.

Abstract
of proceedings
under this act.

§ 16. The Treasurer of the State shall transmit to the Governor an abstract of all his proceedings under this act, with his annual report, to be by the Governor laid before the Legislature; and all books and papers pertaining to the matters provided for in this act shall at all times be open to the inspection of any party interested, or to any Committee of either branch of the Legislature, or a joint Committee of both.

Chap. 35.

AN ACT *making an appropriation for Office Rent and contingent expenses of Superintendent of Public Instruction.*

Passed May 1, 1851.

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

\$1,000
annually, for
public
instruction.

§ 1. The sum of one thousand dollars annually is hereby appropriated for the payment of office rent, Clerk's hire, and contingent expenses of the Superintendent of Public Instruction, which sum shall be paid by the State Treasurer out of any moneys not otherwise appropriated on the warrant of the Comptroller of State: *Provided* that the renting of an office shall not extend beyond the time that a suitable one is furnished at Vellejo.

Chap. 36.

AN ACT to amend "An Act defining the duties of State Printer, and fixing his compensation, passed March ninth, one thousand eight hundred and fifty."

Passed March 25, 1851.

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

§ 1. That in accordance with the last section of the "Act defining the duties of State Printer, and fixing his compensation," which was as follows: § 13. "On all work or printing done after the first day of January, one thousand eight 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;" the compensation to the State Printer be reduced forty per cent. on every description of work done from and after the passing of this Act.

Compensation to State Printer may be reduced.

Chap. 37.

AN ACT providing for the Disposition of certain Property.

Passed April 21, 1851.

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

§ 1. The State of California does hereby grant and release to the town of Martinez all the right, title, and interest of the said State in the lands covered by the waters of the Straits of Carquinez, lying opposite to said town, and bounded as follows: Beginning at a point where the north-eastern bank of Elambre Creek intersects with the line of ordinary high tide of the Straits of Carquinez; thence running in a north-eastern direction, and following the line of said high tide eighty rods; thence north-westerly, and as near as may be at right angles to said line of high tide, to the line of ordinary ship's channel; thence south-westerly, and following the line of ordinary ship's channel, one hundred and sixty rods; thence south-easterly, and as near as may be at right angles to said high tide mark, to ordinary high tide mark; thence north-easterly, along said ordinary high tide mark, to a point where said tide mark intersects with the south-western bank of said Elambre Creek; thence in a straight line to the place of beginning.

Release of certain State lands.

§ 2. The said property above described, and the proceeds thereof, shall be disposed of by the Trustees of said town and their successors

Disposition of such lands.

in office for the improvement of the said town, and for the benefit of commerce, by the construction of wharves, piers, and docks, and otherwise.

Such lands to be surveyed.

§ 3. Within three months from the passage of this Act the Trustees of said town shall cause the lands above described to be surveyed, and a map or plat of the same to be filed in the office of the County Recorder.

Chap. 38.

AN ACT to provide for the Payment of the Salary of the Quarter Master General.

Passed February 7, 1851.

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

Salary of Quarter Master General.

§ 1. The salary of Joseph C. Morehead, Quarter Master General of this State, shall be paid out of the "General Fund," according to law, from the commencement of the discharge of the duties of his office; to be paid by the Treasurer, out of any money not otherwise appropriated, on the warrant of the Comptroller of State, drawn for that purpose.

Chap. 39.

AN ACT prescribing Duties to the Secretary of State.

Passed May 1, 1851.

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

Tender, for supply of stationery, &c.

§ 1. It shall be the duty of the Secretary of State, two months previous to the meeting of each session of the Legislature, to advertise in a newspaper, printed at or nearest the seat of government, for sealed proposals for supplying the Legislature with stationery, fuel, and such other things necessary for the use of the Legislature, specifying in such advertisement the quantity and quality of each item deemed necessary.

Contract to lowest tender.

§ 2. One month previous to such meeting of the Legislature the proposals shall be opened in presence of the Secretary of State and Comptroller, and the contract shall be awarded to the lowest responsible bidder.

Payment for supply.

§ 3. The Secretary is hereby authorized to certify the accounts arising under this Act to the Comptroller, who shall draw his warrant upon the Treasurer for the same.

Chap. 40.

AN ACT to repeal "An Act concerning the office of State Assayer, Melter, and Refiner of Gold, and defining his Duties."

Passed January 28, 1851.

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

§ 1. That the Act entitled "An Act concerning the office of State Assayer, Melter, and Refiner of Gold, and defining his Duties," approved April 20, 1850, be, and the same is hereby repealed.

Chap. 41.

AN ACT to provide for the disposition of certain property of the State of California.

Passed March 26, 1851.

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

§ 1. All the lots of land situated within the following boundaries, according to the survey of the City of San Francisco, and the map or plat of the same now on record in the office of Recorder of the County of San Francisco, are known and designated in this Act as the San Francisco Beach and Water Lots; that is to say, beginning at the point where the eastern line of Simmons street intersects the southern boundary line of the city; thence northerly on the eastern line of Simmons street, to the southern line of South street; thence easterly on the southern line of South street to a point three hundred and seventy-five feet easterly from Simmons street; thence at right angles to South street, northerly to the eastern line of Hubbel street; thence easterly on the line of Hubbel street, two hundred and seventy-five feet; thence northerly at right angles to Hubbel street, to the southern side of Hooper street; thence easterly on the southern line of Hooper street, to the eastern line of Fifth street; thence northerly on the eastern line of Fifth street, to the southern line of Channel street; thence easterly on the southern line of Channel street, to the eastern line of Third street; thence northerly on the eastern line of Third street, to the southern line of Berry street; thence easterly on the southern line of Berry street, to the eastern line of Second street; thence northerly on the eastern line of Second street, to the southern line of King street; thence easterly on the southern line of King street three hundred and seventy-five feet;

160
219
Boundaries of San Francisco beach and water lots.

thence northerly at right angles to King street, to the southern line of Townsend street; thence easterly on the southern line of Townsend street, to the eastern line of First street; thence northerly on the eastern line of First street, to the southern line of Brannan street; thence easterly on the southern line of Brannan street, to the eastern line of Beal street; thence northerly on the eastern line of Beal street, to the southern line of Bryant street; thence easterly on the southern line of Bryant street, to the eastern line of Spear street; thence northerly on the eastern line of Spear street, to a point within one hundred and thirty-seven and one-half feet of the southern side of Harrison street; thence easterly at right angles to Harrison street, to the eastern side of Stuart street; thence northerly on the eastern line of Stuart street, to the southern line of Folsom street; thence easterly on the southern line of Folsom street, to the eastern line of East street; thence northerly on the eastern line of East street, to its point of intersection with the northern side of Jackson street; thence northerly at right angles with the northern side of Jackson street, to the northern line of Pacific street; thence westerly along the northern side of Pacific street, to the eastern line of Davis street; thence northerly along the eastern line of Davis street, to the northern line of Vallejo street; thence westerly along the northern line of Vallejo street, to the eastern line of Front street; thence northerly on the eastern line of Front street, to the northern line of Greenwich street; thence easterly on the northern line of Greenwich street, to the eastern line of Battery street; thence northerly on the eastern side of Battery street, to the northern line of Lombard street; thence westerly on the northern line of Lombard street, to the eastern line of Sanson street; thence northerly on the eastern line of Sanson street, to the northern line of Chesnut street; thence westerly on the northern line of Chesnut street, to the eastern line of Montgomery street; thence northerly on the eastern line of Montgomery street, to the northern line of Francisco street; thence westerly on the northern line of Francisco street, to the eastern line of Kearny street; thence northerly on the eastern line of Kearny street to the northern line of North Point street; thence westerly on the northern line of North Point street, to the east line of Dupont street; thence northerly on the eastern line of Dupont street, to the northern line of Beach street; thence westerly on the northern line of Beach street, to the eastern line of Powell street; thence northerly on the eastern line of Powell street, to the northern line of Jefferson street; thence westerly on the northern line of Jefferson street, to the western line of Larkin street; thence following the line of ship's channel to the western boundary line of said city; thence southerly along the western boundary line of said city, to the natural high water mark; thence along the line of the said high water mark, to its point of intersection with the southern boundary line of said city; thence easterly along the southern boundary line of

said city, to its point of intersection with the eastern line of Simmons street, being the place of beginning.

§ 2. The use and occupation of all the land described in the first section of this act is hereby granted to the city of San Francisco, for the term of ninety-nine years from the date of this act; except as hereinafter provided, all the lands mentioned in the first section of this act, which have been sold by authority of the ayuntamiento, or town, or City Council, or by any Alcalde of the said town or city, at public auction in accordance with the terms of the grant known as Kearny's grant to the city of San Francisco; or which have been sold or granted by any Alcalde of the said city of San Francisco, and confirmed by the ayuntamiento, or town, or City Council thereof, and also registered or recorded in some book of record now in the office, or custody, or control, of the Recorder of the Court of San Francisco, on or before the third day of April, A. D. one thousand eight hundred and fifty, shall be and the same are hereby granted and confirmed to the purchaser or purchasers or grantees aforesaid, by the State relinquishing the use and occupation of the same and her interests therein to the said purchasers or grantees and each of them, their heirs and assigns, or any person or persons holding under them, for the term of ninety-nine years from and after the passage of this Act: *Provided*, that the city of San Francisco shall pay into the State Treasury twenty-five per cent. of all moneys hereafter arising in any way from the sale or other disposition of the property described in the first section of this act; the same to be paid within twenty days after its receipt by said city. The property known as the Government reservation is exempt from the operation of this Act; except that any estate held by virtue of any lease or leases, executed or confirmed by any officer of the United States on behalf of the same, shall be and the same are hereby granted and confirmed to the lessees thereof, and the written instrument whereby such lease or leases was made shall, in all actions brought by the lessees for the recovery of the lands so demised, be sufficient evidence of title and possession to enable the plaintiff to recover.

§ 3. That the original deed, or other written or printed instruments of conveyance, by which any of the lands mentioned in the first section of this act were conveyed or granted by such Common Council, Ayuntamiento, or Alcalde; and in case of its loss, or not being within the control of the party, then a record copy thereof, or a record copy of the material portion thereof, properly authenticated, may be read in evidence in any Court of Justice in this State, upon the trial of any cause in which the contents of the same may be important to be proved, and shall be prima facie evidence of title and possession, to enable the plaintiff to recover the possession of the land so granted.

§ 4. That the boundary line described in section first of this Act, shall be and remain a permanent water front of said city; the authorities of which shall keep clear and free from all obstructions whatsoever

Grant of
said lots to
San Francisco.

Evidence
of title to
said lots.

Said
boundaries to
be a permanent
water front.

the space beyond said line, to the distance of five hundred yards therefrom.

Map of said boundaries to be deposited in Secretary of State's Office.

§ 5. The city of San Francisco shall, within thirty days after the passage of this Act, deposit in the office of the Secretary of State of California, and in the office of the Surveyor General of this State, and in the office of the Surveyor of the city of San Francisco, a correct map of said boundary line mentioned in section one of this Act, distinctly and properly delineated by a red line; said maps to be duly certified to by the Mayor and Surveyor of said city, and under the official seal of said city.

Right of State to construct wharves.

§ 6. Nothing in this Act shall be construed as a surrender by the State of its right to regulate the construction of Wharves or other improvements, so that they shall not interfere with the shipping and commercial interests of the Bay and harbor of San Francisco.

Chap. 42.

AN ACT to Legalize the Order of the Court of Sessions of Solano County.

Passed February 5, 1851.

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

Order of Sessions confirmed.

§ 1. That the order of the Court of Sessions of Solano County, issued November second, one thousand eight hundred and fifty, in relation to the reduction of the Assessment of the State and County Taxes be, and the same is hereby confirmed.

Direction to Comptroller

§ 2. The Comptroller of State is hereby authorized and required to settle the accounts of the Treasurer of Solano County, in accordance with said order.

Chap. 43.

AN ACT to fix the Compensation of the County Judge of Yolo County.

Passed February 5, 1851.

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

County of Yolo in fifth class.

§ 1. The County of Yolo is hereby placed in the fifth classification, together with the Counties of Los Angeles and Solano, as provided by the Act approved April twenty-second, one thousand eight hundred and fifty, entitled "An Act to fix the Compensation of County Judges and Associate Justices of the Court of Sessions."

§ 2. The compensation of the County Judge of said County of Yolo, ^{Salary of} from and after the passage of this Act, shall be at the rate of two thousand five hundred dollars per annum, payable out of the County Treasury in quarterly payments, to be made on the first days of January, April, July, and October of each year. ^{County Judge.}

Chap. 44.

AN ACT in relation to the City of San Francisco.

Passed May 1, 1851.

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

§ 1. The City of San Francisco is hereby authorized and empowered to construct wharves at the end of all the streets, commencing with the Bay of San Francisco, the wharves to be made by the extension of said streets into the Bay, in their present direction, not exceeding two hundred yards beyond the present outside line of the beach and water lots, and the City is authorized to prescribe the rates of wharfage that shall be collected on said wharves, when constructed. The space between said wharves, when they are extended, which is situated outside of the outer line of beach and water lot property, as defined by the Legislature, shall remain free from obstructions, and be used as public slips for the accommodation and benefit of the general commerce of the City and State. ^{City of San Francisco may erect wharves.}

§ 2. The right of the State to the Beach and Water Lot Property in the City of San Francisco is hereby relinquished to said City: *Provided, always,* that the relinquishment to the City is made upon the express conditions that said City shall confirm the titles to all lots which have been granted by any Justice of the Peace; which lots are situated on that part of the Kearny grant which is within the following boundaries, to wit: bounded on the north by Vallejo street, on the south by Harrison street, on the east by the easterly boundary of said beach and water lots as defined by the Legislature, and on the westerly side by Front and Fremont streets; said grants shall be, and the same are hereby confirmed and made evidence of title in all Courts of this State, and holders under them shall have possession of said property so granted: *Provided, always,* that this Act shall not be construed as confirming grants to the property known as the Public Slip, bounded by Davis, Clay, and Sacramento streets, nor to any property the title or lease to which has been confirmed to individuals by any former Act of the Legislature; and said grant must have been recorded in the Recorder's office prior to the first day of February, one thousand eight hundred and fifty-one. ^{Right of State to beach and water lots released.}

Chap. 45.

AN ACT for the Relief of William Reynolds, Treasurer of the County of Marin.

Passed February 18, 1851.

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

Extension
of time to
settle accounts

§ 1. William Reynolds, Treasurer of the County of Marin, is hereby allowed until the first day of April, A.D. one thousand eight hundred and fifty-one, to settle his accounts as such Treasurer with the Comptroller and Treasurer of State.

Sales for taxes.

§ 2. All sales of property made for non-payment of taxes in said County of Marin shall not be invalidated by reason of the time for making said sales having expired ; and it shall be lawful for said County Treasurer to enforce the collection of Taxes by levy and sale of property up to the twenty-fifth day of March, A.D. one thousand eight hundred and fifty-one.

Chap. 46.

AN ACT for the Relief of William Smith.

Passed April 23, 1851.

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

Comptroller's
warrant
for \$2,500.

§ 1. The Comptroller of this State is hereby authorized and required to draw his warrant on the State Treasurer in favor of William Smith for the sum of two thousand five hundred dollars, and the Treasurer is required to pay the same out of any moneys in the Treasury not otherwise appropriated.

Chap. 47.

AN ACT for the Relief of Wm. H. Richardson.

Passed February 24, 1851.

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

State Warrants
for \$1,100.

§ 1. The Comptroller of State is hereby required to issue State Warrants to William H. Richardson for the sum of eleven hundred and

eighty dollars, to be paid out of any money remaining in the General Fund not otherwise appropriated.

§ 2. This Act shall take effect from and after its passage.

When act
to take effect.

Chap. 48.

AN ACT concerning Records kept in the Counties of Trinity and Klamath.

Passed April 29, 1851.

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

§ 1. That the Records of Deeds, Mortgages, and other instruments in writing, made and kept by Officers of the People in the Counties of Trinity and Klamath, previous to the organization of such Counties, shall be as valid in all respects as if made by officers elected in pursuance of the laws of this State in organized Counties.

Certain records
declared valid.

§ 2. All books of such Records shall be deposited by persons having the same in their custody in the office of the County Clerk of their respective Counties, within one month after the election and qualification of such County Clerk.

Such
records to be
deposited with
County Clerk.

§ 3. All persons refusing to deposit said book or books of records mentioned in the first section of this Act in the office of the County Clerk, within one month after the election and qualification of said County Clerk in their respective Counties, shall be deemed guilty of a misdemeanor.

Refusing
to deposit
such books.

Chap. 49.

AN ACT to confirm certain Contracts of the Commissioners of the Sinking Fund of the City of San Francisco for the Building of Broadway and Pacific Street Wharves.

Passed May 1, 1851.

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

§ 1. The Contracts severally entered into on the thirteenth day of February, Anno Domini eighteen hundred and fifty-one, between the Commissioners of the Sinking Fund of the City of San Francisco and Francis Salmon, for the construction of a wharf at the foot of Broadway, and between said Commissioners and M. R. Roberts and Joseph R. West, for the building of a wharf at the foot of Pacific street, are hereby ratified and confirmed.

Contracts
confirmed.

§ 2. No lien or claim or judgment upon the wharves specified in the

Liens
not affected.

first section of this Act shall be invalidated or affected in any manner by the passage of this Act. Nothing in this Act shall allow the said wharves to be constructed beyond the line of East street.

Chap. 50.

AN ACT to repeal "*An Act Locating Officers of Health for the Port of San Francisco, and defining their Duties.*"

Passed March 17, 1851.

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

Repeal of act.

§ 1. The "Act creating Officers of Health for the Port of San Francisco, and defining their duties," passed April eighth, one thousand eight hundred and fifty-one, is hereby repealed.

Chap. 51.

AN ACT relative to the *District Court of the Fourth Judicial District.*

Passed April 25, 1851.

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

Term of Court.

§ 1. There shall be held a term of the District Court of the Fourth Judicial District, to commence on Monday, the twenty-eighth day of April, one thousand eight hundred and fifty-one.

Jurisdiction of Court of Sessions.

§ 2. The Court of Sessions of the County of San Francisco shall have concurrent jurisdiction with the District Court of the Fourth Judicial District in all criminal cases pending in said Court on the first day of May, one thousand eight hundred and fifty-one, except cases of murder, manslaughter, and arson, and such cases then pending may be remitted to said Court of Sessions for trial, by an order of the District Court, on motion of the District Attorney.

Indictments presented to Court.

§ 3. All indictments and presentments found by the Grand Jury empanelled for the March term of said District Court, which shall have been found by such Grand Jury prior to April seventh, one thousand eight hundred and fifty-one, may be presented to the District Court at the term appointed to be held by this Act, and shall have the like force and effect as though they had been presented to the Court at the March term thereof.

Chap. 52.

AN ACT to Ratify and Confirm a Contract entered into on the twenty-eighth day of March, A. D. Eighteen Hundred and Fifty-one, between the Commissioners of the Sinking Fund of the City of San Francisco and Henry A. Breed and William E. Dennis, for the Construction of Market Street Wharf, and California Street Wharf.

Passed April 28, 1851.

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

§ 1. That a contract entered into on the twenty-eighth day of March, eighteen hundred and fifty-one, by the Commissioners of the Sinking Fund for the City of San Francisco, of the one part, and Henry A. Breed and William E. Dennis, in relation to the construction of Market Street Wharf and California Street Wharf be, and the same is hereby ratified and confirmed in all its provisions. Contract confirmed.

Chap. 53.

AN ACT for the Relief of Messrs. Monton, Raveau, and Others.

Passed April 25, 1851.

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

§ 1. That the Comptroller of State be, and he is hereby authorized and directed to issue to Messrs. Monton, Raveau, and others, State warrants to the amount of seven hundred dollars with interest from the date of the bonds, for State bonds, severally numbered one hundred and forty-four, one hundred and forty-five, one hundred and ninety-two, and five hundred and forty-two; *Provided*, that a good and sufficient bond shall first be executed on the part of said Messrs. Monton, Raveau, and others, in the penalty of two thousand dollars, to be approved by the Attorney General of this State, conditioned to indemnify the State from the payment of the bonds as above numbered, alleged to have been destroyed by fire. This Act shall take effect from and after its passage. Comptroller to issue State Warrants. Provide.

Chap. 54.

AN ACT for the Relief of the County Treasurers of the Counties of San Luis Obispo, Santa Barbara, Los Angeles, and San Diego.

Passed March 10, 1851.

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

Extension of
time to render
accounts.

§ 1. That the Treasurers of the Counties of San Luis Obispo, Santa Barbara, Los Angeles, and San Diego be, and they are hereby allowed until the first day of June, one thousand eight hundred and fifty-one, to make their final settlement with the Comptroller of State for State revenue collected by them.

Sales for taxes.

§ 2. That all sales of real and personal property for taxes that have been heretofore made, or that may be hereafter made by said Treasurers be, and the same are hereby legalized as though done at the time and in the manner prescribed by law.

Act, when
to take effect.

§ 3. This Act to be in force from and after its passage.

Chap. 55.

AN ACT to change the name of *Elihu Ely, Jun., to Hubbard C. M. Ely.*

Passed March 28, 1851.

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

Name may
be changed.

§ 1. It shall be lawful for the person heretofore bearing the name of Elihu Ely, Jun., to change the said name to Hubbard C. M. Ely.

Chap. 56.

AN ACT to change the name of *Edwin Sexton to that of Edwin Shultz Saxton.*

Passed January 28, 1851.

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

Name changed.

§ 1. That the name of Edwin Sexton be, and is hereby changed to that of Edwin Shultz Saxton.

Chap. 57.

AN ACT to change the name of *William Rufus Elliott*.

Passed March 7, 1851.

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

§ 1. The name of *William Rufus Elliott* is hereby changed to *Elliott Aubury*. Name changed.

Chap. 58.

AN ACT to change the names of *José Benavidas Basques* and *Maria Josefa Basques* to *José Benavidas Vioget* and *Maria Josefa Vioget*, respectively.

Passed April 29, 1851.

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

§ 1. It shall be lawful for the person heretofore bearing the name of *José Benavidas Basques* to change said name to *José Bonavidas Vioget*. Name may be changed.

§ 2. It shall be lawful for the person heretofore bearing the name of *Maria Josefa Basques* to change said name to *Maria Josefa Vioget*. The like.

§ 3. This Act to take effect from and after its passage.

When act to take effect.

Chap. 59.

AN ACT to change the name of *Morris A. J. Cullen* to *Cullen A. Johnson*.

Passed April 25, 1851.

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

§ 1. It shall be lawful for the person heretofore bearing the name of *Morris A. J. Cullen* to alter the same to *Cullen A. Johnson*. Name may be changed.

Chap. 60.

AN ACT to change the name of John G. Almondinger, Jun., to John G. Almond.

Passed April 2, 1851.

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

Name may
be changed.

§ 1. It shall be lawful for the person heretofore bearing the name of John G. Almondinger, Jun., to change the same to John G. Almond.

Chap. 61.

AN ACT for the Relief of Joseph Evans.

Passed March 6, 1851.

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

Comptroller
to issue
State Warrant.

§ 1. The Comptroller of State is hereby authorized to issue in favor of Joseph Evans a State Warrant for such amount as will cover the principal and interest accruing on two State Bonds of the denomination of two hundred and twenty-five dollars each, and bearing date of April twenty-fourth, one thousand eight hundred and fifty.

Indemnity.

§ 2. The said Joseph Evans, to indemnify the State against all loss that may hereafter occur, shall furnish good and sufficient bonds for double the amount of the warrant above authorized.

Chap. 62.

AN ACT concerning the office of Public Administrator for the County of San Francisco, and making it elective.

Passed March 8th, 1851.

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

Public
Administrator
to be elected.

§ 1. There shall be elected in and for the County of San Francisco a Public Administrator, who shall continue in office until his successor is qualified.

To take oath
and give bond.

§ 2. Before entering upon the duties of his office he shall take the customary oath, and execute a bond to the State of California with sureties, to the approval of the Probate Judge, in the sum of fifty thousand dollars, conditioned for the faithful discharge of all the duties

enjoined upon him by law, and particularly that he will account for and pay over all moneys and property that may come to his hand as such Administrator. The amount of the bond may at any time be increased in the discretion of the Probate Judge, and shall not be void upon the first recovery.

§ 3. He shall perform the same duties, and receive the same compensation, as other Administrators, or such as may be prescribed by law. Duties.

§ 4. It shall be the duty of the present Public Administrator for said County to account for and pay over and deliver to his successor, within ten days after he shall have qualified, all money, papers, and other property belonging to the estates of deceased persons which may have come into his possession as said Administrator, or be held by him by virtue of his office. Duty of present Public Administrator.

§ 5. His report shall be made under oath, and shall contain a full and accurate statement of all the estates which have been administered by him; showing what moneys or effects have been received in each case, and from what sources; the sums expended, and for what purposes. Report, on oath.

§ 6. If he shall fail to comply with the requirements of this Act, he shall be liable, on his own official bond, to any party injured thereby, and may be indicted and punished as for a misdemeanor. Neglecting to comply with act.

§ 7. The first election under this act shall be held on the fourth Monday of April, one thousand eight hundred and fifty-one, and annually thereafter, at the general election for City Officers. Election, when to be held.

Chap. 63.

AN ACT to provide for the holding a term of the District Court in the Counties of Yuba and Solano.

Passed April 29, 1851.

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

§ 1. There shall be held a Term of the District Court of the tenth Judicial District in Yuba County on the second Monday of May next, which term may continue until the commencement of the regular term of said Court as fixed by law. Court to be held in Yuba County.

§ 2. There shall be held a term of the District Court of the seventh Judicial District in Solano County on the third Monday of May next, which term may continue until all the business of the Court is disposed of. The like, Solano.

Chap. 64.

AN ACT authorizing the Judge of the District Court for the County of Santa Clara to hold a Special Term in and for said County.

Passed January 28, 1851.

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

Court to be held at Santa Clara.

§ 1. There shall be a Special Term of the District Court held in and for the County of Santa Clara, commencing on the third Monday in February next, and all writs, processes, and summons, returnable to said Court, and causes tried therein, shall be as valid and legal as if returnable to, and tried at the regular term of said Court.

Chap. 65.

AN ACT authorizing the Judge of the District Court of Eldorado County to hold a special term within and for said County.

Passed February 1, 1851.

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

Court to be held in El Dorado county.

§ 1. There shall be a Special Term of the District Court held within and for the County of Eldorado, beginning on the third Monday in February, one thousand eight hundred and fifty-one, and all writs, summons, and process, returnable thereto, and all judgments upon causes therein tried, shall be as legal and effective as if made at a regular Term of said Court.

Chap. 66.

AN ACT to continue certain terms of the District Courts of this State.

Passed April 30, 1851.

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

Court may be continued.

§ 1. The several District Courts of this State now in Session, or which may be in Session on the first Monday of May next, may continue their respective terms until their next regular terms, unless their business be sooner disposed of. This Act shall take effect immediately after its passage.

Chap. 67.

AN ACT to provide for the holding of a Special Term of the Supreme Court.

Passed March 28, 1851.

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

§ 1. There shall be held in the month of April of the present year, at the City of San Francisco, a special term of the Supreme Court, which term shall commence on the second Monday of said month.

Special term of
Supreme Court.

Chap. 68.

AN ACT providing for holding a Special Term of the District Court in Solano County and for other purposes.

Passed March 6, 1851.

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

§ 1. There shall be held in the County of Solano, on the second Monday of March instant, a Special term of the District Court for the Seventh Judicial District, for the trial of criminal cases.

Court in
Solano county.

§ 2. All process returnable and all orders made, indictments found, judgments rendered, or other proceedings had at such Special Term, shall be as valid in all respects as if the same were a regular term.

Business
at such Court.

§ 3. The Governor is hereby authorized to direct any District Judge of another District to hold such Special Term and also the regular term at Napa City on the first Monday of March instant, and thereupon it shall be the duty of said Judge so directed to hold such Special Term and such regular term.

Court, by
whom held.

Chap. 69.

AN ACT for the repeal of "An Act regulating the Quarantine of Vessels in the Port and Harbor of San Francisco."

Passed January 27, 1851.

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

§ 1. That the Act entitled "An Act regulating the Quarantine of Vessels at the Port and Harbor of San Francisco," approved April 9th, 1851, be and the same is hereby repealed.

Act repealed.

Chap. 70.

AN ACT to create a Board of Supervisors for the County of San Francisco and define their duties.

Passed April 29, 1851.

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

Board
of Supervisors.

§ 1. There shall be within and for the County of San Francisco a Board of Supervisors, to consist of the Mayor and Board of Aldermen of the City of San Francisco, and of three members to be elected by the rest of the county, in the manner hereinafter provided.

Township.

§ 2. The County Clerk for said county shall immediately divide that portion of said county which is situated without the limits of the City of San Francisco into three townships, so that each township shall have as near as may be the same number of inhabitants. The electors of each township shall elect one Supervisor. The time of their election and the term of their office shall be the same as that of the municipal officers of the City of San Francisco: *Provided*, that the first election shall be held on the second Monday of May, eighteen hundred and fifty-one.

Election
of Supervisors.

Meetings
of Supervisors

§ 3. The Board of Supervisors shall meet at such place as they may determine on the first Monday of every second month, and oftener if they think proper, and their proceedings shall be public.

Chairman.

§ 4. They shall elect one of their number to act as Chairman, who shall have power to administer oaths in all matters touching the business of said Board.

Clerk.

§ 5. They may appoint a Clerk, who shall receive a reasonable compensation, to be fixed by the Board of Supervisors. He shall keep a record of their proceedings, and all resolutions and decisions concerning the raising or payment of moneys shall be entered on the Journal. The vote of each member shall be recorded on every question.

Books, &c.

§ 6. The books, records, and accounts of the Board shall be kept in the office of the County Clerk, and shall at all times be open to public inspection.

Power
of Supervisors.

§ 7. The Board of Supervisors shall have power, with the consent of a majority of all its members, to make such orders concerning the corporate property of the county as they may deem expedient, and to sell or otherwise dispose of the same, appropriating the proceeds thereof to the use of the county; to audit the accounts of all officers having the management, collection, or disbursement of any moneys belonging to the county, to examine, settle, and allow all accounts chargeable against the county, and to raise such sum as may be necessary for paying the same; to establish townships and election districts, and to alter the same; and in that part of the county not included within the limits of the City of

San Francisco, to have the management and control of public roads, ferries, and bridges, and to make all necessary orders concerning the same; to impose and enforce a road tax; to organize and support Common Schools by a school tax levied in each district where there are more than fifteen children between the ages of six and eighteen years; to levy and collect an annual tax not to exceed one half of one per cent. on the valuation of all property real and personal in the county, for the payment of the accrued debts of the county; to sue and defend on behalf of the county, and to perform all such acts as may be necessary to the discharge of the duties imposed upon them by law.

§ 8. Said Board of Supervisors shall, before the next general election, divide the county outside of the city limits into Election Districts, and shall appoint a Board of Judges of Election for each of said districts. They shall cause to be elected at the next general election, and annually afterwards, a Board of Judges of Election for each ward of the city and each district in the rest of the county. Election districts.

§ 9. Within the City of San Francisco the Board of Supervisors shall cause the State and County taxes to be assessed upon the valuation made by the City Assessors, and they shall be a Board of Appeals for the equalization of State and County taxes. State and County taxes.

§ 10. Each member of the Board of Supervisors shall be entitled to receive for his services for each day's necessary attendance on the business of the county the sum of three dollars, and no member shall be interested in any contract for the county. Compensation.

§ 11. The Board of Supervisors shall have no power to allow any account for rent or Clerk hire for any Justice or other county officer, unless expressly provided by law. Limitation of power of Supervisors.

Chap. 71.

AN ACT to provide for the construction of a Wagon Road from San José to Santa Cruz.

Passed April 25, 1851.

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

§ 1. The Courts of Sessions in the Counties of Santa Clara and Santa Cruz shall appoint two Commissioners, each in their respective Counties, who, together with the County Surveyors of said Counties, shall meet on the first day of June next at the City of San José, and proceed to make a full and careful reconnoissance for a Wagon Road from thence across the Santa Cruz Mountains, by the nearest and most practicable route, to the town of Santa Cruz, estimating as near as may be the cost of said road in each County. Reconnoissance of line of road.

§ 2. Immediately after such reconnoissance and estimate shall have Meeting of electors.

been completed, the Commissioners shall call a meeting of the legal voters in each County, to decide whether said road shall be built or not, to be decided by a majority of the votes in the two Counties conjointly.

Line of road
to be divided
into sections.

§ 3. Should a majority of votes be in favor of constructing said road, the Commissioners shall immediately proceed to the summit of the mountain range which marks the dividing line between the two Counties, and shall thence proceed to divide the road each way into sections, the length of which shall be determined by the character and amount of the work to be performed in each, and the beginning and end of each section shall be distinctly defined and marked upon the ground. The width and grade of the road on each or all of said sections shall be such as the Commissioners deem proper, and shall with the length of each section be specified in the advertisement for sealed proposals hereinafter mentioned.

Tenders
for constructing
road.

§ 4. So soon as the location of the road shall have been completed the Court of Sessions in each County shall advertise in newspapers or by written notices for sealed proposals to be made in thirty days from the date of the advertisement, for the construction of each, any, or all of the sections to be put under contract, stating the price per line or rod for which the work shall be performed, agreeable to the written specifications of the Commissioners.

Work to be
awarded to
lowest bidder.

§ 5. The whole work, or any section thereof, shall be awarded to the lowest bidder, or bidders, who shall give a satisfactory bond for its faithful performance within such a time as the Court of Sessions may in their judgment specify: *Provided*, such time does not exceed six months from the date of the contract.

Payment
of contractor.

§ 6. The Contractor or Contractors shall, so soon as their work is completed, notify the Commissioners, and on their written acceptance of the same shall receive an order on the County Treasurer for the amount due, which shall be paid out of the fund derived from the road tax hereinafter mentioned.

Tax to
be levied.

§ 7. The Courts of Sessions in each County shall assess for the present year such specified tax upon real and personal estate in their respective Counties, to be collected with the State and County taxes, as shall, so near as they can estimate, cover the cost of said road: *Provided*, such road tax shall not exceed one-quarter ($\frac{1}{4}$) of one per cent.

The like.

§ 8. Should the tax levied during the present year be insufficient to cover the cost of the work, the County in which such deficit occurs shall be liable for the same, and shall collect it by tax on the succeeding year or years; but in no case shall said road tax exceed, after the present year, one-quarter ($\frac{1}{4}$) of one per cent.

Chap. 72.

AN ACT in relation to the appointment of Pilots for the Bay and Harbor of Humbolt.

Passed April 5, 1851.

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

§ 1. That John Sannickson, Wm. H. Dunham, and C. C. McDonald, Pilots appointed. are hereby constituted and appointed Pilots for the Bay and Harbor of Humbolt.

§ 2. The said Pilots shall severally enter into bonds, with security to be approved by the Governor, in the penalty of five 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. To give bond, &c.

§ 3. It shall be the duty of said Pilots to keep, for the purpose of piloting as aforesaid, at least one boat or vessel in good condition, sufficiently large for said purpose, to be exclusively employed as a Pilot boat. Duty of 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 said Bay, the sum of six dollars per foot draught. Their fees.

§ 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. Half pilotage.

§ 6. For every day, after the first 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 five dollars per day in addition to his or their Pilotage as aforesaid. Additions to pilotage.

§ 7. The Governor shall have power to suspend or remove from office any of said Pilots appointed in this Act, for incompetency, neglect of duty, or other good cause in his opinion shown therefor; and shall have the power to fill such vacancies. Suspending pilots.

§ 8. The said Pilots 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 terms of office. Law regulating pilots.

Chap. 73.

AN ACT for the relief of the former Town Council of Stockton.

Passed April 20, 1851.

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

Duty of
District Judge
of San Joaquin.

§ 1. It is hereby made the duty of the District Judge of the District including the County of San Joaquin at chambers to hear, adjudge, and determine all claims, charges, and demands existing against the Old Municipality or Town Council of Stockton, which accrued or were created before the organization of the present incorporation, and which may be presented for his adjudication as prescribed in section two of this Act: *Provided* that said claims in the aggregate do not exceed the sum of eight thousand dollars, and the power of said Judge under this Act shall cease wherever said claims shall exceed the sum of eight thousand dollars.

Claims,
how to be
made.

§ 2. Any individual having claims or demands against said Town Council or Municipality shall present to the District Judge, mentioned in section first, a written statement of his claim or claims, particularly setting forth each and every item thereof, the time when the same accrued, and the particular circumstances attending the same; such statement shall be sworn to and subscribed by the person to whom the same accrued, or by any other person having a knowledge thereof.

Notice of
hearing
claims, &c.

§ 3. The said District Judge within thirty days after the passage of this act shall publish for two successive weeks, in one or more newspapers of the County of San Joaquin, a notice of the time when and place where he will proceed to hear, try, and determine all claims mentioned in section one, and he shall have the same power to compel the attendance of witnesses and the production of papers, and shall be governed by the same rules of evidence, as are provided by law in ordinary cases, and may adjourn from time to time to suit his convenience.

Hearing of
Claims.

§ 4. At the time and place set forth in the notice mentioned in section three, or at any adjourned day thereafter, the said Judge shall proceed to hear, adjudge, and determine all claims which shall be presented to him as mentioned in section two, but he shall require legal proof of each and every such claim and demand. When the said Judge shall become satisfied, after hearing such proof, that any claim or demand so presented and proven is just and equitable, he shall certify the same with the amount so adjudged to be due, together with the costs and charges of the proceeding, and to whom due, and shall file the same in the office of the Clerk of the County of San Joaquin. The said Clerk shall note upon the back of every such certificate the time when he received the same, and shall deliver to the person in whose favor the same shall be certified a certified copy of the same under his

hand and the seal of the County of San Joaquin, and shall also transmit by mail a note or memorandum thereof to the Comptroller of State.

§ 5. Whenever the original holder of the certificate as mentioned in section four, or any person to whom it may have been legally transferred, shall present the same to the Comptroller of State, the Comptroller shall file the same in his office, and shall issue to the owner his warrant for the same amount upon the Treasurer of State; taking his receipt therefor, which shall for ever be a bar to any future recovery for the same demand. The Treasurer shall pay such warrant when presented out of any moneys in the Treasury not otherwise appropriated.

Warrant on Treasury, in exchange for certificate.

§ 6. The Sheriff and Clerk of the County of San Joaquin are not required to perform any of the duties mentioned in this Act unless their legal fees shall be first paid. The Judge shall certify the payment of such fees, and also the fees of publishing the notice mentioned in section three in favor of the party paying the same, and the same shall be included in the certificate mentioned in section four.

Fees to officers.

Chap. 74.

AN ACT to ratify and confirm an ordinance passed by the City of San Francisco, on the eighteenth day of November, one thousand eight hundred and fifty, authorizing the building of a Plank Road to the Mission of Dolores.

Passed April 5, 1851.

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

§ 1. That an ordinance passed on the eighteenth day of November, eighteen hundred and fifty, by the City of San Francisco, authorizing the building of a Plank Road to the Mission of Dolores, be, and the same is hereby ratified and confirmed in all its provisions.

Ordinance confirmed.

Chap. 75.

AN ACT to prevent the City of San Francisco from selling or in any otherwise disposing of Lots within its corporate limits.

Passed April 1, 1851.

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

§ 1. The City of San Francisco shall not have power either to sell, lease, or in any manner convey any lands situated within the corporate

City of San Francisco not to dispose

of certain lands
until, &c.

The like.

limits of said City, from and after the passage of this act until the tenth day of May next, or thereafter.

§ 2. No officers of said City, or any one appointed by said City, before or after the passage of this act shall have any power to dispose of said lands except in accordance with the provisions of the first section of this act, and every sale made by said city, its officers, agents, or commissioners, contrary to the provisions of this act, shall be null and void.

Chap. 76.

AN ACT ordering a Special Election in the County of Calaveras.

Passed April 29, 1851.

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

Election to fix
County seat.

§ 1. There shall be held throughout the County of Calaveras a Special Election on the Fourth Monday of May next, to determine and fix the County Seat of said County.

Where
County seat
to be held.

§ 2. The place which shall receive the largest number of votes cast at said election shall be the County Seat of said County, until otherwise provided for by law.

Election, how
conducted, &c.

§ 3. The election shall be conducted, and the returns made out, in conformity with the provisions of the "Act to regulate elections."

Chap. 77.

AN ACT for the relief of the Mayor and City Council of the City of San José.

Passed March 28, 1851.

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

State warrant,
for \$50,333.

§ 1. The Comptroller of State shall issue State Warrants to the amount of fifty thousand three hundred and fifty-three dollars, to be paid out of any moneys in the General Fund, not otherwise appropriated to the Mayor and Common Council of the City of San José: *Provided*, that the above sum of money shall not be paid as aforesaid in case M. G. Vallejo fails to give bond as provided in the act entitled "An Act for the permanent location of the Seat of Government."

Proviso.

Act, when
to take effect.

§ 2. This act shall be in force and take effect from and after its passage.

Chap. 78.

AN ACT supplementary to an act entitled "An Act to Incorporate the City of Los Angeles," passed April fourth, one thousand eight hundred and fifty.

Passed April 5, 1851.

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

§ 1. The Office of Recorder of the City of Los Angeles is hereby abolished, and the Mayor of said City shall have all the powers and perform all the duties of Recorder. Office of Recorder abolished.

§ 2. The aggregate amount of taxes levied by the Common Council of the City of Los Angeles shall not exceed the sum of one half of one per cent. upon the value of all taxable property within said City during one year. Amount of taxes.

§ 3. The Corporation of the City of Los Angeles shall retain all the powers and rights promised by the former Ayuntamiento of said City over the public lands belonging to said City, and not included within its present incorporated limits; to lease, sell, or otherwise dispose of said lands, as also to take from the river of Los Angeles the water needed for irrigation of said lands, by means of a dam or dams built without the incorporated limits aforesaid; but the said Corporation shall exercise no municipal authority over said lands except to regulate the taking and distribution of water for irrigation as aforesaid. Power of Corporation.

§ 4. This act shall be in force from and after thirty days after its passage. Act, when to take effect.

Chap. 79.

AN ACT amendatory of the Ninth, Twelfth, and Fourteenth Sections of an Act entitled "An Act to Incorporate the City of San José."

Approved March 27, 1850.

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

§ 1. The ninth section of an Act entitled "An Act to incorporate the City of San José," is hereby amended so as to read: 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 ordinance, remunerating themselves for services as Councilmen.

Amendment
to Section 19.

§ 2. The twelfth section of the same Act shall be amended so as to read: The Mayor shall have the like jurisdiction in both civil and criminal cases as is or may be conferred upon Justices of the Peace within the township in which the city is located.

Amendment
to Section 14.

§ 3. The fourteenth section of the same Act shall be amended so as to read: 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 shall arrest all persons guilty of a breach of the peace and 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. He may also appoint one or more deputies who shall possess the same power and authority as the Marshal.

When act
to take effect.

§ 4. This Act shall take effect from and after its passage.

Chap. 80.

AN ACT to Incorporate the City of Marysville.

Passed February 5, 1851.

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

ARTICLE I.

Of Boundaries, General Powers, and the Formation of Wards.

City
Incorporated.

§ 1. The district of country in the County of Yuba, which is contained within the boundaries hereinafter described, shall be a city by the name of Marysville, and the inhabitants residing therein shall be a corporation, under the name and style of "The Mayor and Common Council of the City of Marysville," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all courts, and in all actions and proceedings, and may 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 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 as may be required for burial purposes.

§ 2. The boundaries of the City of Marysville shall be as follows: Boundaries of city.
 commencing at high water mark on the southern bank of Yuba River, at a point one mile east of the public Plaza, and running thence north two miles; thence west to Feather River; thence south following Feather River to high water mark on the southern bank of Yuba River; thence east along the southern bank of Yuba River to the place of beginning.

§ 3. The said city shall be divided into four wards, as follows: City to be divided into wards.

1st. All that part of the city which lies west of Main street, shall be the first ward:

2d. All that part of the city which lies between Main street and D street, shall be the second ward:

3d. All that part of the city which lies between D and C streets, shall be the third ward:

4th. All that part of the city which lies east of C street, shall be the fourth ward.

§ 4. The Common Council shall have power to alter from time to time, by vote of two thirds of all the members, the boundaries of the wards; *Provided*, such alteration be made at least three months previous to the annual election of City Officers. Wards may be altered.

ARTICLE II.

Of the Officers of the City and their Election.

§ 1. The Officers of the City of Marysville shall consist of one Mayor, City Officers.
 eight Aldermen, one Treasurer, one Assessor, one Clerk, one Attorney, and one Marshal, and such other officers as are hereinafter authorized to be appointed.

§ 2. The Mayor shall be elected by the qualified electors of the City, Mayor.
 and shall hold his office for one year, and until his successor is elected and qualified.

§ 3. Two Aldermen shall be elected by the qualified electors of each Aldermen.
 ward, and shall hold their offices for one year and until their successors are elected and qualified.

§ 4. No person shall be eligible to the office of Mayor or Alderman Who eligible for Mayor or Alderman.
 who is not a citizen of the United States, and has not been a resident of the State one year, and of the City of Marysville six months previous to the election.

§ 5. The election for a Mayor and Aldermen shall take place on the Election of Mayor and Aldermen.
 first Monday of March in each year. For the first election the Judge of Yuba County shall appoint two inspectors in each ward, and designate the place of opening the polls. For all subsequent elections such appointment and designation shall be made by the Common Council of the City.

§ 6. All the provisions of law in force regulating elections and defining the powers and duties of the officers thereof, shall apply to the election of Mayor and Aldermen under this Act; except that two Inspectors Law regulating elections.

and one Clerk shall be the only officers of election in each ward of the city.

Certificate
of election
to Aldermen.

§ 7. The Inspectors and Clerk of each ward shall deliver to the two persons receiving the highest number of votes in the ward a certificate of election as Aldermen; and in elections subsequent to the first shall also transmit to the Clerk of the city a statement showing the number of votes cast in the ward, and for whom the same were cast, with the number for each person.

Certificate
of election
to Mayor.

§ 8. At the first election the Inspectors of the second, third, and fourth wards shall, immediately after the votes are counted, prepare and deliver to the Inspectors of the first ward a statement, certified by them to be correct, of the number of votes cast in their respective wards for persons to fill the office of Mayor, with the number cast for each person. The Inspectors of the first ward shall thereupon add together the votes of all the wards as they are given for each person, and shall issue a certificate of election as Mayor to the person receiving the highest

Election returns.

number of votes in the City for that office. At elections subsequent to the first election sealed returns of the votes given for persons to fill the office of Mayor shall be made by the Inspectors of each ward to the Clerk of the City; such returns shall be opened and counted in the presence of the Common Council, and a certificate of election issued under their direction to the person receiving the highest number of votes for that office.

Who
entitled
to vote.

§ 9. No person shall be entitled to vote at any city election who is not a white male citizen of the United States, and who has not been a resident of this State for one year, and of the city six months previous to the election.

Term of
office, when
to commence.

§ 10. The Mayor and Aldermen shall enter upon their duties the first Monday subsequent to their election. Before entering upon their duties they shall take the oath of office, which may be administered by any Judge or Justice.

President
of Council.

§ 11. The Common Council, at their first meeting after the annual election, and at any other meeting, when from any cause it may become necessary, shall elect by ballot a President from their own body, who shall preside at all their meetings when the Mayor is not present; and whenever there is a vacancy in the office of Mayor, or whenever the Mayor is absent from the city, or is unable from sickness or any other cause to discharge the duties of his office, the President shall act as Mayor, and possess all the powers and perform all the duties of the Mayor during such vacancy, absence, or disability.

Vacancy
in office
of Alderman.

§ 12. Whenever a vacancy shall occur in the office of Alderman, by death, resignation, removal, or otherwise, the Common Council shall order a special election to fill such vacancy. The person elected to fill a vacancy shall hold his office for the residue only of the term of his immediate predecessor.

Election
of officers.

§ 13. The Common Council shall each year, within one month after

the annual election, elect by ballot the Treasurer, the Assessor, the Clerk, the Attorney, and the Marshal of the city, who shall hold their respective offices for one year, and until their successors are elected and qualified, unless previously removed for misconduct in office, or neglect of duty.

§ 14. The Common Council shall have power to elect such other inferior officers as they may deem necessary in the government of the city; and in all elections they shall vote by ballot. Election of inferior officers.

ARTICLE III.

Of the Common Council, and their Powers and Duties.

§ 1. The Mayor and Aldermen of the city shall constitute the Common Council, which shall meet on the first Monday subsequent to the annual election, and the first Monday of each subsequent month in the year, and at such other times as they shall by resolution direct. The Mayor may call special meetings at any time, by written notice to each member, served personally, or left at his place of residence or business. At all meetings of the Common Council the Mayor, when present, shall preside. Common Council, how constituted.

§ 2. A majority of the Common Council shall constitute a quorum for the transaction of business, but a smaller number may compel the attendance of absent members; and no tax or assessment shall be ordered except by a vote of a majority of all the members. Quorum.

§ 3. In the proceedings of the Common Council each member present shall have a vote, except the Mayor, who shall have only a casting vote when the votes of the other members are tied. Voting in Council.

§ 4. The Common Council shall determine the rules of their proceedings, and the qualifications and election of their members. Rules.

§ 5. The sittings of the Common Council shall be open to the public except when the interests of the city shall require secrecy. A journal of their proceedings shall be kept by the Clerk, under their direction; and the yeas and nays on any question shall be taken and entered on the journal at the request of any two members. Meetings.

§ 6. The Common Council shall have power within the city: 1st. To make by-laws and ordinances not repugnant to the Constitution and laws of this State. 2d. To levy and collect taxes on all property, real and personal, made taxable by law for State purposes, not exceeding one per centum per annum upon the assessed value of such property. 3d. To provide for the draining, grading, paving, improvement, repair, and lighting of the streets, and the construction of sidewalks, drains, and sewers, and keeping the same in repair, and the cleaning of the drains and sewers, and the prevention and removal of obstructions on the sidewalks. 4th. To grade the banks of the Yuba and Feather Rivers, so as to facilitate the discharge of merchandise from steamers, vessels, and boats. 5th. To regulate the landing and stationing of steamers, vessels, and boats, and to fix and collect a revenue tax for wharfige. 6th. To Powers of Council.

provide for the removal of obstructions to navigation in the Yuba River, from its mouth to the upper landing at the public Plaza. 7th. To provide for the prevention and extinguishment of fires, and to organize and establish fire companies. 8th. To regulate the storage of gunpowder, tar, pitch, rosin, and other extremely combustible materials. 9th. To establish and regulate a City Polica. 10th. To prevent and remove nuisances. 11th. To remove from the immediate vicinity of the inhabited parts of the city all slaughter-houses, haystacks, forges, and blacksmith shops. 12th. To license and regulate auctioneers and taverns, bar rooms, billiard tables, bowling alleys, theatrical and other exhibitions, shows, and amusements. 13th. To license, tax, regulate, prohibit and suppress tippling houses, dram shops, gaming and gambling houses, and hawkers, pedlers, and pawnbrokers, and to suppress disorderly houses and houses of ill fame. 14th. To provide for the erection of all public buildings for the use of the city. 15th. To open, alter, and widen streets and alleys. 16th. To establish a City Hospital and provide for the support of the indigent sick. 17th. To establish and run a ferry or ferries across the Yuba River, or let out from year to year the right to run such ferry or ferries, upon such terms as to a division of the proceeds from the ferrage as may be just, and to regulate the rates of ferrage. 18th. To construct a bridge across the Yuba River, at the eastern extremity of the public Plaza, or east of the public Plaza, or to authorize its construction upon such terms as to a division of the proceeds from its tolls as may be just, and to regulate the rates of toll. 19th. To borrow money upon the faith and credit of the city; but no loan shall be made for a sum exceeding five thousand dollars, including the amount of any previous indebtedness, without the consent to such loan of the electors of the city previously obtained. 20th. To appropriate money for any item of city expenditure, and to provide for the payment of any debts and expenses of the city. 21st. To prevent and restrain any riot or disorderly assemblage in any street, house, or place of the city. 22d. To impose and appropriate fines, forfeitures, and penalties, for the breach of any ordinance, and to provide for the punishment of breaches of the 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. 23d. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members with the concurrence of two thirds of the members elected.

Loan
exceeding
\$5,000.

§ 7. When the Common Council desire to effect a loan for a sum exceeding five thousand dollars, including the amount of any previous indebtedness, they shall submit a proposition for such loan to the electors of the city, and if a majority of the persons voting vote in favor of such proposition, the Common Council shall have authority to effect such loan, but not otherwise.

Accountability
of officers.

§ 8. It shall be the duty of the Common Council to provide for the accountability of all officers and other persons elected by them, to whom

the receipt and expenditure of the funds of the city shall be intrusted, by requiring from them sufficient security for the faithful performance of their duties or trusts, which security shall be given by them before entering upon their respective duties. In case such security becomes insufficient, additional security may be required, and if not given, the Common Council, by a vote of two thirds of the members, may declare the office vacant, and elect another person to supply the vacancy.

§ 9. It shall be the duty of the Common Council to publish in one or more newspapers printed in the city, one month before the annual election of city officers, in each year, for the general information of the citizens of Marysville, a full and detailed statement of the receipts and expenditures of the city, during the year ending on the last day of the month previous to that in which the publication is made; and in every such statement the different sources of the city revenue, and the amount received from each; the several appropriations made by the Common Council, the objects for which the same were made, and the amount of money expended under each; the moneys borrowed on the faith and credit of the city; the authority under which each loan was made; and the terms on which it was obtained, shall be clearly and particularly specified.

Statement
of receipts and
expenditures
to be published.

ARTICLE IV.

Of the Powers and Duties of the City Officers, and their Compensation.

§ 1. It shall be the duty of the Mayor :

1st. To communicate to the Common Council, quarterly, a general statement of the situation and condition of the city, in relation to its government, finances, and improvements :

Duties
of Mayor.

2d. To recommend to the Common Council the adoption of all such measures as he shall deem expedient relative to the police, security, health, cleanliness, and ornament of the city, and the improvement of its government :

3d. To be vigilant and active in causing the by-laws and ordinances of the Common Council to be duly executed and enforced :

4th. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty.

5th. To countersign all warrants and licenses issued under orders or ordinances of the Common Council :

6th. To preside over the Common Council, when present at their sittings :

7th. To maintain the peace and good order of the city, and generally to perform all such duties as may be prescribed by this Act, and the ordinances of the Common Council, and the laws of this State.

Aldermen.

§ 2. It shall be the duty of every Alderman of the city to attend the regular and special meetings of the Common Council; to act upon Committees, when appointed thereto by the Mayor; to report to the Mayor all subordinate officers who are guilty of violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the city, and in enforcing the by-laws and ordinances of the Common Council.

Treasurer.

§ 3. It shall be the duty of the City Treasurer to receive all moneys belonging to the city, and to keep an account of all receipts and expenditures, in such manner as the Common Council shall direct; and he shall, whenever required by resolution of the Common Council, present to them a full account of such receipts and expenditures, for any period designated in the resolution. All moneys drawn from the City Treasurer shall be drawn in pursuance of an order of the Common Council, by warrant, signed by the Clerk, and countersigned by the Mayor or President of the Common Council; and such warrant shall specify for what purpose the amount designated therein is to be paid.

Assessor.

§ 4. It shall be the duty of the City Assessor to prepare within such time as the Common Council shall direct, and present to them with his certificate of their correctness, a list of all the taxable property, real and personal, within the city, with the valuation thereof, and a list containing the names and occupations of all residents within the city, and to perform such other services, in relation to the assessment of property in the city, as may be required by the Common Council.

Clerk.

§ 5. It shall be the duty of the Clerk of the City to keep the corporate seal, and all the papers and documents belonging to the city; to file them in his office under appropriate heads; to attend the sittings of the Common Council, and keep a journal of their proceedings, and a record of all their by-laws and ordinances; to sign all warrants and licenses, issued in pursuance of the orders and ordinances of the Common Council, and affix the corporate seal to such licenses; to keep an accurate account, in a suitable book, under the appropriate heads of expenditures, of all orders drawn on the Treasury, and all warrants issued in pursuance thereof; also to keep an account, in an appropriate book, of all licenses issued, with the names of the persons to whom issued, the date of the issue, the time for which the same are granted, and the sums paid therefor.

Attorney.

§ 6. It shall be the duty of the City Attorney to attend to all actions and proceedings to which the city is a party, or interested therein; to give his advice and opinion in writing, whenever required by the Mayor or Common Council; to draw up all contracts and instruments to which the city is a party; and to perform such other services connected with his profession as an Attorney as may be required by the Common Council.

Marshal.

§ 7. It shall be the duty of the City Marshal to execute within the city, and return all process issued and directed to him by the Justices of

the Peace, or other legal authority within the city, and to arrest all persons guilty of a breach of the peace, or of a violation of any ordinance of the Common Council, and to take them before the Justice of the Peace, or other legal authority within the City; to collect the taxes of the city, and pay all moneys received into the Treasury, in pursuance of the ordinances of the Common Council; to supervise and control the City Police; to attend the sittings of the Common Council, and perform such duties whilst in attendance upon their sittings as may be directed by them, and to perform such other duties as may be prescribed by ordinance of the Common Council.

§ 8. The Common Council shall define the duties of the officers Other officers. elected by them whose duties are not herein prescribed, and shall determine the fees and salaries of all the officers elected by them under this Act.

§ 9. The Mayor shall receive for his services such salary or compensation as may be allowed by the Common Council, not exceeding, Compensation to Mayor. however, in any case the sum of one thousand dollars per year.

§ 10. The Aldermen shall not receive any salary or compensation for Aldermen. their services, unless a proposition to allow them a salary or compensation, specifying the amount thereof, be first submitted to the electors of the city, and be approved by them. Such proposition shall be published in one of the newspapers of the city, at least one month previous to the day on which the vote of the citizens shall be taken thereon. If a majority of the persons voting vote in favor of the proposition, then the salary or compensation specified therein may be allowed; but not otherwise: *Provided*, that such compensation or salary of each Alderman shall not exceed five dollars for each day's attendance at the meetings of the Common Council.

ARTICLE V.

Of Recorders' Courts and Justices of the Peace.

§ 1. The Common Council are hereby authorized and empowered to establish within the limits of the City a Recorder's Court, whenever in their opinion the interests of the City shall require the existence of such a Court. The Court, when thus established, shall possess all the powers and exercise all the jurisdiction conferred by law upon Recorders' Courts. Recorder's Court may be established.

§ 2. Until a Recorder's Court be established, the Justices of the Peace within the city shall have jurisdiction: First, of an action or proceeding for a penalty, fine, or forfeiture, imposed by any order of the Common Council; and second, of proceedings respecting vagrants and disorderly persons. Jurisdiction of Justices' Courts.

§ 3. The Justices of the peace in the City shall also have jurisdiction The like. of the following public offences committed within the limits of the city: First, Petit larceny; Second, Assault and battery not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill; Third, Committing a wilful injury to property, and

all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Proceedings
in Justices'
Courts.

§ 4. All proceedings and actions under this Act, before the Justices of the Peace within the limits of the city, shall be commenced by complaint, setting forth the violation of the ordinance, or the acts of vagrancy or disorderly conduct complained of, or the offence charged, with such particulars as to the offence, of time, place, person, or property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint; and all complaints shall be verified by the oath of the parties making them. To the complaint the defendant may plead, or he may answer or deny the same. Such plea, answer, or denial, may be oral or in writing; and immediately thereafter the case shall be tried, unless for good cause shown an adjournment be granted. In all cases the defendant shall be entitled, if demanded by him, to a trial by a jury of six persons.

ARTICLE VI.

Miscellaneous Provisions.

Ayes and
nays to be
entered
on Journal.

§ 1. Upon the passage of all resolutions and ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the ayes and nays shall be entered on the journals.

When
a majority
of members
must vote.

§ 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or any ordinance in anywise increasing or diminishing the city revenue.

When
resolutions
to lie over.

§ 3. All resolutions and ordinances calling for the appropriation of any sum of money exceeding one thousand dollars shall lie over for the space of one week, and be published in one of the newspapers printed in the city.

Style
of ordinances.

§ 4. The style of the city ordinances shall be as follows: "The Common Council of Marysville do ordain as follows:" All ordinances shall be published in one or more of the newspapers printed in the city.

Chap. 81.

AN ACT amending the Act to Incorporate the City of Marysville.

Passed April 20, 1851.

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

Amendment
to Section 9,
of Article 2.

§ 1. Section nine of article second of the Act to Incorporate the City of Marysville, which reads as follows: "No person shall be entitled to

vote at any City Election who is not a white male citizen of the United States, and who has not been a resident of this State one year, and of the City six months previous to the election," is hereby amended so as to read as follows: No person shall be entitled to vote at any City Election who is not a white male citizen of the United States, and who has not been a resident of this State six months, and of the City thirty days next preceding the election.

§ 2. Section one of article fifth of said act, which reads as follows: ^{Amendment to Section 1, of Article 3,} "The Common Council are hereby authorized and empowered to establish within the limits of the City a Recorder's Court, whenever in their opinion the interests of the City shall require the existence of such a Court. The Court when thus established shall possess all the powers and exercise all the jurisdiction conferred by law upon Recorders' Courts," is hereby amended so as to read as follows: There shall be a Recorder's Court within the limits of the City on and after the first day of July next. The Recorder shall be chosen by the qualified electors of the City on the Second Monday of June next. After the present year the Recorder shall be chosen at the annual election of City Officers. The Recorder's Court established by this act shall possess, in addition to the powers and jurisdiction conferred by law upon Recorders' Courts, the powers and jurisdiction in civil cases conferred by law upon Justices' Courts.

Chap. 82.

AN ACT to Incorporate the City of Nevada.

Passed March 13, 1851.

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

ARTICLE I.

OF BOUNDARIES, GENERAL POWERS, AND THE FORMATION OF WARDS.

§ 1. The district of Country in the County of Yuba, which is contained within the boundaries to be established as hereinafter provided, shall be a city by the name of Nevada, and the inhabitants residing therein shall be a Corporation under the name and style of the Mayor and Common Council of the City of Nevada, and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all Courts, and in all actions and proceedings, and may 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 ^{City incorporated.}

alter the same at pleasure: *Provided*, that they shall not purchase any real estate, other than such lands and 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 as may be required for burial purposes.

Boundaries
of City.

§ 2. The boundaries of the City of Nevada shall be established by an ordinance of the Common Council within one month after their first meeting; such boundaries shall not embrace an area of over three miles square, and the northern and southern lines of such boundaries shall be within one mile and a half from the store of Truex and Blackman; and the eastern line shall be within one mile, and the western line within two miles of said store. When the boundaries shall have been established, a full description of the same shall be entered in the records of the Common Council, and published in one of the newspapers of the County, once a week for four successive weeks; and such boundaries shall not hereafter be changed without the consent of the Legislature.

City to
be divided
into wards.

§ 3. Within one month after their first meeting the Common Council shall divide the City into five wards, and shall establish the respective boundaries of such wards, so as to embrace within the boundaries of each ward, as near as it can be conveniently done, the same number of inhabitants; when the boundaries of the wards shall have been established, a full description of the same shall be entered in the records of the Common Council, and published in one of the newspapers of the County.

Wards may
be altered.

§ 4. The Common Council shall have power to alter, from time to time; by a vote of two thirds of all the members, the boundaries of the wards: *Provided*, such alteration be made at least three months previous to the annual election of City officers.

ARTICLE II.

OF THE OFFICERS OF THE CITY AND THEIR ELECTION.

City Officers.

§ 1. The officers of the City of Nevada shall consist of one Mayor, ten Aldermen, one Recorder, one Treasurer, one Assessor, one Clerk, one Attorney, and one Marshal; and such other officers as are hereinafter authorized to be appointed.

Mayor, how
elected, &c.

§ 2. The Mayor shall be elected by the qualified electors of the City, and shall hold his office for one year, and until his successor be elected and qualified.

Election of
Aldermen.

§ 3. At the first election the Aldermen shall be elected by the qualified electors of the City; after the first election, two Aldermen shall be elected by the qualified electors of each ward; the Aldermen shall hold their offices for one year, and until their successors be elected and qualified.

Who
eligible as
Mayor or
Alderman.

§ 4. No person shall be eligible to the office of Mayor or of Alderman who is not a citizen of the United States, and who has not been a

resident of the State for one year, and of the City of Nevada three months previous to the election.

§ 5. The election for Mayor and Aldermen shall take place on the second Monday of April in each year. For the first election the Justice of the Peace in the township of Nevada, who was first elected Justice, shall appoint Inspectors to open the polls at each precinct, and shall appoint not less than three nor more than four precincts; at subsequent elections the polls shall be opened in each ward, and the appointment of Inspectors and the designation of the place where the polls shall be opened shall be made by the Common Council.

Election,
when and
how held.

§ 6. All the provisions of law in force regulating elections and defining the duties and powers of the officers thereof, shall apply to the election for Mayor and Aldermen under this act; except that two Inspectors and one Clerk shall be the only officers of election at the precincts appointed for the first election, and at subsequent elections for each ward in the city.

Law
regulating
elections.

§ 7. At the first election, the Inspectors and Clerks of each precinct shall, within one day after the election, deliver to the Justices of the Peace in the Township of Nevada sealed returns of the votes cast for Mayor and Aldermen; such returns shall be opened on the Thursday following the election by said Justices in the presence of each other, and a certificate of election as Mayor shall be issued by them to the person receiving the highest number of votes for that office in the city; and a certificate of election as Aldermen to the ten persons receiving the highest number of votes for the office of Aldermen in the city.

Election
returns.

§ 8. At elections subsequent to the first sealed returns from the Inspectors and Clerk of each ward shall be delivered to the Clerk of the City, showing the number of votes cast for persons to fill the office of Mayor. Such returns shall be opened and counted in the presence of the Common Council, and a certificate of election issued under their direction to the person receiving the highest number of votes in the city for that office; and the Inspectors and Clerk of each ward shall, immediately after the votes are counted, prepare and deliver a certificate of election as Aldermen to the two persons having the highest number of votes in their respective wards.

The like.

§ 9. No person shall be entitled to vote at any city election who is not a white male citizen of the United States, and who has not been a resident of the State six months, and of the city thirty days next preceding the election.

Who entitled
to vote.

§ 10. The Mayor and Aldermen shall enter upon their duties the first Monday subsequent to their election. Before entering upon their duties they shall take the oath of office, which may be administered by any Judge or Justice.

Commencement
of term of office.

§ 11. The Common Council at their first meeting after the annual election, and at any other meeting when from any cause it may become necessary, shall elect by ballot a President from their own body, who

President
of Council.

shall preside at their meetings when the Mayor is not present, and whenever there is a vacancy in the office of Mayor, or whenever the Mayor is absent from the city, or is unable from sickness or any other cause to discharge the duties of his office, the President shall act as Mayor, and possess all the powers and perform all the duties of Mayor during such vacancy, absence, or disability.

Vacancy
in office of
Alderman.

§ 12. Whenever a vacancy shall occur in the office of any Alderman by death, resignation, removal, or otherwise, the Common Council shall order a special election to fill such vacancy. The person elected to fill a vacancy shall hold his office for the residue only of the term of his immediate predecessor.

Election of
City Officers.

§ 13. The Common Council shall each year, within one month after the annual election, elect by ballot the Treasurer, the Assessor, the Clerk, the Attorney, and the Marshal of the city, who shall hold their respective offices for one year, and until their successors are elected and qualified, unless previously removed for misconduct in office or neglect of duty; the Recorder shall also be elected by the Common Council by ballot, and shall hold his office for two years and until his successor is elected and qualified.

Election of
inferior officers.

§ 14. The Common Council shall have power to elect such other inferior officers as they may deem necessary in the government of the city, and in all elections they shall vote by ballot.

ARTICLE III.

Of the Common Council and their Powers and Duties.

Common
Council, how
constituted.

§ 1. The Mayor and Aldermen of the city shall constitute the Common Council, which shall meet on the first Monday subsequent to the annual election, and on the first Monday of each subsequent month in the year, and at such other times as they shall by resolution direct. The Mayor may call special meetings at any time by written notice to each member, served personally or left at his place of residence or business; at all meetings of the Common Council the Mayor when present shall preside.

Quorum.

§ 2. A majority of the Common Council shall constitute a quorum for the transaction of business, but a smaller number shall compel the attendance of absent members; and no tax or assessment shall be ordered except by a vote of a majority of all the members.

Voting in
Council.

§ 3. In the proceedings of the Common Council each member present shall have a vote except the Mayor, who shall have only a casting vote when the votes of other members are tied.

Rules.

§ 4. The Common Council shall determine the rules of their proceedings, and the qualifications and elections of their members.

Proceedings
of Council.

§ 5. The sittings of the Common Council shall be open to the public, except when the interests of the City shall require secrecy. A journal of their proceedings shall be kept by the Clerk, under their direction, and the yeas and nays on any question shall be taken and entered on the journal, at the request of any two members.

§ 6. The Common Council shall have power within the City :

Powers
of Council.

1st. To make by-laws and ordinances not repugnant to the Constitution and Laws of this State.

2d. To levy and collect taxes on all property, real and personal, made taxable by law for State purposes, not exceeding one per centum per annum, upon the assessed value of such property.

3d. To provide for the draining, grading, paving, improvement, repair, and lighting of streets, and the construction of sidewalks, drains, and sewers, and keeping the same in repair, and the cleaning of the drains and sewers, and the prevention and removal of obstructions on the sidewalks.

4th. To provide for the prevention and extinguishment of fires, and to establish and organize fire companies.

5th. To regulate the storage of gunpowder, tar, pitch, rosin, and other extremely combustible materials.

6th. To establish and regulate a city police.

7th. To prevent and remove nuisances.

8th. To remove from the immediate vicinity of the inhabited parts of the city all slaughter-houses, haystacks, forges, and blacksmith shops.

9th. To license and regulate auctioneers and taverns, bar-rooms, billiard tables, bowling alleys, theatrical and other exhibitions, shows, and amusements.

10th. To license, tax, regulate, prohibit, and suppress, tippling houses, dram shops, gaming and gambling houses, and hawkers, pedlers, and pawnbrokers, and to suppress disorderly houses, and houses of ill fame.

11th. To provide for the erection of all public buildings for the use of the city.

12th. To open, alter, and widen streets and alleys.

13th. To establish a City Hospital, and to provide for the support of the indigent sick.

14th. To borrow money on the faith and credit of the City, but no loan shall be made for a sum exceeding five thousand dollars, including the amount of any previous indebtedness, without the consent to such loan of the electors of the city, previously obtained.

15th. To appropriate money for any item of City expenditure, and to provide for the payment of any debts and expenses of the City.

16th. To prevent and restrain any riot or disorderly assemblage in any street, house, or place of the city.

17th. To impose and appropriate fines, forfeitures, and penalties, for the breach of any ordinance, and to provide for the punishment of breaches of the 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.

18th. To suspend or remove any city officer for misconduct in

office, or neglect of duty, with the concurrence of two thirds of the members elected.

19th. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members with the concurrence of two thirds of the members elected.

Loans,
when may
be effected.

§ 7. When the Common Council desire to effect a loan for a sum exceeding five thousand dollars, including the amount of any previous indebtedness, they shall submit a proposition for such loan to the electors of the city; and if a majority of the persons voting vote in favor of such proposition, the Common Council shall have authority to effect such loan, but not otherwise.

Accountability
of officers.

§ 8. It shall be the duty of the Common Council to provide for the accountability of all officers and other persons elected by them, to whom the receipt and expenditure of the funds of the city shall be intrusted, by requiring from them sufficient security for the faithful performance of their duties or trust, which security shall be given by them before entering on their respective duties; in case such security becomes insufficient, additional security may be required, and if not given the Common Council, by a vote of two thirds of the members, may declare the office vacant, and elect another person to supply the vacancy.

Statement
of receipts and
expenditures
to be published.

§ 9. It shall be the duty of the Common Council to publish in a public newspaper, printed in the city, if one be printed in the city, but if none be printed in the city, then in one printed in the county, one month before the annual election of officers in each year, for the general information of the citizens of Nevada, a full and detailed statement of the receipts and expenditures of the city, during the year ending on the last day of the month previous to that in which the publication is made; and in every such statement the different sources of the city revenue, and the amount received from each, the several appropriations made by the Common Council, the objects for which the same were made, and the amount of moneys expended under each, the moneys borrowed on the faith and credit of the city, the authority under which each loan was made, and the terms on which it was obtained, shall be clearly and particularly specified.

ARTICLE IV.

Of the Powers and Duties of City Officers, and their compensation.

Duties
of Mayor.

§ 1. It shall be the duty of the Mayor :

1st. To communicate to the Common Council quarterly a general statement of the situation and condition of the city, in relation to its government, finances, and improvements.

2d. To recommend to the Common Council the adoption of all such measures as he shall deem expedient, relative to the police, health, security, cleanliness, and ornament of the city, and the improvement of its government.

3d. To be vigilant and active in causing the by-laws and ordinances of the Common Council to be duly executed and enforced.

4th. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty.

5th. To countersign all warrants and licenses issued under orders or ordinances of the Common Council.

6th. To preside over the Common Council when present at their meetings.

7th. To maintain the peace and good order of the city, and generally to perform all such duties as may be prescribed by this Act, and the ordinances of the Common Council and the laws of this State.

§ 2. It shall be the duty of every Alderman of the city to attend the regular and special meetings of the Common Council; to act upon Committees when appointed thereto by the Mayor; to report to the Mayor all subordinate officers who are guilty of violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the city, and in enforcing the by-laws and ordinances of the Common Council. Aldermen.

§ 3. It shall be the duty of the City Recorder to hold a Court, to be called the Recorder's Court of the city of Nevada, at such convenient place in the city as the Common Council may provide, and to pay into the City Treasury at the end of each week all moneys collected and paid into Court, in actions and proceedings therein, to which the city is a party. Recorder.

§ 4. It shall be the duty of the City Treasurer to receive all moneys belonging to the city, to keep an account of all receipts and expenditures, in such manner as the Common Council shall direct; and he shall, whenever required by resolution of the Common Council, present to them a full account of such receipts and expenditures for any period designated in the resolution. All moneys drawn from the City Treasury shall be drawn in pursuance of an order of the Common Council by warrant, signed by the Clerk and countersigned by the Mayor, or the President of the Common Council, and such warrant shall specify for what purpose the amount designated therein is to be paid. Treasurer.

§ 5. It shall be the duty of the City Assessor to prepare within such time as the Common Council shall direct, and present to them, with his certificate of their correctness, a list of all the taxable property, real and personal, within the city, with the valuation thereof; and a list containing the names and occupations of all residents within the city; and to perform such other services in relation to the assignment of property in the city as may be required by the Common Council. Assessor.

§ 6. The Clerk of the City shall be the Clerk of the Common Council, and it shall be his duty to keep the Corporate Seal, and all the papers and documents belonging to the city; to file them in his office Clerk.

under appropriate heads; to attend the sittings of the Common Council, and keep a journal of their proceedings, and a record of all their by-laws and ordinances; to sign all warrants and licenses issued in pursuance of the orders and ordinances of the Common Council, and affix the Corporate Seal to such licenses; to keep an accurate account in a suitable book, under the appropriate heads of expenditures, of all orders drawn on the Treasury, and all warrants issued in pursuance thereof; also to keep an account in an appropriate book of all licenses issued, with the names of the persons to whom issued, the date of issues, the time for which the same are granted, and the sums paid therefor.

Attorney. § 7. It shall be the duty of the City Attorney to attend to all actions and proceedings to which the city is a party, or interested therein; to give his advice and opinion in writing, whenever required by the Mayor or Common Council; to draw up all contracts and instruments to which the city is a party; and to perform such other services connected with his profession as an Attorney as may be required by the Common Council.

Marshal. § 8. It shall be the duty of the City Marshal to execute within the city, and return all process issued and directed to him by the Recorder, or from the Recorder's Court of the city; to arrest all persons guilty of a breach of the peace, or a violation of any ordinance of the Common Council, and to take them before the Recorder; to pay into the Recorder's Court all moneys collected by him on any process issued in an action or proceeding therein to which the city is a party; to collect the taxes of the city, and pay all moneys received for taxes into the City Treasury, in pursuance of the ordinances of the Common Council; to supervise and control the city police; to attend the sittings of the Common Council, and perform such duties whilst in attendance upon their sittings as may be directed by them, and to perform such other duties as may be prescribed by ordinance of the Common Council.

Inferior officers. § 9. The Common Council shall define the duties of the officers elected by them whose duties are not herein prescribed; and shall determine the fees and salaries of all the officers elected by them under this Act.

Compensation to Mayor. § 10. The Mayor shall receive for his services such salary or compensation as may be allowed by the Common Council, not exceeding, however, in any case, the sum of one thousand dollars per year.

To Aldermen. § 11. The Aldermen shall not receive any salary or compensation for their services, unless a proposition to allow them a salary or compensation, specifying the amount thereof, be first submitted to the electors of the city, and be approved of by them; such proposition shall be published in one of the newspapers of the City, if there be one; but if there be no newspaper printed in the city, then in one of the newspapers of the county, at least one month previous to the day on which the vote of the citizens shall be taken thereon; if a majority of the persons voting vote in favor

of the proposition, then the salary or compensation specified therein may be allowed, but not otherwise: *Provided*, that such compensation or salary of each Alderman shall not exceed five dollars for each day's attendance at the meetings of the Common Council.

ARTICLE V.

Of the Recorder, and the Recorder's Court.

§ 1. The Recorder shall possess the powers and exercise the duties of a committing Magistrate in criminal cases which are above the jurisdiction conferred by this Act upon the Court held by him. Powers of Recorder.

§ 2. The Recorder's Court shall have jurisdiction: Jurisdiction of Recorder's Court.
1st. Of actions to determine the right to "mining claims" within the limits of the City:

2d. Of actions or proceedings for penalties, fines or forfeitures, imposed by the ordinances of the Common Council: and,

3d. Of proceedings respecting vagrants and disorderly persons.

§ 3. The Recorder's Court shall also have jurisdiction of the following public offences committed within the limits of the City: The like.

1st. Petit larceny:

2d. Assault and battery not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill.

3d. Breaches of the peace, riots, affrays, committing a wilful injury to property, and all misdemeanors punishable by fine, not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fines and imprisonment.

§ 4. All proceedings and actions under this Act in the Recorder's Court shall be by complaint, setting forth the "mining claim" asserted, with its metes and bounds, or the violation of the ordinance, or the acts of vagrancy, or the disorderly conduct complained of, or the offence charged, with such particulars as to the offence, of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint; and all complaints shall be verified by the oath of the parties making them; to the complaint the defendant may plead, or he may answer or deny the same; such plea, answer, or denial, may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment be granted. In actions to determine the right to "mining claims," either party shall be entitled, if demanded, to a jury of twelve persons; in all other actions or proceedings the defendant shall be entitled, if demanded by him, to a jury of six persons. Proceedings in Recorder's Court.

§ 5. In actions to determine the right to "mining claims," proof shall be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claims, and such customs, usages, or regulations, when not in conflict with the constitution and laws of this State, shall govern the decision of the actions. In cases of "mining claims."

ARTICLE VI.

Miscellaneous Provisions.

Yeas and
nays to be
entered
on journal.

§ 1. Upon the passage of all resolutions and ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the yeas and nays shall be entered upon the journals.

Appropriations.

§ 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or an ordinance in any wise increasing or diminishing the City revenue.

The like.

§ 3. All resolutions and ordinances calling for the appropriation of any sum of money exceeding one thousand dollars shall lay over for the space of one week, and be published in one of the newspapers printed in the city, if there be one.

Style
of ordinances.

§ 4. The style of the city ordinances shall be as follows: "The Common Council of the City of Nevada do ordain as follows." All ordinances shall be published in a newspaper printed in the city, if there be one; but if no newspaper be printed in the city, then by posting the same in three conspicuous places in each ward, and by printing the same in some newspaper within the County.

Chap. 83.

AN ACT to Incorporate the City of Benecia.

Passed April 24, 1851.

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

ARTICLE I.

City
incorporated.

§ 1. The district of country in the County of Solano, which is contained within the boundaries hereinafter described, shall be a city by the name of Benecia, and the inhabitants residing therein shall be a corporation under the name and style of the "Mayor and Council of the City of Benecia," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all Courts and in all actions and proceedings, and may 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 the lands belonging to the city, and may have a common seal, and alter the same at pleasure: *Provided*, they shall not purchase 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 laying out of streets or public grounds, or may be required for public cemeteries.

§ 2. The boundaries of the City of Benecia shall be as follows: All that tract of land lying on the north side of the Straits of Carquinez, as surveyed by Benjamin A. Barlow, Esq., late City Surveyor, and designated by his map now on file in the office of the Clerk of Solano County; the southern boundary shall extend to the middle of the channel of the Straits of Carquinez.

Boundaries of City.

§ 3. The said city shall be divided into two wards, as follows: 1st Ward, all that part of the city lying east of First street; 2d Ward, all that part of the city lying west of First street.

City to be divided into wards.

ARTICLE II.

Of the Officers of the City and their Election.

§ 1. The officers of the City of Benecia shall consist of one Mayor, eight Councilmen, one Treasurer, one Assessor, one Clerk, one Attorney, one Marshal, and one Surveyor, and such other officers as are hereinafter authorized to be appointed, but no person shall fill and discharge the duties of any two of said offices.

City Officers.

§ 2. The Mayor shall be elected by the qualified electors of the city, and shall hold his office for one year and until his successor be elected and qualified.

Election of Mayor.

§ 3. An equal number of Councilmen shall be elected by the qualified electors of each ward, and shall hold their offices for one year and until their successors are elected and qualified.

Of Councilmen.

§ 4. The Council shall have power to increase the number of wards and to alter the boundaries thereof, and apportion the number of Councilmen to be elected from each ward: *Provided*, such alteration and apportionment be made three months previous to the annual election of City Officers.

Number of wards may be increased.

§ 5. No person shall be eligible to any office herein named, or authorized to be made, who is not a citizen of the United States, and who has not been a resident of the State one year, and of the City of Benecia six months previous to the election.

Who eligible to office.

§ 6. The election of Mayor and Councilmen shall take place on the first Monday of May in each year. The Council shall appoint two Inspectors for each Ward, and designate the places for opening the polls.

Election of Mayor, and when to be held.

§ 7. All the provisions of the law now in force regulating elections, and defining the powers and duties of the officers thereof, shall apply to the election for Mayor and Councilmen under this Act, except that two Inspectors and one Clerk shall be the only officers of election in each ward of the city.

Laws regulating elections.

§ 8. The Inspectors and Clerk of each ward shall deliver to the persons receiving the highest number of votes in the Ward a certificate of election as Councilmen, and shall also transmit to the Clerk of the Council a statement showing the number of votes cast, with the number for each person; such returns shall be opened and counted in the presence of the Council, and a certificate of election be issued under their direction

Certificate of election.

to the person receiving the highest number of votes for that office. When two or more persons have an equal number, and the highest number of votes, a new election shall be called by the Council, and shall take place within ten days thereafter.

Who
entitled
to vote.

§ 9. Any person who shall be entitled to vote for State officers shall be entitled to vote at all City elections, but no person shall be elected a Councilman or be entitled to vote at any City election unless he shall have resided in the Ward in which he votes twenty days next preceding the election.

Commencement
of term of office.

§ 10. The Mayor and Councilmen shall enter upon their duties the first Monday subsequent to receiving their certificate of election. Before entering upon their duties they shall take the oath of office, which may be administered by any Judge or Justice.

President
of Council.

§ 11. The Council at their first meeting after the annual election, and at any other meeting when from any cause it may become necessary, shall elect a President from their own body, who shall preside at all their meetings; and whenever there is a vacancy in the office of Mayor, or whenever the Mayor is absent from the city, or is unable from sickness or any other cause to discharge the duties of his office, the President of the Council shall act as Mayor, and possess all the powers and perform all the duties of Mayor during such vacancy, absence, or disability.

Vacancies,
how filled.

§ 12. Whenever any vacancy shall occur in the office of Mayor or of any Councilman by death, resignation, removal, or otherwise, the Council shall order a special election to fill such vacancy. The person elected to fill a vacancy shall hold his office for the residue only of the term of his immediate predecessor.

Election
of Officers.

§ 13. The Council shall each year, within a month after the annual election, elect the Treasurer, Assessor, Clerk, Attorney, Marshal, and Surveyor of the City, who shall hold their respective offices for one year, and until their successors are elected and qualified, unless previously removed as provided in this Act.

Election of
other officers.

§ 14. The Council shall have power to elect such other officers as they may deem necessary in the government of the City; and in all elections they shall vote viva voce.

ARTICLE III.

Of the Council, its Powers and Duties.

Meetings
of Council.

§ 1. The Council shall meet on the first Monday subsequent to the annual election, and the first Monday of each subsequent month in the year, and at such other times as they shall by resolution appoint. The Mayor may call special meetings at any time by written notice to each member served personally, or left at his place of business or residence.

Quorum.

§ 2. A majority of the Council shall constitute a quorum for the transaction of business, but a smaller number may compel the attendance

of absent members : *Provided*, that no tax or assessment shall be ordered except by a vote of a majority of all the members present.

§ 3. In the proceedings of the Council each member present shall have a vote, and the President shall also have a casting vote when the votes of the members are tied. Voting in Council.

§ 4. The Council shall determine the rules of their proceedings and the qualification and election of their members. Rules of Council.

§ 5. The sittings of the Council shall be open to the public, except when the interests of the city shall require secrecy ; a journal of their proceedings shall be kept by the Clerk under their direction, and the yeas and nays on any question shall be taken and entered on the journal at the request of any two members. Sittings of Council.

§ 6. The Council shall have power within the city : Powers of Council.

1st. To make by-laws and ordinances not repugnant to the Constitution and Laws of the State :

2d. To levy and collect taxes on all property, real and personal, made taxable by law for State purposes, not exceeding one per cent. per annum upon the assessed value of such property, except local assessments for local improvements, as hereinafter provided :

3d. To provide for the draining, grading, paving, planking, improvement, repair, and lighting of the streets, the construction of sidewalks, and keeping the same in repair and free from obstructions.

4th. To construct wharves, as far as ship's channel at the foot or south-ends of all streets running into the water, and also at the foot or west-end of B, C, D, E, and F. streets respectively, and to collect a revenue tax for wharfage at such public wharves :

5th. To provide for the removal of obstructions to navigation in the harbor within the corporate limits of the city :

6th. To provide for the prevention and extinguishment of fires, and organize and establish fire companies :

7th. To regulate the storage of gunpowder, tar, pitch, rosin, and other extremely combustible materials :

8th. To prevent and remove nuisances, and prevent and remove slaughter-houses, haystacks, and whatever else may be injurious to the health and safety of the city :

9th. To license, tax, or regulate, or prohibit tipping houses, dram shops, gaming and gambling houses, and houses of ill fame :

10th. To license, tax, and regulate auctioneers, hawkers, pedlars, and pawnbrokers, and tavern bar-rooms, and billiard tables, bowling alleys, theatrical and other exhibitions, shows and amusements :

11th. To license, tax, and regulate hackney coaches, wagons, carts, drays, and livery stables, and fix the rates to be charged for the carriage of persons and property :

12th. To license, tax, and regulate boatmen and porters, and fix the rates of lighterage and portorage :

13th. To establish and regulate city police and night watch, and

prevent any riot, or disorderly assemblage in any street, house, or place in the city :

14th. To erect a workhouse or house of correction, and provide for the maintenance and government thereof :

15th. To establish a city hospital, and provide for the support of indigent sick :

16th. To erect market houses, establish market places, and provide for the government and regulation thereof :

17th. To provide for the erection of all public buildings required for the city, and regulate and prescribe the manner of building partitioning, walls, and fences :

18th. To provide for the establishment and support of public schools, seminaries of learning, and public libraries, and for the erection of suitable buildings for the same :

19th. To elect a superintendent of public instruction and a board of education, which board shall, at the time of election, be divided by lot into two classes, one half to continue in office two years and the other half to go out of office at the expiration of the first year, upon an election of members in their place for the residue of the term :

20th. To open, alter, and widen streets and alleys, and on the petition of persons owning two thirds of the property along the line of an alley within a block, to close such alleys :

21st. To build and keep in repair bridges, culverts, and flood-gates, and to excavate canals through the bed of any street, on petition of the owners of two thirds of the property bounding or fronting on the proposed canal :

22d. To provide for supplying the city with water, and regulate the use of public pumps and hydrants :

23d. To make local assessments for pumps and all other local improvements, on the petition of the owners of two thirds of the property along the line or fronting on such improvements : *Provided*, such assessment shall not exceed in amount two thirds of the actual cost of such improvements :

24th. To borrow money upon the faith and credit of the city ; but no loan shall be made for a sum exceeding twenty-five thousand dollars, including the amount of any previous indebtedness, without the consent of a majority of the electors of the city previously obtained ; and any excess which may be voted, over and above the sum of twenty-five thousand dollars, without the consent of the electors being first had, shall be collected in an action of debt against the Councilmen voting such excess :

25th. To appropriate money for any item of city expenditure, and to provide for the payment of any debts and expenses of the city : *Provided*, that no contract made in behalf of the city, conditioned for the payment of any sum exceeding five thousand dollars, shall be entered into till proposals for the same shall be invited by public ad-

vertisement for a period of ten days, and in any case the contract shall be given to the lowest responsible bidder or bidders: *and Provided further*, that neither the Mayor, nor any Councilman, or other public officer under city appointment, shall, during the period for which he is elected to serve, be interested in any such contract:

26th. To impose and appropriate fines, forfeitures, and penalties for the breach of any ordinances; but no fine shall be imposed for more than five hundred dollars, and no offender shall be imprisoned for a longer term than sixty days, or made to work on the streets or in the houses of correction for a longer term than thirty days, for one and the same offence:

27th. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members, with the concurrence of two thirds of the members elected.

§ 7. It shall be the duty of the Council to provide for the accountability of all officers and other persons elected by them, to whom the receipt and expenditure of the funds of the City shall be intrusted, by requiring sufficient security for the faithful performance of their duties or trusts, which security shall be given by them before entering upon such duties or trusts. In case such security becomes insufficient, additional security may be required, and if not given, the Council by a vote of two thirds of the members may declare the office vacant, and elect another person to fill the vacancy.

Accountability
of officers.

§ 8. It shall be the duty of the Council to publish, one month before the annual election of officers in each year, an abstract of the receipts and expenditures of the City, during the year ending on the last day of the month previous to that in which the publication is made; and in every such statement of the different sources of the City revenue, and the amount received from each, the several appropriations made by the Council, the object for which the same were made, and the amount of money expended under each, the amount of money borrowed on the faith and credit of the City; the authority under which each loan was made, and the terms on which it was obtained shall be clearly and particularly specified.

Statement of
receipts and
expenditures
to be published.

ARTICLE IV.

Of the Powers and Duties of the City Officers, and their compensation.

§ 1. It shall be the duty of the Mayor:

1st. To communicate to the Council at their first meeting, and quarterly thereafter, a general statement of the situation and condition of the City, in relation to its government, finances, and improvements, and recommend the adoption of all such measures as he shall deem expedient in relation to the police, security, health, cleanliness, ornament, and improvement of the City.

Duties of
Mayor.

2d. To be vigilant and active in causing the by-laws and ordinances to be duly executed and enforced.

3d. To execute a constant supervision and control over the

conduct and acts of all subordinate officers, and to receive and examine all complaints preferred against any of them for violation or neglect of duty.

4th. To sign all contracts made in behalf of the City, and countersign all warrants and licenses issued under order or ordinance of the City.

5th. To maintain the peace and good order of the City, and generally to perform all such actions as may be prescribed by this act, and the ordinances of the Council and the laws of the State.

6th. It shall be the duty of the Mayor also to sign all ordinances passed by the Council if he approve the same, but if he should not approve any ordinance submitted to him, he shall return it with his objections in writing to the Council, who shall cause the same to be entered on their Journal, and proceed to reconsider the ordinance. If after such reconsideration two thirds of the members elect shall agree to pass the ordinance, it shall become a law. If any ordinance shall not be returned by the Mayor within one week after it shall have been presented to him, they shall become effective as if he had signed it.

Of Councilman.

§ 2. It shall be the duty of every Councilman to attend the regular and special meetings of the Council; to act upon communications; to report to the Mayor all subordinate officers who are guilty of a violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the City, and in enforcing the by-laws and ordinances of the Council.

Treasurer.

§ 3. It shall be the duty of the Treasurer to receive all moneys belonging to the City, to keep an account of all receipts and expenditures in such manner as the Council shall direct; and he shall, whenever required by a resolution of the Council, present to them a full account of such receipts and expenditures for any period designated in the resolution. All moneys drawn from the City Treasury shall be drawn in pursuance of an order of the City Council, by warrant signed by the Clerk, and countersigned by the Mayor, and such warrant shall specify for what purpose the amount designated therein is to be paid.

Assessor.

§ 4. It shall be the duty of the City Assessor to prepare within such time as the Council shall direct, and present to them, with his certificate of their correctness, a list of all the taxable property, real and personal, within the City, with the valuation thereof, and a list containing the names and occupations of all residents within the City, and to perform such other services in relation to the assessment of property in the City as may be required by the Council.

Clerk.

§ 5. It shall be the duty of the Clerk of the City to keep the Corporate Seal, and all the papers and documents belonging to the City, to file them in his office under their appropriate heads; to attend the meetings of the Council, and keep a journal of their proceedings and a record of all their by-laws and ordinances; to sign all warrants and licenses issued in pursuance of the orders and ordinances of the

Council, and affix the Corporate Seal to all contracts and licenses; to keep an accurate account in a suitable book, under the appropriate heads of expenditure, of all orders drawn on the Treasury, and all warrants issued, with the name of the person to whom issued, the date of the issue, and all licenses issued, to whom and for what purpose issued, the time for which the same were granted, and the sum paid therefor.

§ 6. It shall be the duty of the City Attorney to attend to all actions and proceedings to which the City is a party or interested therein; to give his advice and opinion in writing whenever required by the Mayor or Council; to draw up all contracts and instruments to which the City is a party, and to perform such other services connected with his profession as an Attorney as may be required by the Council. Attorney.

§ 7. It shall be the duty of the City Marshal to execute within the City and return all process issued and directed to him by the Justices of the Peace, or other legal authority within the City; to arrest all persons guilty of a breach of the Peace or of a violation of any ordinance of the Council, and to take them before a Justice of the Peace or other legal authority within the City; to collect the taxes of the City and pay over all moneys into the City Treasury, received in pursuance of the ordinances of the Council; to supervise and control the City Police and Watch; to attend the meetings of the Council and perform such duties while in attendance upon their meetings as may be directed by them, and to perform such other duties as may be prescribed by ordinance. Marshal.

§ 8. It shall be the duty of the City Surveyor to superintend the erection of all public buildings, the public wharves, the grading, paving, and planking of streets, and such other improvements as may be authorized; to see that all the ordinances regulating streets and sidewalks, partition walls, and fences, are complied with; report to the Mayor all nuisances, obstructions, and encroachments on the streets and sidewalks, and perform all such other duties as may be prescribed to him as Street Commissioner. Surveyor.

§ 9. The Council shall define the duties of the officers elected by them whose duties are not herein prescribed, and shall fix the fees and salaries of all officers elected by them. Other officers.

§ 10. The Mayor and Councilmen shall receive no compensation for their services. Compensation.

ARTICLE V.

OF RECORDERS' COURTS AND JUSTICES OF THE PEACE.

§ 1. There shall be a Recorder's Court within the limits of the City whenever, in the opinion of the Council, the interests of the City shall require the existence of such a Court. And when established it shall possess all the powers and exercise all the jurisdiction conferred by law upon Recorders' Courts. Recorder's Court may be established.

§ 2. Until a Recorder's Court be established, the Justices of the Jurisdiction of Justices' Courts.

Peace within the limits of the City shall have jurisdiction : 1st, of an action or proceeding, fine, or forfeiture, imposed by an ordinance of the Council ; and 2d, of proceedings respecting vagrants and disorderly persons.

The like.

§ 3. The Justices of the Peace in the City shall also have jurisdiction of the following public offences committed within the limits of the City : 1st, of petit larceny ; 2d, assault and battery, not charged to have been committed on a public officer in the execution of his duties, or with intent to kill ; 3d, committing a wilful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Proceedings in Justices' Courts.

§ 4. All proceedings and actions under this act, before the Justices of the Peace within the limits of the City, shall be commenced by complaint setting forth the violation of the ordinance or the acts of vagrancy or disorderly conduct complained of, or the offence charged with such particulars as to the offence, time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint ; and all complaints shall be verified by the oath of the parties making them. To the complaint the defendant may plead, or he may answer or deny the same ; such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment may be granted. In all cases the defendant shall be entitled, if demanded by him, to a trial by a jury of six persons.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

Yeas and nays to be entered on Journal.

§ 1. Upon the passage of all resolutions and ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the yeas and nays shall be entered on the journal.

Appropriations.

§ 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or an ordinance in anywise increasing or diminishing the City revenue.

The like.

§ 3. All resolutions and ordinances calling for the appropriation of any sum exceeding one thousand dollars, shall lay over for the space of one week and be published in a paper printed in the City, should there be one ; if not, then to be posted up in three of the most public places in the City.

Style of ordinances.

§ 4. The style of the City ordinances shall be as follows : " The Council of the City of Benecia do ordain as follows." All ordinances shall be printed in a newspaper printed in the City ; should there be none, then to be posted up in three of the most public places in the City.

Sales for taxes.

§ 5. The sales of real estate heretofore for taxes by the City authori-

ties are hereby confirmed, and deeds shall be granted by the Council for the same, and shall have the same validity in law as property sold for taxes due the State.

§ 6. The act entitled "An Act to incorporate the City of Benecia," *Act repealed.* passed March twenty seventh, one thousand eight hundred and fifty, is hereby repealed.

Chap. 84.

AN ACT to Reincorporate the City of San Francisco.

Passed April 15, 1851.

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

CHARTER OF THE CITY OF SAN FRANCISCO.

ARTICLE I.

General Powers, Boundaries and Wards.

§ 1. The People of the City of San Francisco shall continue to be a ^{City} body politic and corporate, under the style of the "City of San Francisco," and by that name they shall have perpetual succession, may complain and defend in all courts and in all actions and proceedings, and may purchase, receive, and hold property, real and personal, and sell or otherwise dispose of the same for their common benefit: *Provided*, that they shall purchase without the city only such property as may be necessary for the purposes of burial, or for the erection of prisons, hospitals, asylums, and waterworks for supplying the city with water.

§ 2. The City of San Francisco shall hereafter be bounded as follows: ^{Boundary} On the south by a line parallel with Clay street, two and a half miles _{of City.} distant, in a southerly direction, from the centre of Portsmouth square, on the west by a line parallel with Kearney street, two miles distant, in a westerly direction, from the centre of Portsmouth square. Its northern and eastern boundaries shall be coincident with those of the County of San Francisco.

§ 3. The said city shall continue as now divided into eight wards, ^{Wards.} which number shall not be altered, unless by Act of the Legislature. The Common Council shall, at least three months before the general election in the year eighteen hundred and fifty-two, and also during the second year thereafter, redistrict the city, so that each ward shall contain as near as may be the same number of inhabitants.

ARTICLE II.

Of Elections.

City Officers. § 1. For the government of said city there shall be elected annually, by general ticket, the following officers: A Mayor, Recorder, Comptroller, Treasurer, Collector, Attorney, Marshal, Street Commissioner, and three Assessors; and, also, by the respective wards, a body of Aldermen and a board of Assistant Aldermen.

Who eligible for office. § 2. No person who is not a qualified voter shall be eligible to any office under this charter, nor shall any person be entitled to vote at any city election unless he shall be an elector for State officers, and have resided in the ward thirty days next preceding said election.

Vacancies. § 3. All vacancies, except as hereinafter provided, shall be filled by election in such manner as may be prescribed by ordinance.

Notice of election. § 4. It shall be the duty of the Common Council to call all city elections, to designate the places of holding the same, giving at least ten days' notice thereof, to appoint inspectors of elections, to examine the returns and declare the results, and to determine contested elections.

When elections to be held. § 5. The first general election for officers under this charter shall be held on the fourth Monday of April, one thousand eight hundred and fifty-one, and thereafter annually at the general election for State officers. No election shall be held in any place where intoxicating liquors are vended.

Law regulating elections. § 6. All provisions of law regulating elections for State officers shall apply, so far as practicable, to elections under this charter.

Tie votes. § 7. 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.

Assessors. § 8. At the first election under this charter only two Assessors shall be elected, and the County Assessor shall act as one of the City Assessors during the term for which he was elected.

ARTICLE III.

Of the Common Council.

Aldermen and Assistants. § 1. The legislative power of the city shall be vested in a Board of Aldermen and a Board of Assistant Aldermen, which shall each consist of one member from each ward, and shall form the Common Council of the city. No person shall be eligible to either Board who shall not be an elector of the ward for which he may be elected; nor shall he be a member except whilst a resident of the ward which he represents.

Meetings of Aldermen. § 2. Both Boards shall assemble on the first Monday after their election; they shall sit in separate chambers, and their proceedings shall be public. A majority in each Board shall be a quorum, but a smaller number may adjourn from time to time, and may compel the attendance of absent members. Each Board shall elect a president from its own body, choose its clerk and other officers, determine the rules of its pro-

ceedings, judge of the qualifications of election of its own members, and keep a journal of its own proceedings, and shall have power to compel the attendance of members, to punish them for disorderly conduct, and, with the consent of two thirds, to expel a member. Either Board may originate or amend any ordinance or resolution, and no ordinance or resolution shall be passed unless by a majority of all the members elected to each Board. On the final passage of every ordinance or resolution ayes and nays shall be taken and entered upon the journal.

§ 3. Every ordinance passed by both Boards, shall, before it takes effect, be presented to the Mayor for his approval. If he approve he shall sign it, if not he shall return it with his objections to the Board in which it originated. Said Board shall enter the objections on its journal, and publish them in some city newspaper. If at any stated meeting thereafter two thirds of all the members elected to each Board shall agree to pass said ordinance, notwithstanding the objections of the Mayor, it shall become a law. Should any ordinance not be returned by the Mayor within ten days after he shall have received it, it shall become a law, the same as if it had received his signature. Ordinances.

§ 4. Every ordinance providing for any specific improvement, the creation of any office, or the granting of any privilege, or involving the sale, lease, or other appropriation of public property, or the expenditure of public moneys (except for sums less than five hundred dollars), or laying any tax or assessment, and every ordinance imposing a new duty or penalty, shall, after its passage by either Board, and before being sent to the other, be published with the ayes and nays in some city newspaper, and no ordinance or resolution which shall have passed one Board shall be acted upon by the other on the same day, unless by unanimous consent. The like.

§ 5. The Common Council shall not create, nor permit to accrue, any debts or liabilities which, in the aggregate with all former debts or liabilities, shall exceed the sum of fifty thousand dollars over and above the annual revenue of the city, unless the same shall be authorized by ordinance for some specific object, which ordinance shall provide ways and means, exclusive of loans, for the payment of the interest thereon as it falls due, and also to pay and discharge the principal within twelve years; but no such ordinance shall take effect until it shall have been submitted to the people and receive a majority of all the votes cast at such election; and all money raised by authority of such ordinance shall be applied only to the object therein mentioned, or to the payment of the debt thereby created; *Provided*, that the present debt of the city, with the interest accruing thereon, shall make no part of the fifty thousand dollars aforesaid. Limiting power of Common Council.

§ 6. The Common Council shall have no power to borrow money on the credit of the city, unless they shall by ordinance direct the same in anticipation of the revenue for the current year, and shall provide in said ordinance for repaying the same out of such revenue, nor in such The like.

case shall they borrow a sum to exceed fifty thousand dollars ; but a larger sum may be raised by loan for the purpose of extinguishing the present liabilities of the city, whenever the ordinance providing for the same shall first be approved by the electors of the city at any general election : *Provided*, that said loan shall bear a yearly rate of interest not to exceed ten per cent. and shall be payable within twenty years.

The like.

§ 7. The Common Council shall have no power to emit bills of credit or to issue or put in circulation any paper or device as a representative of value or evidence of indebtedness, to award damages for the non-performance or failure on their part of any contract, to loan the credit of the city, to subscribe to the stock of any association or corporation, or to increase the funded debt of the city unless the ordinance for that purpose be first approved by the people at a general election ; but this section shall not be construed to prohibit the auditing and certifying of accounts by the proper officers to the creditors of the city, but no such audited or certified accounts shall draw interest.

Annual appropriations.

§ 8. Annual and occasional appropriations shall be made by ordinance for every branch and object of city expenditure, and no money shall be drawn from the treasury unless the same shall have been previously appropriated to the purpose for which it is drawn. Every warrant upon the treasury shall be signed by the comptroller and countersigned by the mayor, and shall specify the appropriation under which it is issued, and the date of the ordinance making the same. It shall also state from what fund and for what purpose the amount specified is to be paid.

Joint Committee of accounts.

§ 9. There shall be elected annually by ballot a joint committee of accounts to consist of three members from each board, who shall meet at least once a month and examine all accounts of the finance department, and report thereon in writing to both boards of the Common Council.

Members of Council not to be elected to charter offices.

§ 10. No member of the Common Council shall, during the period for which he was elected, be appointed to any office under this charter, nor be interested in any contract or business, or the sale of any article, the expense of which is borne by the city ; nor shall any member be interested in the purchase of any property belonging to the city, or which may be sold for city taxes ; nor shall any member sell or offer for sale to the city any property in which he may be interested.

Or vote, in certain cases.

§ 11. No member of the Common Council shall vote on any question in which he may be interested, either personally or as agent for another.

Taxes.

§ 12. The Common Council shall have power, *and it shall be their duty*, annually to raise by tax on the real and personal property in the city, whatever amount of money may be requisite for the support of free common schools, and to provide suitable buildings therefor.

Laws for government of City.

§ 13. They shall also have power within the city to pass all proper and necessary laws for the regulation, improvement, and sale of city property ; for the levy and collection of city taxes on all taxable pro-

erty, not to exceed one per cent. a year upon its assessed value; for the laying out, making, opening, widening, regulating, and keeping in repair, all streets, roads, bridges, fences, public places and grounds, wharves, docks, piers, slips, sewers, wells, and alleys, and for making the assessments therefor; for regulating and collecting wharfage, dockage, and cramage upon all water-craft and all goods landed; for securing the protection, health, cleanliness, ornament, peace, and good order of the city; for the prevention and extinguishment of fires; for regulating firemen, watchmen, policemen, and such other officers as it may be necessary to appoint; for the care and regulation of prisons, markets, houses of correction and industry; for the support, regulation, and employment of all vagrants and paupers; for licensing, taxing, and regulating all such vehicles, business, and employments as the public good may require, and as may not be prohibited by law, and for making such licenses; to prohibit and suppress dram-shops, gambling-houses, and houses of ill fame, gaming, hawking, pawnbroking, and all indecent or immoral practices, amusements, and exhibitions; to regulate the location of slaughter-houses, markets, stables, and houses for the storage of gun-powder and other combustibles; for the establishment of a chain-gang, and rules and regulations for the government of the same, and, in brief, to pass all such other laws and ordinances, for the management, good government, and general welfare of said city, as may not be inconsistent with this charter, or with the laws or constitution of this State or of the United States, and to affix penalties to the violation of any ordinance; but such penalties shall not exceed imprisonment for sixty days and a fine of five hundred dollars.

§ 14. All money to be received from the following sources, shall continue to constitute a sinking fund for the payment of the existing city indebtedness with the interest accruing thereon, until the same shall be cancelled: Appropriations
to Sinking Fund.

1st. The net proceeds of all sales of real estate belonging, or that may hereafter belong to the city:

2d. The net proceeds of all bonds and mortgages payable to the city:

3d. For occupation of private wharves, basins, and piers:

4th. For wharfage, rents, and tolls. Said fund or any part thereof shall not be loaned to any other fund, or expended for any other purposes whatever.

§ 15. The Common Council shall at an early day take steps to fund by ordinance the existing debts of the city. The funded debt shall consist of: Funding
City debt.

1st. The liabilities for the payment of which the city revenue is already pledged.

2d. The creditors of the city may fund the debts respectively due them at the passage of this act, on such terms as the Common Council may prescribe, at a rate of interest not to exceed ten per cent. a

year, and payable within ten years; but no bond shall issue of a less denomination than one hundred dollars.

Depreciation
of City funds.

§ 16. The Common Council shall have no power to allow extra compensation to any creditor of the city, on account of any depreciation to which the city bonds, warrants, or other evidences of indebtedness may be liable.

Commissioners
of Sinking Fund.

§ 17. The Commissioners of the Sinking Fund created by ordinance of the Common Council are hereby prohibited from permanently disposing of any property belonging to the city by sale, lease, or otherwise, and also required to reconvey and deliver to the city, before the tenth day of May next, all property, titles, rights, and interests belonging to the city, and which are or may be in their possession.

Impeachment.

§ 18. The Board of Assistant Aldermen shall have the sole power of impeachment, and all impeachments shall be tried by the Board of Aldermen. No person shall be convicted unless by the concurrence of two thirds of all the members. Judgment, in case of conviction, shall extend no further than removal from office and disqualification from holding any office under the charter; but the party convicted may be indicted and punished according to law.

ARTICLE IV.

Of Executive Officers.

Executive
power, in
whom vested.

§ 1. The executive power of the Corporation shall be vested in the Mayor and such other executive officers as are or may be created by law, and neither the Common Council nor any committee or member thereof shall perform any executive or ministerial business unless especially directed by law.

Mayor to
report to
Common
Council.

§ 2. It shall be the duty of the Mayor,

1st. To communicate to the Common Council semi-annually, and oftener if he shall think proper, a general statement of the situation and condition of the city in relation to its government, finances, and improvements, with such recommendations in relation thereto as he may deem expedient.

2d. To be vigilant and active in causing the laws and ordinances of the city to be duly executed and enforced; to be the head of Police; to exercise a constant supervision and control over the conduct of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and to certify the same to the Common Council; to countersign all licenses and warrants on the Treasury, and generally to perform all such duties as may be prescribed for him by law or by the city ordinances.

Vacancy in
office of Mayor.

§ 3. Whenever there shall be a vacancy in the office of Mayor, or the Mayor shall be absent from the city, or be prevented from attending to the duties of his office, the President of the Board of Aldermen shall perform the duties, receive the compensation, and possess all the rights and powers of Mayor during such vacancy, absence, or disability.

§ 4. It shall be the duty of the Treasurer to receive and pay out all moneys belonging to the city, and to keep an account of all receipts and expenditures under such regulations as may be prescribed by ordinance. The Treasurer shall make monthly to the Common Council a full statement of the receipts and expenditures of the preceding month, and publish the same in some city newspaper.

Duty of
Treasurer.

§ 5. It shall be the duty of the Comptroller to report to the Common Council monthly a full and detailed statement of all the expenses and payments of the city government and the state of each appropriation made by ordinance, and he shall also, at the expiration of the fiscal year, publish a full and detailed statement of the receipts and expenditures of the city during said year, specifying the different sources of revenue and the amount received from each, the several appropriations made by the Common Council, the objects for which they were made, and the amount of money expended under each; the moneys borrowed on the credit of the city, the authority under which each loan was made and the terms on which it was obtained, the amount of the funded debt and of the interest accrued thereon; with a detailed statement of the sums owed and the property owned by the city.

Duty of
Comptroller.

§ 6. It shall be the duty of the Marshal to execute all process issued by the Recorder or directed to him by any legal authority; to attend upon the Recorder's Court; to arrest all persons guilty of a breach of the peace or violation of any ordinance, and take them before the Recorder; to supervise and control the city Police, to superintend the city prison, and to perform all such duties as may be prescribed by ordinance.

Duty of Marshal.

§ 7. 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 perform all such other services in connexion with his profession as may be required by the Common Council.

Duty of
City Attorney.

§ 8. It shall be the duty of the Collector to issue all licenses that may be granted by city authority, and to register the same in a suitable book which shall at all times be open for public inspection; to collect all license taxes, and all taxes and assessments that may be due according to the assessment books, and to pay over the same to the Treasury in the specific funds received.

Duty of
Collector.

§ 9. It shall be the duty of the Assessors to prepare, within such time as the Common Council may direct, a correct list of all the taxable property within the city, with the true valuation thereof, and to present the same, certified by them, 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 is or may be prescribed by law for assessing and collecting the State revenue. Should the owner of any property assessed as aforesaid not be satisfied with the valuation thereof, he may apply, under oath, to the Board of Assessors for the reduction of the

Duty of
Assessors.

assessment. If said Board refuse he may appeal to the Board of Aldermen, and their decision shall be final.

Duty of Recorder.

§ 10. The Recorder, as to offences committed within the city, shall have like jurisdiction as may be conferred upon Justices of the Peace. He shall also have final jurisdiction in all cases of assault, riot, breach of the peace, and petit larceny, and all crimes and misdemeanors punishable by fine not to exceed five hundred dollars, or imprisonment not to exceed three months, or both such fine and imprisonment.

Duties of other Officers.

§ 11. The Common Council shall prescribe the duties of all officers whose duties are not defined in this Act, or in any other law of this State, and it shall be the duty of the officers of the city generally to perform all such services as may be required by law, or the ordinances of the Common Council.

Salaries.

§ 12. The several officers under this charter shall receive for their services out of the City Treasury a compensation to be fixed by ordinance, not to exceed four thousand dollars a year: *Provided*, that the Treasurer shall receive in lieu of salary not to exceed one half of one per cent. on all moneys received, paid out, and accounted for by him, and the Collector not to exceed one per cent. on all moneys collected and paid over.

Treasurer.

Clerks' salaries.

§ 13. The compensation of the Mayor's and Recorder's Clerks shall not exceed two thousand dollars each, per annum, nor shall that of the Clerk of either board of Aldermen exceed twelve hundred dollars. Each assessor shall receive not to exceed fifteen hundred dollars, and no officer shall be entitled to any Clerk or deputy unless as herein expressly provided.

Common Council.

§ 14. The members of the Common Council shall receive no compensation for their services.

When office deemed vacant.

§ 15. If any person elected to a city office shall remove from the city, absent himself therefrom for more than thirty days, or shall fail to qualify within ten days after his election, his office shall be deemed vacant.

Term of office.

§ 16. The officers elective under this charter shall continue in office for one year or until their successors are qualified; but any officer may be removed for misconduct by impeachment.

Officers to give security.

§ 17. All officers or persons to whom the receipt or expenditure of the moneys or funds of the City shall be intrusted shall give security, in such amount as the Common Council may require, payable to the city, and subject to the approval of the Mayor. Such bond shall be subject to the provisions of law concerning bonds of officers.

Fees, &c., to be paid into Treasury.

§ 18. All fees, costs, fines, perquisites, or emoluments for any services to be performed by any officer or person under this charter, or collected under any ordinance of the Common Council, shall be paid over every week by such officer or person into the City Treasury under oath; and no officer shall be entitled to receive his salary till he shall

file his affidavit with the Comptroller, that he has faithfully accounted for and paid over all moneys for which he is bound to account.

§ 19. For any violation of the tenth, eleventh, or seventeenth sections of article third, or of the eighth or eighteenth sections of article fourth, or of the seventh section of article sixth of this chapter, the party so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, may be punished by fine not to exceed five thousand dollars and imprisonment not to exceed one year. Violating this act.

§ 20. The officers of the present city government shall continue in office under this charter with such powers and duties as are herein prescribed until their successors are qualified; and nothing herein contained shall be construed to release any persons heretofore holding office in said city from any personal liabilities which they may have incurred by their official acts. Present officers to continue.

ARTICLE V.

Streets and Improvements.

§ 1. The Mayor, Street Commissioner, and Assessors shall constitute a Board of Commissioners of Assessment. When private property is taken for public purposes and the valuation by said Commissioners is not satisfactory to the owner thereof, he may require that the matter be submitted to the jury before the Superior Court, and the value found by the jury, when confirmed by the Court, shall be the amount which the owner shall be bound to accept and entitled to receive before the property is taken. Commissioners of assessment.

§ 2. Whenever the Common Council shall think it expedient to open, alter, or improve any street, or alley, or to improve any public grounds, notice thereof shall be given by publication for ten days in some daily paper. Should one third of all the owners of the adjacent property protest against the proposed improvement it shall not then be made. If no such protest be made the Common Council shall proceed with such improvement, at least two thirds of the expenses of which shall be borne by the property adjacent. Notice of improvements.

§ 3. The assessment for said improvement shall be made by the Commissioners named in section first, and shall be proportionate to the advantages respectively derived from such improvement. Assessment for improvements.

§ 4. Should any person be dissatisfied with the assessment by said Commissioners he may appeal to the board of Aldermen, whose decision shall be final. Appeal from assessment.

§ 5. Whenever two thirds of all the persons owning property on any street or land shall apply to the Common Council for any improvement thereof, the same shall be made on such conditions as the Common Council may determine, said persons paying at least two thirds of the expenses of such improvement. Improvements, on application of owners.

ARTICLE VI.

Miscellaneous Provisions.

- Fiscal year.** § 1. The fiscal year of the city shall begin on the first day of July.
- Ordinances.** § 2. Every ordinance of the Common Council shall embrace but one subject and that shall be expressed in its title.
- The like.** § 3. The ordaining clause of the city ordinances shall be, "The People of the City of San Francisco do ordain as follows."
- Taxation.** § 4. Taxation shall be uniform throughout the city.
- Licenses.** § 5. Licenses shall be discriminating and proportionate to the amount of business.
- Sales.** § 6. All sales or leases of property belonging to the city shall be by public auction.
- Contracts.** § 7. All contracts for work or supplies shall be let to the lowest bidder after notice given through the public newspapers, and no officer shall be interested in any contract connected with his department.
- Privileges.** § 8. The Common Council shall have no power to grant exclusive privileges.
- No inspectors of produce, &c.** § 9. The Common Council shall appoint no officers for weighing, measuring, gauging, culling, or inspecting any merchandise, produce, manufacture, or commodity; but nothing in this section shall prevent their passing any ordinance necessary for protecting the public health.
- Amount of taxes.** § 10. The Common Council shall have power to raise by tax any amount of money that they may deem expedient, whenever the ordinance for that purpose shall have been approved by the people.
- Amendment to charter.** § 11. When any amendment to this charter shall have been agreed to by three fourths of all the members elected to each board, it may be submitted to the people at any general election; and if approved by them it shall become a part of the charter. Said amendment shall be published at least sixty days before said election. It shall also be the duty of the Common Council to call a convention of delegates for the revision of this charter. Said convention shall meet on the first Monday of March, one thousand eight hundred and fifty-three, and shall consist of three members for each ward. Should the charter as amended and adopted by said convention be approved by the people at any general election, it shall become the charter of the City of San Francisco—subject, however, to the approval of the Legislature.
- Act repealed.** § 12. The Act entitled "An Act to incorporate the City of San Francisco," passed April fifteenth, one thousand eight hundred and fifty, is hereby repealed.

Chap. 85.

AN ACT to Incorporate the City of Monterey.

Passed April 30, 1851.

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

ARTICLE I.

§ 1. The district of country in the County of Monterey, heretofore ^{City} known as the "Pueblo of Monterey," and the inhabitants residing therein, ^{incorporated,} shall be a corporation under the name and style of the City of Monterey, and by that name shall be known in law, have perpetual succession, sue and be sued, complain and defend in all courts, and in all actions and proceedings, and may 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 until the original boundaries of the Pueblo of Monterey shall be accurately established and defined, the qualified electors, residing within one mile from the church in Monterey, shall be entitled to vote at any election held under the provisions of this Act.

ARTICLE II.

§ 1. The officers of the City of Monterey shall consist of one Mayor, ^{City Officers.} nine Aldermen, one Treasurer, one Assessor, and one Marshal, and such other officers as are hereinafter authorized to be appointed.

§ 2. The first election under the provisions of this Act shall be held ^{Elections.} on the first Monday of May next, and all subsequent elections on the second Monday of January annually.

§ 3. All officers shall be elected by the qualified electors of the city. ^{Electors.}

§ 4. All officers elected at the first election under the provisions of ^{Term of office.} this Act shall hold their offices until the second Monday in January thereafter, and until their successors are elected and qualified, and all officers elected at the annual election on the second Monday in January shall hold their offices for one year, and until their successors are elected and qualified.

§ 5. No person shall be eligible to any office of the city who is not a ^{Who eligible for office.} citizen of the United States, and who has not been a resident of this State six months next preceding the election, and of the City of Monterey three months.

§ 6. For the first election the present Council of Monterey shall appoint the Inspector and Judges of the election, and designate the ^{Inspector, and Judges of Elections.}

places of opening the polls; for all subsequent elections such designation and appointments shall be made by the Council of the City.

Law,
regulating
Elections.

§ 7. All the provisions of law in force regulating elections and defining the powers and duties of the officers thereof, shall apply to the election of all officers under this Act.

Election returns.

§ 8. At all elections under this Act sealed returns of the votes for officers shall be delivered within one day after the election to the Mayor of the city, and on the second day after the election the returns shall be opened in the presence of the Council, and a certificate of election shall be issued by them to the persons having the highest number of votes for the different offices in the city, and shall cause the Marshal to notify such persons of their election.

Who
may vote.

§ 9. No person shall be entitled to vote at any city election who is not a white male citizen of the United States, and who has not been a resident of the State six months and of the City thirty days next preceding the election.

Commencement
of term of office.

§ 10. All officers elected under the provisions of this Act shall enter upon their duties the first Monday subsequent to their elections. Before entering on their duties they shall take the oath of office, which may be administered by any Judge or Justice of the Peace, or Mayor of the City.

President
of Council.

§ 11. The Council, at their first meeting after the annual election, or at any other meeting, when from any cause it may become necessary, shall elect by ballot a President from their own body, who shall preside at all their meetings when the Mayor is not present, and whenever there is a vacancy in the office of Mayor, or when he is unable from any other cause to discharge the duties of his office; the President shall act as Mayor, and shall possess all the powers and perform all the duties of Mayor during such vacancy, absence, or inability.

Vacancy
in office
of Alderman.

§ 12. Whenever a vacancy shall occur in the office of Alderman, by death, resignation, removal, or otherwise, the Council shall order a special election to fill such vacancy, notice of which shall be given at least five days before such election. The person elected to fill such vacancy shall hold his office for the residue only of the term of his predecessor.

Inferior officers.

§ 13. The Council shall have power to appoint or elect such inferior officers as may be necessary in the government of the city, and in all such elections they shall vote by ballot.

ARTICLE III.

Of the Council, and their Powers and Duties.

Council, how
constituted.

§ 1. The Mayor and Aldermen shall constitute the Council, which shall meet on the first Monday subsequent to the election, and on the first Monday of each month in the year, and at such other times as they shall by resolution direct. The Mayor shall call special meetings at any time by written notice to each member served personally, or left

at his place of residence or business ; at all meetings of the Council the Mayor when present shall preside.

§ 2. A majority of the Council shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and may compel the attendance of absent members, but no tax or assessment shall be ordered except by a vote of a majority of all the members elected. Quorum.

§ 3. In the proceedings of the Council each member present shall have a vote, except the Mayor, who shall have only a casting vote, when the votes of the members are tied. Voting,
in Council.

§ 4. The Council shall determine the rules of their proceedings and the qualifications and elections of their members. Rules.

§ 5. The sittings of the Council shall be open to the public, except when the interests of the city shall require secrecy. A journal of their proceedings shall be kept by the Clerk under their direction, and the yeas and nays on any question shall be taken and entered upon the journal at the request of any two members. Proceedings
of Council.

§ 6. The Council shall have power within the city :

Power
of Council.

1st. To make by-laws and ordinances, not repugnant to the Constitution and Laws of this State :

2d. To levy and collect taxes on all property real and personal, made taxable by law for State purposes, not exceeding the one half of one per centum per annum, upon the assessed value of such property :

3d. To provide for the draining, grading, paving, improvement, repair, and lighting of the streets, and the construction of sidewalks, drains, and sewers, and keeping the same in repair, and the cleansing of the drains and sewers, and the prevention and removal of obstructions on the sidewalks :

4th. To provide for the prevention and extinguishment of fires, and to organize and establish fire companies :

5th. To regulate the storage of gunpowder, and other extremely combustible materials :

6th. To regulate and establish a city police :

7th. To establish markets and wharves :

8th. To remove from the immediate vicinity of the inhabited parts of the city all slaughter-houses, haystacks, and other combustible matter that endangers the health or safety of the city :

9th. To license, tax, regulate, prohibit, and suppress tippling-houses, dram shops, gaming and gambling houses, hawkers, pedlers, and pawnbrokers, and to suppress disorderly houses and houses of ill fame :

10th. To license, tax, and regulate auctioneers, and taverns, bar-rooms, billiard tables, bowling alleys, theatrical and other exhibitions, shows and amusements :

11th. To provide for the erection of all public buildings for the use of the city :

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12th. To open, alter, and widen streets and alleys :

13th. To provide for the indigent sick, blind, and insane of the city :

14th. To make regulations to prevent the introduction and spread of contagious and other diseases :

15th. To establish and regulate free and other schools :

16th. To borrow money on the faith and credit of the city ; but no loan shall be made of any amount of money without the consent to such loan of the electors of the city previously obtained :

17th. To levy an additional amount of taxes for any specific object, but no such tax shall be levied without the consent of the electors of the city :

18th. To appropriate money for any item of city expenditure, and to provide for the payment of any debts or expenses of the city :

20th. To impose and appropriate fines, forfeitures, and penalties for the breach of any ordinance, and to provide for the punishment of breaches of the ordinances, but no fines shall be imposed of more than one hundred dollars, and no offender shall be imprisoned for a longer term than thirty days for any offence :

21st. To suspend any city officer for misconduct in office or neglect of duty, with the concurrence of two thirds of the members elected :

22d. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members with the concurrence of two thirds of the members elected :

23d. To establish chain-gangs for the punishment of all offenders against the laws or ordinances of the city, breaches of the peace, and other offences.

Meeting
of Electors,
as to loans.

§ 7. When the Council desire to loan money, or to levy an additional amount of tax, the Mayor shall issue his proclamation to the electors of the city, setting forth the amount of the loan they wish to make, or the amount of such additional tax proposed to be levied, stating specifically the objects to which the funds are to be applied, and requesting them to meet on a certain day and decide whether such loan shall be made, or additional tax levied.

Council may
make loan.

§ 8. That if a majority of all the votes given are in favor of making such loan, or of levying such additional tax, the Council shall have power to make the loan, or assess the tax, and not otherwise.

Accountability
of Officers.

§ 9. It shall be the duty of the Council to provide for the accountability of all officers and others appointed or elected by them to whom the receipt and expenditure of any funds of the city shall be intrusted, by requiring of them sufficient security for the faithful performance of their duties or trusts, which security shall in all cases be required of them before they enter upon their duties ; in case such security becomes insufficient, additional security may be required, and if not given, the Council by a vote of two thirds of the members, may declare the office vacant, and shall order an election to fill the vacancy.

§ 10. That whenever the interest and convenience of the inhabitants of the city will be promoted thereby, the Council shall have power to divide the city into three Wards, designate the boundaries of each Ward, fix the places of holding the elections, make all rules and regulations for holding the elections, and making the returns of the same, appoint an Inspector and Judges for the election in each Ward: *Provided*, that there shall be three members of the Council elected in each Ward.

City may be divided into wards.

§ 11. It shall be the duty of the Council to publish in a newspaper printed in the city, if there be one printed in the city, if not then by written advertisement posted up in the Mayor's office, one month before the annual election of officers, in each year, for the general information of the citizens of Monterey, a full and detailed statement of the Receipts and Expenditures of the city for the past year; and in every such statement the different sources of City revenue, and the amount received from each, the several appropriations made by the Council, the objects for which the same were made, and the amount of moneys expended under each, the amount of moneys borrowed on the faith and credit of the City, the authority under which each loan was made, and the terms on which it was obtained, shall be clearly and particularly specified.

Receipts and expenditures to be published.

ARTICLE IV.

Of the Powers and Duties of City Officers.

§ 1. It shall be the duty of the Mayor:

1st. To communicate to the Council quarterly a general statement of the situation and condition of the city, in relation to its government, finances, and improvements: Mayor.

2d. To recommend to the Council the adoption of such measures as he shall deem expedient relative to the police, health, security, cleanliness, and ornament of the city, and the improvement of its government:

3d. To be vigilant and active in causing the by-laws and ordinances of the Council to be duly executed and enforced:

4th. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty:

5th. To countersign all warrants and licenses issued under orders or ordinances of the Council:

6th. To preside over the Council when present at their meetings:

7th. To hold a Court to be called the Mayor's Court of the City of Monterey, at such convenient place in the City as the Council may provide; and to pay into the City Treasury at the end of each week all moneys collected and paid into Court in actions and proceedings therein to which the City is a party:

8th. To maintain the peace and good order of the City, and generally to perform all such duties as may be prescribed by this Act, and the ordinances of the Council, and the laws of this State.

Aldermen.

§ 2. It shall be the duty of every Alderman of the City to attend the regular and special meetings of the Council, to act upon Committees when appointed thereto, to report to the Mayor all subordinate officers who are guilty of violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the City, and enforcing the by-laws and ordinances of the Council.

Treasurer.

§ 3. It shall be the duty of the City Treasurer to receive all moneys belonging to the city, to keep an account of all receipts and expenditures in such manner as the Council shall direct, and he shall, whenever required by resolution of the Council, present to them a full account of such receipts and expenditures, for any period designated in the resolution; all moneys drawn from the City Treasury shall be drawn in pursuance of an order of the Council, by warrant signed by the Clerk, and countersigned by the Mayor, or the President of the Council; and such warrant shall specify for what purpose the amount designated therein is to be paid.

Assessor.

§ 4. It shall be the duty of the City Assessor to prepare within such time as the Council shall direct, and present to them, with his certificate of their correctness, a list of all the taxable property, real and personal, within the city, with the valuation thereof; and a list containing the names and occupations of all the residents within the city, and to perform such services in relation to the assessment of property in the city as may be required by the Council.

The like.

§ 5. The Assessor shall by virtue of his office be Clerk to the Council; it shall be his duty to keep the Corporate Seal and all the papers and documents belonging to the city; to file them in his office under appropriate heads; to attend the sittings of the Council and keep a Journal of their proceedings, and a record of all the by-laws and ordinances; to sign all warrants and licenses issued in pursuance of the ordinances and orders of the Council, and affix the corporate seal to such licenses; to keep an accurate account in a suitable book under the appropriate heads of expenditures of all orders drawn on the Treasury, and all warrants issued in pursuance thereof; also to keep an account in an appropriate book of all licenses issued, with the names of the persons to whom issued, the date of the issues, the time for which the same are granted, and the sum paid therefor.

Marshal.

§ 6. It shall be the duty of the City Marshal to execute within the city, and return all process issued and directed to him by the Mayor or from the Mayor's Court; to execute all process and return the same that may be directed to him by any other Court in the city; to arrest all persons guilty of a breach of the peace, or a violation of the ordinances of the Council, and to take them before the Mayor; to pay into the Mayor's Court all moneys collected by him on any process issued in any action or proceeding therein to which the city is a party; to collect the taxes of the city and pay all moneys received into the City Treasury, in pursuance of the ordinances of the Council; to supervise and control the City Police; to attend the sittings of the Council, and to perform such

duties whilst in attendance upon their sittings as may be directed by them ; he shall also perform the duties of Street Commissioner, and do and perform all such other duties as may be prescribed by ordinance of the Council.

ARTICLE V.

Of the Mayor and Mayor's Court.

§ 1. The Mayor shall possess the powers and exercise the duties of a ^{Power} ~~Committing~~ Magistrate in criminal cases which are above the jurisdiction ^{of Mayor.} conferred by this Act upon the Court held by him.

§ 2. The Mayor's Court shall have jurisdiction within the limits of ^{Jurisdiction of} the city : ^{Mayor's Court.}

1st. Of an action or proceeding for a penalty, fine, or forfeiture, imposed by any ordinance of the Council : and

2d. Of proceedings respecting vagrants and disorderly persons :

3d. Of all other civil actions to the same extent as Justices of the Peace.

§ 3. The Mayor's Court shall also have jurisdiction of the following ^{The like.} public offences, committed within the limits of the City :

1st. Petit Larceny.

2d. Assault and battery, not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill.

3d. Breaches of the peace, riots and affrays, committing a wilful injury to property ; and all misdemeanors punishable by fine, not exceeding two hundred dollars, or imprisonment not exceeding forty days, or by both such fine and imprisonment.

§ 4. All proceedings and actions under the first and second subdivisions of the second section of this article, and under the third section in the Mayor's Court, shall be commenced by complaint, setting forth the violation of the ordinance or the act of vagrancy or disorderly conduct complained of ; or the offence charged, with such particulars as to the offence, of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint ; and all complaints shall be verified by the oaths of the parties making them. To the complaint the defendant may plead, or he may answer or deny the same ; such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment be granted. In all actions or proceedings in the Mayor's Court either party shall be entitled, if demanded by him or her, to a jury of six persons. ^{Proceedings to be commenced by complaint.}

ARTICLE VI.

Miscellaneous Provisions.

§ 1. Upon the passage of all resolutions and ordinances, appropriating money, imposing taxes, abolishing licenses, increasing or les- ^{Years and days to be entered on Journal.}

sening the amount to be paid for licenses, the yeas and nays shall be entered on the Journals.

Appropriations. § 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating money for any purpose, or an ordinance in anywise increasing or diminishing the City Revenue.

The like. § 3. All resolutions and ordinances calling for the appropriation of any sum of money exceeding twenty-five dollars shall lay over for the space of one week, and shall be published by written advertisement posted up at the Mayor's office.

Style of Ordinances. § 4. The style of the City ordinances shall be as follows: "The Council of the City of Monterey do ordain as follows:" All ordinances shall be published in a newspaper published in the City, if there be one; if there be none, then by written advertisement posted up at the Mayor's office, and at three other public places in the City.

To what rights the Corporation to succeed. § 5. 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, and shall also succeed to all the legal rights and claims of the Corporation, created by the Act entitled, "An Act to incorporate the City of Monterey," passed March thirtieth, one thousand eight hundred and fifty, and shall be subject to all the liabilities incurred and obligations created under said act of incorporation.

Inferior officers. § 6. The Council shall define the duties of all inferior officers elected or appointed by them, where such duties are not specified by this Act, and shall establish and fix a Tariff of fees for all such officers, designating the fee which shall be allowed for each particular item of service.

ARTICLE VII.

Of the Fees of the Officers.

Aldermen § 1. The Aldermen (or Council) shall not receive any salary, fees, or compensation, for any service rendered by them, or required of them, by the provisions of this Act.

Mayor. § 2. The Mayor shall not receive any salary, but for all services rendered by him he shall be entitled to the same fees and emoluments that are allowed by law to Justices of the Peace for similar services.

Treasurer. § 3. The City Treasurer shall receive the same fees, for all moneys by him paid out, as are by law allowed to County Treasurers for like services.

Assessor. § 4. The City Assessor shall be entitled to the same per diem pay for Assessing the City property, and making return thereof to the City Council, as County Assessors are allowed for similar services, and for all other duties required of him by this Act, he shall receive such compensation as the Council shall prescribe: *Provided*, that the aggregate of his pay shall not amount to more than three hundred dollars in any one year for all service by him rendered.

Marshal. § 5. The City Marshal shall be entitled to the same fees as are by

law allowed to Constables for similar services, and for all duties required of him by this Act; when no fees are prescribed by law, he shall be entitled to such compensation as the Council shall fix by ordinance.

§ 6. That the Act entitled "An Act to incorporate the City of ^{Act repealed.} Monterey," passed March thirtieth, one thousand eight hundred and fifty, be and the same is hereby repealed.

Chap. 86.

AN ACT to Incorporate the City of Sonora.

Passed May 1, 1851.

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

ARTICLE I.

OF BOUNDARIES, GENERAL POWERS, AND THE FORMATION OF WARDS.

§ 1. The district of country in the County of Tuolumne, which is ^{City} contained within the boundaries to be established as hereinafter provided, ^{Incorporated.} shall be a City of the name of Sonora, and the inhabitants residing therein shall be a Corporation under the name and style of "The Mayor and Common Council of the City of Sonora," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all Courts, and in all actions and proceedings, and may 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 any real estate other than such lands and 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 as may be required for burial purposes.

§ 2. The boundaries of the City of Sonora shall be such as were ^{Boundaries} established by a survey of the said City, known as Cooper's survey, which ^{of City.} was declared by the City Council, and subsequently recognised and adopted by the Court of Sessions of Tuolumne County, as defining the boundaries and limits of said City; and the same is hereby declared legal and valid.

§ 3. Within one month after their first meeting the Common Council shall divide the City into Wards, and shall establish the respective ^{Division} boundaries of such Wards so as to embrace within the boundaries of ^{of City} each Ward, as near as it can be conveniently done, the same number of ^{into Wards.} inhabitants. When the boundaries of the Wards shall have been estab-

lished, a full description of the same shall be entered in the records of the Common Council, and published in one of the newspapers of the County.

Alteration
of Wards.

§ 4. The Common Council shall have power to alter from time to time, by a vote of two thirds of all the members, the boundaries of all the Wards: *Provided*, such alterations be made at least three months previous to the annual election of City officers.

ARTICLE II.

OF THE OFFICERS OF THE CITY AND THEIR ELECTIONS.

City Officers.

§ 1. The Officers of the City of Sonora shall consist of one Mayor, ten Aldermen, one Recorder, one Assessor, one Treasurer, one Clerk, one Attorney, and one Marshal, and such other officers as are hereinafter authorized to be appointed.

Election
of Mayor.

§ 2. The Mayor shall be elected by the qualified electors of the City, and shall hold his office for one year, and until his successor be elected and qualified.

Aldermen.

§ 3. At the first election the Aldermen shall be elected by the qualified electors of the City. After the first election two Aldermen shall be elected by the qualified electors of each Ward. The Aldermen shall hold their offices for one year, and until their successors are elected and qualified.

Who eligible
for office.

§ 4. No person shall be eligible to the office of Mayor or Alderman who is not a citizen of the United States, and who has not been a resident of the State one year, and of the City of Sonora three months previous to the election.

Election, when
to take place.

§ 5. The election for Mayor and Aldermen shall take place on the Third Monday of May of the present year, and thereafter on the First Monday of March in each year. For the first election, the Justice of the Peace in the Township of Sonora who was first elected Justice shall appoint Inspectors to open the polls of each precinct, and shall appoint not less than three nor more than five precincts. At subsequent elections the polls shall be opened in each Ward, and the appointment of Inspectors, and the designation of the places at which the polls shall be opened, shall be made by the Common Council.

Laws
regulating
elections.

§ 6. All the provisions of law in force, regulating elections and defining the duties and the powers of the officers thereof, shall apply to the election for Mayor and Aldermen under this act, except that two Inspectors and one Clerk shall be the only officers of elections at the precincts appointed for the first election, and at subsequent elections for each Ward of the City.

Election returns.

§ 7. At the first election the Inspectors and Clerk of each precinct shall, within one day after the election, deliver to the Justices of the Peace in the Township of Sonora sealed returns of the votes cast for Mayor and Aldermen; such returns shall be opened on the Thursday

following the election by said Justices, in presence of each other, and a certificate of election as Mayor, shall be issued by them to the person receiving the highest number of votes for that office in the City, and a certificate of election as Alderman to the ten persons receiving the highest number of votes for the office of Alderman in the City.

§ 8. At all elections subsequent to the first sealed returns from the Inspectors and Clerk of each Ward shall be delivered to the Clerk of the City, showing the number of votes cast for persons to fill the office of Mayor. Such returns shall be opened and counted in the presence of the Common Council, and a certificate of election issued under their direction to the person receiving the highest number of votes in the City for that office; and the Inspectors and Clerk of each Ward shall, immediately after the votes are counted, prepare and deliver a certificate of election as Alderman to the two persons having the highest number of votes in their respective Wards. The like.

§ 9. No person shall be entitled to vote at any City election, who is not a white male citizen of the United States, and who has not been a resident of the State for six months, and of the City thirty days previous to the elections. Who may vote.

§ 10. The Mayor and Aldermen shall enter upon their duties the first Monday subsequent to their elections. Before entering upon their duties they shall take the oath of office, which may be administered by any Judge or Justice. Commencement of term of office.

§ 11. The Common Council at their first meeting after the annual election, and at any other meeting, when from any cause it may become necessary, shall elect by ballot a President from their own body, who shall preside at all their meetings, when the Mayor is not present, or whenever there is a vacancy in the office of Mayor, or whenever the Mayor is absent from the City, or is unable from sickness or any other cause to discharge the duties of office. The President shall act as Mayor, and possess all the powers and perform all the duties of the Mayor, during such vacancy, absence, or disability. President of Council.

§ 12. Whenever a vacancy shall occur in the office of any Alderman, by death, resignation, removal, or otherwise, the Common Council shall order a special election to fill such vacancy; the person elected to fill such vacancy shall hold his office for the residue of the term only of his immediate predecessor. Vacancy in office of Alderman.

§ 13. There shall be elected each year, at the annual election by the qualified electors of said city, the Treasurer, the Assessor, the Attorney, the Clerk, and the Marshal of the city, who shall hold their respective offices for one year and until their successors are elected and qualified, unless previously removed for misconduct in office, or neglect of duty. The Recorder shall be elected by the Common Council by ballot, and shall hold his office for two years, and until his successor is elected and qualified. Election of other officers.

§ 14. The Common Council shall have power to elect such other Inferior officers.

inferior officers as they may deem necessary in the government of the city, and in all elections they shall vote by ballot.

ARTICLE III.

Of the Common Council and their Powers and Duties.

Common
Council, how
constituted.

§ 1. The Mayor and Aldermen of the city shall constitute the Common Council, which shall meet on the first Monday subsequent to the annual election, and on the first Monday of each subsequent month in the year, and at such other times as they shall by resolution direct. The Mayor may call special meetings at any time by written notice to each member, served personally or left at his place of residence or business, at all the meetings of the Common Council. The Mayor, when present, shall preside.

Quorum.

§ 2. A majority of the Common Council shall constitute a quorum for the transaction of business, but a smaller number may compel the attendance of absent members, and no tax or assessment shall be ordered except by a vote of a majority of all the members.

Votes
in Council.

§ 3. In the proceedings of the Common Council each member shall have a vote, except the Mayor, who shall have only a casting vote when the votes of the other members are tied.

Rules.

§ 4. The Common Council shall determine the rules of their proceedings, and the qualifications and elections of their members.

Meetings
of Council.

§ 5. The sittings of the Common Council shall be open to the public except when the interests of the city shall require secrecy. A journal of their proceedings shall be kept by the Clerk, under their direction, and the yeas and nays on any question shall be taken and entered on the journal at the request of any two members.

Powers
of Council.

§ 6. The Common Council shall have power within the city:

1st. To make by-laws and ordinances not repugnant to the constitution and laws of this State:

2d. To levy and collect taxes on all property, real and personal, made taxable by law for State purposes, not exceeding one hundred per cent. per annum upon the assessed value of such property:

3d. To provide for the draining, grading, paving, improvement, repair, and the lighting of the streets, and the construction of side walks, drains, and sewers, and the prevention and removal of obstructions on the side walks.

4th. To provide for the prevention and extinguishment of fires, and to establish and organize fire companies.

5th. To regulate the storage of Gunpowder, Tar, Pitch, Rosin, and other extremely combustible materials:

6th. To establish and regulate a City Police:

7th. To prevent and remove nuisances:

8th. To remove from the immediate vicinity of the inhabited parts of the city all slaughter-houses, haystacks, forges, and blacksmiths' shops.

9th. To license and regulate auctioneers and taverns, bar-rooms, billiard-tables, bowling alleys, theatrical and other exhibitions, shows, and amusements :

10th. To license, tax, and regulate, prohibit, and suppress tippling houses, dram-shops, gaming and gambling houses, and hawkers and pedlars and pawnbrokers ; and to suppress disorderly houses and houses of ill fame :

11th. To provide for the erection of all public buildings for the use of the city :

12th. To open, alter, and widen streets and alleys :

13th. To establish a City Hospital, and to provide for the support of the indigent sick :

14th. To borrow money on the faith and credit of the city, but no loan shall be made for a sum exceeding five thousand dollars including the amount of any previous indebtedness, without the consent to such loan of the electors of the city previously obtained :

15th. To appropriate money for any item of City Expenditure, and provide for the payment of all debts and expenses of the city :

16th. To prevent and restrain any riot or disorderly assemblage, in any street, house, or place of the city :

17th. To impose and appropriate fines, forfeitures, and penalties, for the breach of any ordinance, and to provide for the punishment of breaches of the 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 :

18th. To suspend any City Officer for misconduct in his office or neglect of duty, with the concurrence of two thirds of the members elected :

19th. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members with the concurrence of two thirds of the members elected.

§ 7. When the Common Council desire to effect a loan for a sum exceeding five thousand dollars, including the amount of any previous indebtedness, they shall submit a proposition of such loan to the electors of the city ; and if a majority of persons voting vote in favor of such proposition, the Common Council shall have authority to effect such loan, but not otherwise.

Loan exceeding \$5,000.

§ 8. It shall be the duty of the Common Council to provide for the accountability of all officers and other persons elected, to whom the receipts and expenditures of the funds of the city shall be intrusted, by requiring from them sufficient security for the faithful performance of their duties or trusts, which security shall be given by them before entering upon their respective duties ; in case such security becomes insufficient, additional security may be required, and if not given, the Common Council, by a vote of two thirds of the members, may declare the office vacant, and elect another person to supply the vacancy.

Accountability of officers.

Receipts
and payments
to be published.

§ 9. It shall be the duty of the Common Council to publish in a public newspaper, printed in the city, and if there be not one printed in the city, then in one printed in the County, one month before the annual election of officers in each year, for the general information of the citizens of Sonora, a full and detailed statement of receipts and expenditures of the city during the year ending on the last day of the month previous to that in which the publication is made, and in every such statement the different sources of City Revenue, and the amount received from each, the several appropriations made by the Common Council, the objects for which the same were made, and the amount of moneys expended under each, the moneys borrowed on the faith and credit of the city, the authority under which each loan was made, and the terms on which it was obtained, shall be clearly and particularly specified.

ARTICLE IV.

Of the Powers and Duties of City Officers, and their Compensation.

Duty
of Mayor.

§ 1. It shall be the duty of the Mayor:

1st. To communicate to the Common Council quarterly a general statement of the situation and condition of the city in relation to its government, finances, and improvements.

2d. To recommend to the Common Council the adoption of all such measures as he may deem expedient relative to the police, health, security, cleanliness, and ornament of the city, and the improvement of its government.

3d. To be vigilant and active in causing the by-laws and ordinances of the Common Council to be duly executed and enforced.

4th. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty.

5th. To countersign all warrants and licenses issued under orders or ordinances of the Common Council.

6th. To preside over the Common Council when present at their sittings.

7th. To maintain the peace and good order of the city, and generally to perform all such duties as may be prescribed by this Act, and the ordinances of the Common Council and the laws of this State.

Aldermen.

§ 2. It shall be the duty of every Alderman of the city to attend the regular and special meetings of the Common Council, to act upon the committees when appointed thereto by the Mayor, to report to the Mayor all subordinate officers who are guilty of violation or neglect of duty, and to aid the Mayor in maintaining the good order and peace of the city, and in enforcing the by-laws and ordinances of the Common Council.

Recorder.

§ 3. It shall be the duty of the City Recorder to hold a Court to be called the Recorder's Court of the City of Sonora, at such convenient

place in the city as the Common Council may provide, and to pay into the City Treasury at the end of each week all moneys collected and paid into Court in actions and proceedings therein to which the city is a party.

§ 4. It shall be the duty of the City Treasurer to receive all moneys ^{Treasurer.} belonging to the city, to keep account of all receipts and expenditures in such manner as the Common Council may direct, and he shall, whenever required by resolutions of the Common Council, present them a full account of such receipts and expenditures for any period designated in the resolution. All moneys drawn from the City Treasury shall be drawn in pursuance of an order of the Common Council, by warrant, signed by the Clerk and countersigned by the Mayor or the President of the Common Council; and such warrant shall specify for what purpose the amount designated therein is to be paid.

§ 5. It shall be the duty of the City Assessor to prepare, within such ^{Assessor.} time as the Common Council shall direct, and present to them, with his certificate of their correctness, a list of all taxable property, real and personal, within the city, with a valuation thereof, and a list containing the names and occupations of all residents within the city, and to perform such other services in relation to the assessments of property in the city as may be required by the Common Council.

§ 6. The Clerk of the City shall be Clerk of the Common Council, ^{City Clerk.} and it shall be his duty to keep the Corporate Seal and all the papers and documents belonging to the City; to file them in his office under appropriate heads; to attend the sittings of the Common Council, and keep a journal of their proceedings, and a record of all their by-laws and ordinances; to sign all licenses and warrants issued in pursuance of the orders and ordinances of the Common Council, and affix the Corporate Seal to such licenses; to keep an accurate account in a suitable book, under the appropriate heads of expenditures, of all orders drawn on the Treasury and all warrants issued in pursuance thereof; also to keep an account, in an appropriate book, of all licenses issued and the name of the person to whom issued, the date of the issue, the time for which the same are granted, and the sum paid therefor.

§ 7. It shall be the duty of the City Attorney to attend to all actions ^{City Attorney.} and proceedings to which the City is a party or interested therein; to give his advice and opinion in writing whenever required by the Mayor or Common Council; to draw up all instruments and contracts to which the City is a party; and to perform such other services connected with his profession as an Attorney, as may be required by the Common Council.

§ 8. It shall be the duty of the City Marshal to execute within the ^{Marshal.} City and return all process issued and directed to him by the Recorder, or from the Recorder's Court of the City; to arrest all persons guilty of a breach of the peace, or a violation of any ordinance of the Common Council, and to take them before the Recorder; to pay into the Recor-

der's Court all moneys collected by him on any process issued in any action or proceeding therein to which the City is a party; to collect the taxes of the City, and pay all moneys received for taxes into the City Treasury, in pursuance of the ordinances of the Common Council; to supervise and control the City Police; to attend the sittings of the Common Council, and perform such duties whilst in attendance upon their sittings as may be directed by them, and to perform such other duties as may be prescribed by ordinance of the Common Council.

Officers
elected
by Council.

§ 9. The Common Council shall define the duties of the officers elected by them, whose duties are not herein prescribed, and shall determine the fees and salaries of all the officers elected by them under this Act.

Salary
of Mayor.

§ 10. The Mayor shall receive for his services such salary or compensation as may be allowed by the Common Council, not exceeding, however, in any case the sum of one thousand dollars per year.

Aldermen.

§ 11. The Aldermen shall not receive in any case a salary or compensation for their services, unless a proposition to allow them a salary or compensation, specifying the amount thereof, be first submitted to the electors of the City, and be approved by them; such proposition shall be published by them in one of the newspapers of the City, if there be one; but if there be no newspaper published in the City, then in one of the newspapers published in the County, at one month previous to the day on which the vote of the citizens is to be taken thereon; if a majority of the persons voting vote in favor of the proposition, then the salary or compensation specified therein shall be allowed, but not otherwise: *Provided*, that such salary or compensation shall not exceed five dollars for each day's attendance at the meeting of the Common Council.

ARTICLE V.

Of the Recorder, and the Recorder's Court.

Power
of Recorder.

§ 1. The Recorder shall possess the powers and exercise the duties of a Committing Magistrate, in criminal cases which are above the jurisdiction conferred by this Act upon the Court held by him.

Jurisdiction
of Recorder's
Court.

§ 2. The Recorder's Court shall have jurisdiction within the city limits:

- 1st. Of an action to determine the right to mining claims:
- 2d. Of an action or proceeding for a penalty, fine, or forfeiture, imposed by any ordinance of the Common Council: and,
- 3d. Of proceedings respecting vagrants and disorderly persons.

The like.

§ 3. The Recorder's Court shall also have jurisdiction of the following public offences committed within the limits of the city:

- 1st. Petit larceny:
- 2d. Assault and battery, not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill:
- 3d. Committing a wilful injury to property; and all misdemea-

nors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

§ 4. All proceedings and actions under this Act in the Recorder's Court shall be commenced by complaint setting forth the mining claim asserted, with its metes and bounds, or the violation of the ordinance, or the acts of vagrancy, or the disorderly conduct complained of, or the offence charged, with such particulars as to such offence, of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer to the complaint; and all complaints shall be verified by the oath of the parties making them. To the complaint the defendant may plead, or he may answer or deny the same; such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless for any good cause shown a continuation be granted. In any action to determine the right to "Mining Claims," either party shall be entitled, if demanded, to a Jury of twelve persons; in all other actions or proceedings, the defendant shall be entitled, if demanded by him, to a Jury of six persons.

Proceedings to be commenced by complaint.

ARTICLE VI.

Miscellaneous Provisions.

§ 1. Upon the passage of all resolutions and ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the ayes and noes shall be entered on the journal.

Ayes and noes to be entered on journal.

§ 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating for any purpose the sum of five hundred dollars and upwards, or an ordinance in anywise increasing or diminishing the city revenue.

Appropriations.

§ 3. All resolutions and ordinances calling for the appropriation of any sum of money exceeding one thousand dollars, shall lay over for the space of one week, and be published in one of the newspapers published in the city, if there be one.

The like.

§ 4. The style of the City Ordinances shall be as follows: "The Common Council of Sonora do ordain as follows." All ordinances shall be published in a newspaper printed in the city, if there be one, but if there be no newspaper published in the city, then by posting the same in three conspicuous places in each ward, and by printing the same in some newspaper within the County.

Style of ordinances.

Chap. 87.

AN ACT to provide a Revenue for the State Marine Hospital at San Francisco.

Passed March 26, 1851.

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

Master, &c.,
of all vessels
to report to
Treasurer of
Marine Hospital.

§ 1. Within forty-eight hours after the arrival of any and all vessels at the Port of San Francisco, or within the bay thereof, from any port or place without the United States, and before such vessel shall leave said port or bay of San Francisco for any other port or place, the master or commander thereof shall make a report in writing, on oath or affirmation, to the Treasurer of the State Marine Hospital at San Francisco, which report shall state the name, age, size, complexion, and such other description of the person or persons named in said report as will enable them to be known, and the whole number of cabin and steerage passengers on board of such vessel, and also the name and residence of the owner or owners and consignees of such vessel. If any master or commander shall refuse or neglect to report fully, as aforesaid, or shall make a false report or statement, he shall forfeit and pay not less than five hundred dollars for each refusal or false report, for which the master, owner, or owners of such vessel, shall be liable, jointly and severally, and which may be sued for and recovered in any Court of competent jurisdiction, in the name and for the use and benefit of the State Marine Hospital at San Francisco: *Provided, however,* that nothing in this section shall be so construed as to require the master or commander in his report to render the name of any citizen of the United States, who may come direct, en route, from any other State into this State.

Master, &c.,
of vessel
to give bond.

§ 2. It shall be the duty of the Treasurer of the State Marine Hospital at San Francisco to require the master, owner, or owners of all vessels on which said passengers have arrived, to give a several bond to the State Marine Hospital at San Francisco, in a penalty of two hundred dollars for each and every passenger included in the report required to be made by the first section of this Act, conditioned to indemnify, and to save harmless the State Marine Hospital at San Francisco, and each and every City, Township, and County of this State from any cost or charge which the said Hospital, or such City, Township, or County shall incur, for the relief, support, or medical care of the person named in the bond, within two years from the date of the bond. Each bond so given shall be secured by two or more sufficient sureties, being residents of this State, each of whom shall prove to the satisfaction of the Treasurer of said Hospital that he is the owner of a freehold in this State, of the value of three hundred dollars, over and above any claim or lien thereon

against him, including any contingent claim which may accrue from, or upon any former bond given under the provisions of this Act: *Provided, however,* that the master, owner, or owners, may commute for the bonds above required, by the payment, in money, for each cabin passenger, according to the first section of this Act, five dollars; for each deck passenger, according to the first section of this Act, three dollars. If any master, owner, or owners of any vessel shall refuse or neglect to give a bond, as provided in this section, or pay the commutation money, he or they shall forfeit and pay a sum not less than five hundred nor more than two thousand dollars, to be sued for and collected in any Court having jurisdiction of the same, for the use and benefit of the State Marine Hospital at San Francisco.

Master
may commute
for such bonds.

§ 3. The Treasurer of said Hospital shall give to the master, owner, or owners, who may have paid commutation money, a receipt containing all the names of passengers for whom such commutation shall have been paid; and all sums of commutation money thus received shall form part and parcel of the funds of the State Marine Hospital at San Francisco.

Receipt for
commutation
money.

§ 4. It shall be the duty of the Tax Collector of taxes in the County of San Francisco to make a distinct report of all moneys received by him on account of licenses to hawkers and pedlars, and also all money received on account of auction sales and for licenses for gaming; which report shall be given to the County Treasurer, and upon the receipt of the money thus collected and paid over, it shall be the duty of the County Treasurer to place to the credit of the State Marine Hospital at San Francisco one half the amounts so received, which shall be paid over monthly to the State Marine Hospital at San Francisco upon the order of the Trustees of said Institution; *Provided,* such amount does not exceed thirty thousand dollars.

Tax collector
to make
separate reports.

§ 5. It shall be the duty of all ship brokers and agents, or shipping masters, to make out a monthly statement, under oath, of any and all passengers shipped by any and all vessels, and any and all sailors and mariners, as the case may be, engaged to go on board of any vessel leaving the port of San Francisco bound for any other port out of this State; such report shall be made to the Treasurer of the State Marine Hospital at San Francisco; and shall pay to the Treasurer fifty cents for each passenger shipped, or sailor or marine engaged to go on board of any vessel; which sum or sums of money shall form part and parcel of the funds of the State Marine Hospital at San Francisco.

Ship
brokers and
agents to
report monthly.

§ 6. It shall be the duty of the Master or Commander of each Steamer or other vessel of any kind, running to and from the port of San Francisco, to have placed in some conspicuous part of the cabin or cabins one or more cards, which shall be furnished by the Treasurer of the State Marine Hospital at San Francisco upon the application of the Masters of said vessels for the same, informing all persons who may desire it that they can, by the payment of five dollars to either the Treasurer of the State Marine Hospital at San Francisco, or to the Mas-

Hospital
cards to be
placed in
cabins of
all vessels.

ter of said vessel, obtain admission into the State Marine Hospital at San Francisco at any time within a year from the date of the receipt of the Treasurer or Master, as the case may be. It shall be the duty of the Master of all vessels to call the attention of his passengers to these Hospital Cards, at least once on each voyage. It shall also be the duty of the Master of any and all Steamers or other vessels to provide a box, which shall be called the Charity Hospital Box, and place the same in the cabin of said Steamer or vessel, labelled the Charity Hospital Box, into which any and all persons who are desirous of so doing may deposit any contribution whatever for the use and support of the said Hospital. It shall be the duty of all Masters of Steamers and other vessels plying as aforesaid to and from the port of San Francisco to make a report, under oath, of all sums of money received, giving the names, age, size, and otherwise describe the individual paying the same, so as to correspond with the receipts given them, and the amounts which may be deposited in the Charity Hospital Box, twice in each month, and pay over all such sums to the Treasurer of the State Marine Hospital at San Francisco. In all receipts given by the Master of any vessel for moneys received for said Hospital, such receipt shall specify the name, age, size, and otherwise describe the individual paying the same, so that he, she, or they, may at any time within twelve months be admitted into the State Marine Hospital at San Francisco as a patient, upon the production of said receipt. If any Master of any Steamer or other vessel navigating the waters or running to and from the port of San Francisco, shall refuse or neglect to comply with the provisions of this Act, he or they shall forfeit and pay not less than five hundred dollars for each and every refusal or neglect, to be sued for and collected as in other cases for the use and benefit of the State Marine Hospital of San Francisco.

§ 7. The Corporate authorities of the City of San Francisco are hereby authorized to send the sick and invalids of the city to the State Marine Hospital at San Francisco, upon such terms as the city authorities and the Trustees of the State Marine Hospital at San Francisco may agree: *Provided*, the amount shall not exceed fifty thousand dollars per annum for such purpose. It shall also be lawful for the Collector of the port of San Francisco to send all sick and disabled seamen to the State Marine Hospital at San Francisco, upon such terms and under such rules and restrictions as shall be agreed upon between the Collector and the Trustees of the State Marine Hospital at San Francisco.

Also a
Charity
Hospital box.

Master to
report and
pay over
sums deposited
in said box.

Receipts
for money paid
for Hospital.

Penalty, for
not complying
with act.

The city sick
may be sent to
Marine Hospital.

Also
sick and
disabled
seamen.

Chap. 88.

AN ACT to authorize the Funding of the Floating Debt of the City of San Francisco and to provide for the payment of the same.

Passed May 1, 1851.

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

§ 1. The city of San Francisco is hereby authorized to fund its floating debt as hereinafter provided, and for this purpose P. A. Morse, D. I. Tallant, William Hooper, John W. Geary, and James King of William, of the city of San Francisco, are hereby constituted and shall be known as "The Commissioners of the Funded Debt of the City of San Francisco," and as such they and their successors appointed as hereinafter prescribed shall have the powers hereinafter enumerated. They shall organize their commission by the appointment of a President and Secretary from their own body ; they shall hold their offices during good behavior. Any vacancy occurring shall be filled by appointment by the Mayor of said city of some respectable citizen of said city to such office and confirmed by the Common Council. The said funding commissioners, before entering upon the duties of their office, shall file a joint and several bond with the Mayor of the city, in the penal sum of one hundred thousand dollars for the prompt and faithful discharge of all the duties of their office.

Commissioners
of funded
debt appointed.

Powers of
Commissioners.

§ 2. The said Commissioners of the funded debt shall have power to issue on the part of the said city certificates of stock to be known as "The San Francisco City Stock ;" for an amount equal to the aggregate amount of the floating debt of the said city, which shall be due or the consideration whereof shall have accrued on or before the first day of May, in the year one thousand eight hundred and fifty-one ; which said certificate shall be in such form as the said Commissioners shall prescribe and shall be signed by each of the said Commissioners then in office, and each and every certificate to purport in substance as follows : namely, That the city of San Francisco owes to the holder thereof a sum to be expressed therein, not less, however, than one hundred dollars, bearing an interest of ten per cent. per annum. The said interest to be payable half yearly at such specified time and place as the said Commissioners may see fit to direct, upon coupons annexed to such certificates and the principal sum to be redeemable within twenty years after the date of such certificate ; the coupons for the payment of such interest according to the terms of such certificate shall be signed by the President and Secretary of the said Commissioners and annexed to and delivered with each certificate, and such certificate, although not under the common seal of the corporate city of San Francisco, shall be

Certificates
of stock may
be issued.

Interest,
how payable.

as valid and binding upon the said corporate city as though the same were issued under its said Common Seal.

Exchange of certificates with City creditors.

§ 3. The said Commissioners shall have power to exchange such certificates of stock with creditors of said city who are entitled to the benefit of the provisions of this Act, in extinguishment of an equal amount of the said floating debt.

Assessor to be notified of amount necessary to be raised to pay interest.

§ 4. The said Commissioners, previous to the making out of the general assessment list for the said city, in each and every year, shall certify and deliver to the city assessors the amount which shall be necessary to be raised for the payment of the interest of the debt so funded for the current year, and the said assessors in completing said assessment list shall add to the amount which may be authorized by law to be raised thereon for other purposes the amount so certified for the payment of such interest, and also the further sum of fifty thousand dollars in each and every year for the purpose of a sinking fund for the redemption of such stock; the first moneys collected upon the whole of such general assessment list when so completed shall be paid by the collector thereof into the City Treasury, and by the City Treasurer into the hands of said Commissioners as fast as collected; and no payment shall either directly or indirectly be made out of the moneys assessed or collected upon the said assessment list for any other purpose until the amounts authorized by this section to be assessed and collected shall have been actually paid over to said Commissioners. The Common Council of the said city shall not have power to enact any provisions which shall prevent or hinder the immediate collection, in current coin, of the amounts authorized to be raised by this section, or otherwise contravene the provisions of this section, and if any such provisions are attempted to be enacted, it shall be the duty of the city collector to disregard the same, and to collect in current coin the amounts by this section authorized to be assessed and collected. The said Commissioners shall have the right at all times to inspect the books of the Treasurer, Assessor, and Collectors of said city.

Sinking fund.

Commissioners may inspect books of Treasurer.

Disposition of moneys received by Commissioners.

§ 5. The said Commissioners shall receive into their custody all the moneys which shall be levied and collected for the purposes of this Act. Out of the same they shall pay the interest of the said stock, at the times and places where the same shall become due and payable, out of such portions of the principal debt as they may be able to obtain for that purpose, as provided for in section 14 of this Act; or, in case they shall not be able to obtain portions of such principal debt for that purpose, they shall securely invest such balance, and reinvest the interest and proceeds thereof until they shall be able so to apply the same to the total extinguishment of such portions of the said debt as herein provided. They shall keep regular books of accounts and minutes of their proceedings, which shall be open at all times to the inspection of the Mayor and Comptroller of said city; and shall within one month before the expiration of the fiscal year of the said city transmit to the

Commissioners to report receipts and payments to Council.

Common Council of the said city a statement verified by the oath of one or more of said commissioners, showing the amount of moneys received and paid out by them, the expenditures by them made, the amount of stock outstanding, and the amount redeemed within the current year, the condition of the moneys and funds in their hands, and how the same are invested and secured; which statement the Common Council shall cause to be forthwith published in a daily newspaper published in said city.

§ 6. At the time when the principal of said stock becomes redeemable, the said Commissioners shall devote the moneys in their hands to the redemption of the same, and shall pay over the surplus, if any, to the Treasurer of said City. The said Commissioners shall also, after discharging the trusts for which they are herein appointed, convey and restore to the City of San Francisco all the property, titles, and assets belonging to the same and remaining in their possession. Each of the said Commissioners shall receive during his continuance in office, an annual salary not to exceed twelve hundred dollars, except the President and Secretary, whose salaries shall not exceed fifteen hundred dollars each, to be fixed by the Common Council, and paid out of the moneys which shall be collected and paid to the said Commissioners, under the provisions of this act. Before entering upon their office the said Commissioners shall give bonds to the said City, by its Corporate name, to be approved by the Common Council, conditioned for the faithful discharge of the duties of their office; and such bonds shall be renewed from time to time upon the order of the District Court, having jurisdiction within the said City, for cause shown, on the application of the said City, after previous notice to the said Commissioners, and upon failure to comply with such order, the office of such Commissioners shall become vacant.

Redemption
of stock.

Salary of
Commissioners.

Commissioners
to give bonds.

§ 7. The District Court having original civil jurisdiction within the said City of San Francisco shall have power to enforce obedience to the provisions of this act, and for that purpose may issue process of mandamus, distringas, sequestration, and attachment; and any public officer who shall wilfully violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be liable to indictment and punishment therefor.

Obedience
to act, how
enforced.

§ 8. Any person holding indebtedness of any character against the City, authorized by this act to be funded, shall have the privilege of receiving in lieu thereof the ten per cent. bonds or certificates as provided in section 2, and the said Fund Commissioners are hereby authorized and directed to pay said bonds or certificates to such person or persons, at the rate of one hundred cents on the dollar, for every dollar of such indebtedness received.

City creditors
may receive
certificates
of stock.

§ 9. No creditor of the said City (the amount of whose claims against the said City shall be audited and approved at the time of the passage of this act) shall be entitled to the benefit of the provisions of the same, unless he shall signify his election to exchange such claims for said

Creditors
to elect, if
they will
receive
certificates
of stock
within
90 days.

funded stock, within ninety days after the passage of this act, and for such claims, such stock shall be issued for the amount due thereon at the time of the passage of this act, and bearing date as of that day; and in case any claims against the said City, which may be entitled to the benefit of the provisions of this act, shall not be audited and approved at the same time of the passage thereof, but shall thereafter be audited and approved, then the same shall be presented for exchange as aforesaid, within ninety days after such liquidation, and upon being so presented, such stock shall be issued for the amount then due thereon, and bearing date as of the day of such presentation, and if not so presented, the same shall not be entitled to the benefit of the provisions of this act.

Repeal of
Section 17,
article 3, of
City Charter.

§ 10. The seventeenth section of the third article of the "Act to reincorporate the City of San Francisco," which reads as follows: "The Commissioners of the Sinking Fund, created by ordinance of the Common Council, are hereby required to reconvey and deliver to the Common Council before the tenth day of May next all property, titles, rights and interests, belonging to the City, and now in their possession," be and the same is hereby repealed.

City property
exempt
from sale
by execution.

§ 11. All property of the City of San Francisco which is necessary to be retained for all or any of the municipal purposes of the City shall for ever be exempt from sale by execution.

Commissioners
of sinking fund
to convey to
Commissioners
of funded debt.

§ 12. The Commissioners of the Sinking Fund created by ordinance of the Common Council are hereby required to convey to the Commissioners of the Funded Debt of the City of San Francisco created by this Act, on their application therefor, all the property, and all the rights, titles, and interests in property belonging to said City; and to pay over into the hands of said Commissioners any funds, notes, securities, or other assets belonging to said City which they may have received, or may hereafter receive, by virtue of article third of an Act entitled "An Act to incorporate the City of San Francisco," approved the fourteenth day of April, eighteen hundred and fifty-one; said Commissioners shall have the right, at such time and place as in their discretion the interest of the City may require, to expose at public sale or to lease the property to be conveyed, as provided in this section, and they shall apply the proceeds of such sale or lease to the liquidation of the floating debt of said City.

Repeal of
Section 15,
article 3, of
City Charter.

§ 13. The fifteenth section of the third article of the "Act to reincorporate the City of San Francisco," which reads as follows: "The Common Council shall at an early day take steps to fund by ordinance the existing debts of the City. The funded debt shall consist of:

" 1st. The liabilities for the payment of which the City revenue is already pledged.

" 2d. The creditors of the City may fund the debts respectively due them at the passage of this Act, on such terms as the Common Council may prescribe, at a rate of interest not to exceed ten per cent. per annum, and payable in ten years; but no bond shall issue of a less

denomination than one hundred dollars," be and the same is hereby repealed.

§ 14. Whenever the said Commissioners of the funded debt shall have surplus moneys in their hands for the extinguishment of any portion of the said principal stock as hereibefore provided, they shall publicly advertise, for at least five weeks, in some newspaper printed in the City of San Francisco, for sealed proposals for the surrender of portions of said stock, and shall state in such advertisement the amount of money which they have in their hands for that purpose, and they shall accept those proposals which shall secure the cancellation of the greatest amount of such stock, and of annual interest thereafter to accrue on the same, reference being had to the rate of interest payable on such stock : *Provided*, that no stock shall be so purchased at a price higher than par.

Advertisement
for surrender
of stock.

Chap. 89.

AN ACT to Incorporate the City of Sacramento.

Passed *

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

§ 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 the 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 hereafter be known by the name of the "City of Sacramento."

Boundaries
of City.

EXECUTIVE DEPARTMENT,
San José, March 26, 1851. }

* The within [above] bill is regarded as oppressive and extraordinary in many of its features, but not regarding it as infringing any particular principle of the Constitution, and as it is the Act of the Representatives of Sacramento County, and presuming it to be the wish of the people of Sacramento City, I permit it to become a law, by the operation of time, without approving or returning it to the body in which it originated.

Jno. McDOUGAL.

Present city government to continue until, &c. City to be divided into wards.

Election, under this act.

City Officers.

To be a corporate body.

§ 2. The present City Government shall continue in office until the election and qualification of the officers to be elected under the provisions of this Act. They shall divide the City into three wards, the population of which shall be as nearly equal as possible, from each of which shall be elected three Councilmen by the qualified voters therein. The Common Council shall direct an election to be held in the different wards of the city for the election of the officers specified in this Act, in the manner hereinafter required, and may, in their discretion, increase the number of wards.

§ 3. For the government of said City there shall be a Mayor, Recorder, and Council, to consist of nine members. The said Mayor, Recorder, and Councilmen shall be a body politic and corporate by the name and style of the "Mayor and Common Council of the City of Sacramento," 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 purchase and hold property, real and personal, within said City, they may also receive and hold for the use of the City legacies and donations, both of real and personal property, but shall not sell any real estate without the consent expressly given of a majority of the legal voters of said City: *Provided* that they shall purchase no real estate other than such land or lots within the City 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, except as provided in section seventeen, and shall have a common seal, and may alter the same at pleasure.

Election of corporate officers, &c.

§ 4. There shall be elected in said City, at the time and the manner hereinafter prescribed, a Mayor, Recorder, nine Councilmen, a City Marshal, a City Attorney, Assessor, Treasurer, and Harbor Master, but no person shall be eligible to the office of Councilman or qualified to vote for the same in any ward other than that in which he has resided at least ten days before the election; and 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 at any city election, 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 at least thirty days next preceding the election.

Penalty for voting more than once.

§ 5. Any person voting in more than one ward in this city at any one election, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding five hundred dollars, or imprisonment not exceeding twelve months, and shall for ever be deprived of the privilege of voting in any election for the city officers.

Meetings of Common Council.

§ 6. The members of the Common Council elected under this Act shall assemble within five days after their election, and the Mayor shall preside over their meetings but shall have no vote, and in case of his

absence, death, or disability, the Council may elect a President, *pro tempore*, from their own body, to preside over them for the time being, and shall elect some suitable person as Secretary of the Council. They shall, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time, by giving each member of the Council verbal notice, or by leaving a written notice at their usual places of residence. A majority of all the members elected shall constitute a quorum to do business, except as herein otherwise provided, 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 the members elected expel any member; but not a second time for the same cause. They shall cause to be kept 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.

Quorum.

Powers
of Council.

§ 7. 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, or 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 license gambling houses, or tables; to establish and regulate markets; to establish a board of health; to cause the streets to be cleaned and repaired; to provide for the making and improving of sidewalks, and the regulation thereof; to impose for the benefit of the city fines, penalties, and forfeitures for breaches of city ordinances; to provide for the punishment of breaches of the city ordinances, and to determine what are nuisances; but no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer term than sixty days; to levy and collect taxes; to lay out, extend, alter, or widen streets and alleys; to alter, improve, keep and repair, and have full control of the levee; to establish and regulate a police to be subject to the supervision of the Mayor; to make appropriations for any object of city expenditure; to erect and maintain poorhouses and hospitals for the support of the indigent, sick, and insane; 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; to provide for the prevention and extinguishment of fires, and to organize fire companies; and to regulate the storage of gunpowder and such other combustible materials as

Further
powers
of Council.

might endanger the city by fire. They shall have power to create a captain of police and such other officers as they may deem necessary, and to prescribe their duties and compensation, subject to the provisions of this Act; to prevent and restrain any riot or disorderly assemblage in any street, house, or place of the city; and may by ordinance provide for the formation of a "Chain Gang," for persons convicted of crime. They shall fix a tariff of fees for the direction of all officers that may be by ordinance required to charge and collect fees, specifying the fee which shall be charged for each particular item of service; and to pass such other by-laws and ordinances for the regulation and police of said city as they may deem necessary. All by-laws and ordinances shall be published in some newspaper printed in the city.

Process to be served on Mayor.

§ 8. All legal process against the city shall be served on the Mayor, and in his absence on the Mayor *pro tempore*.

When Corporation may be garnished.

§ 9. In no case shall the Corporation be garnished for any debts due or to become due by said Corporation on contracts for city improvements, except for debts incurred for said improvements, and all tools and other property while being used upon any public improvements in the city shall be exempt from execution and attachment, except for materials furnished or for work done on such improvement.

Appropriations.

§ 10. All appropriations shall be by ordinance, and all contracts and conveyances may be made in such manner as directed by the Council, subject to the approval of the Mayor; or, in case of his disapproval, by a two third vote of all the members of the Council elected.

Vacancies, how filled.

§ 11. When any vacancy shall occur in any city office the Council shall order an election to be held for the purpose of filling said vacancy, unless it should occur within sixty days of the regular annual election, when it shall be filled by the Council.

Council to audit all accounts against City.

§ 12. All accounts and demands against said city (except such as are specified in section nineteenth) shall be passed upon, and if found correct, allowed by the Common Council, and an order made that such demands be paid, upon which the Mayor shall draw his warrant, countersigned by the Secretary of the Council, upon the Treasurer, in favor of the owner or owners, specifying for what purpose and by what authority it is issued, and out of what fund it shall be paid, and the Treasurer shall pay the same out of the proper fund.

Statement of receipts and payments to be published.

§ 13. It shall be the duty of the Common Council to publish in one or more public newspapers printed in the city, one month before the annual election for city officers in each year, for the general information of the citizens of the City of Sacramento, a full and detailed statement of the receipts and expenditures of the city during the year ending on the last of the month previous to that in which the publication is made, and in every such statement the different sources of the city revenue, and the amount received from each; the several appropriations made by the Common Council, the objects for which the same were made, and the amount of moneys expended under each; the money borrowed on the

faith and credit of the city; the authority under which each loan was made, and the terms on which it was obtained, shall be clearly and particularly specified.

§ 14. The City Council shall have power by ordinance 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. Council may borrow money.

§ 15. The Council may by ordinance provide for the assessment and collection of the taxes semi-annually, but no tax shall be levied on the inhabitants of the city or on their property at any meeting of the Council which consists of less than two thirds of the whole number elected: *Provided*, such assessment shall not exceed two per cent. per annum on real and personal property, unless by express consent of the people: said two per cent. to be in addition to and exclusive of the revenue now authorized to be collected from licenses and wharfage. May provide for collection of taxes.

§ 16. If in the opinion of the 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 inform the Mayor, who shall 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 two 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. Amount of taxes.

§ 17. Real and personal property may be sold for taxes due the city, and the city shall have power to purchase property offered for sale for said taxes: *Provided*, public notice be given in some city newspaper thirty days previous to said sale, descriptive of the property; *Provided, also*, that the owner of any real property sold for taxes under the provisions of this section may redeem the same within six months from the day of such sale, by depositing in the office of the City Treasurer, for the use of such purchaser, the amount bid for such property, together with fifty per cent. damages thereon and legal interest: *Provided, also*, that only so much of the property shall be sold as will bring an amount to cover the taxes and expenses. Should the real property sold not be redeemed in accordance with the provisions of this act, the title shall remain absolute in the purchaser. Additional taxes.

§ 18. Special Assessments may be made for the improvement of streets, alleys, and so forth, upon the property specially to be benefited by said improvement, whenever two thirds of the owners of said property shall petition the Council therefor. And such property shall be made liable and may be sold for said assessment in the same manner as for other taxes: *Provided*, the city shall pay one third of the said improvement. Sales for taxes.

§ 19. The Common Council shall have no power to inquire into or award damages to any party for the non-performance or failure on their Special assessments.

for breach
of contract.

part of any contract or undertaking in which the city is or hereafter may be in any manner interested; nor shall they allow extra compensation to any creditor of the city on account of any depreciation to which their scrip, warrants, or bonds may be liable.

City
debt may
be funded.

§ 20. The Common Council shall, within sixty days from and after the passage of this act, ascertain the entire amount of the city debt, both principal and interest, and in their discretion shall have power to fund any or all of such indebtedness by effecting a loan or loans for that purpose, and the annual revenues of the city (except such revenues as may be necessary for the current expenses of the City Government) may be pledged for the payment of the interest and the redemption of the principal of such loan or loans; but the loan or loans so made shall be applied to no other purpose, and no indebtedness of the city shall be so funded unless it can be done on a less rate of interest than the city is now paying on its respective loans. No loan shall be created for a longer period than five years, nor unless the said city shall reserve to itself the right to redeem and call in the same at any time after giving ninety days' notice in one of the public journals published in the city where such principal and interest may be made payable; at the expiration of such notice the said loan or loans shall cease to draw interest. The Council may fund any other indebtedness of the city for such term as may by them be deemed advisable: *Provided*, the same can be done at an interest not exceeding fourteen per cent. per annum.

Elections,
when to
be held.

§ 21. The first election for city officers under this act shall take place on the first Monday in May next, and they shall hold office until the first Monday of April one thousand eight hundred and fifty-two, or until their successors are qualified. All subsequent general elections for city officers shall be held on the first Monday of April in each year, and they shall hold office for the term of one year, or until their successors are qualified.

Council
to regulate
Elections.

§ 22. It shall be the duty of the Council to order all elections and to designate the places of holding the same; to give at least two days' notice thereof, and to appoint two persons to act as judges in each ward, who shall appoint two clerks in their respective wards, and they 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 judges in their respective wards shall cause two lists of the names of the voters to be kept and numbered regularly, which number shall correspond with the number which shall be written in figures on the ballot of each voter before it is deposited in the ballot box. After counting the ballots the poll lists and ballots shall be sealed up by the judges and deposited with the Secretary of the Council, to be preserved for at least thirty days. At the expiration of thirty days, in case no notice of contest is given, the ballots so sealed up shall be destroyed without opening the same, and no examination or comparison of the lists and ballots shall take

place except in cases of contested elections. At all elections under this charter the polls shall be opened at sunrise and kept open until sunset, at which time the judges shall close the polls. The counting of the ballots shall be in public.

§ 23. The returns of all elections shall be made to the Common Council, who shall declare the result. The persons who shall have received a plurality of votes for the several offices shall be declared duly elected. Election returns.

§ 24. The Mayor, Recorder, and Councilmen chosen at said election shall be qualified within three days thereafter. The other officers elected shall be qualified within ten days thereafter, and shall enter upon the discharge of their duties. If any of the officers chosen at said election shall fail to qualify as above specified, their offices shall be deemed vacant. Officers, when to qualify.

§ 25. Any officer of the city government, except the Mayor and Common Councilmen, may be removed from office by a vote of two thirds of the members of the Common Council elect for any malfeasance or misfeasance in office, or neglect of duty: *Provided*, that no removal shall take place except upon charges fully specifying the cause of complaint, and until the party sought to be removed has had an opportunity to be heard in his defence, and the cause of such removal shall be entered at length upon the journal. Removal of Officers.

§ 26. Should the Mayor wilfully fail or refuse to discharge any of the duties imposed on him by the provisions of this Act, or wilfully and knowingly exercise any power as Mayor, not expressly designated to him in this charter, he shall be guilty of a misdemeanor, and on conviction before a court of competent jurisdiction, shall be fined in a sum not less than five hundred dollars, nor more than five thousand dollars, and such conviction shall operate as a forfeiture of his office, and to which he shall not be again elected. Office of Mayor, how forfeited.

§ 27. All City officers before entering upon the duties of their office shall take an oath of office. The Recorder, Marshal, Attorney, Assessor, Treasurer, and Harbor Master shall also give bond, with securities to be approved by the Mayor and Common Council, payable to the Mayor 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 officer become or be deemed insufficient he may be required by the Mayor to give an additional bond to be approved as above, and upon his failing or refusing so to do within the time that he is required to do so by the Council his office shall be deemed vacant. Officers to take oath and give bond.

§ 28. All City officers shall pay into the Treasury the specific fund by them collected; and for any violation of this section may be fined not exceeding five hundred dollars and shall be liable to removal from office. Officers to pay moneys received into Treasury.

§ 29. No City officer shall be entitled to collect or receive for his own use any fee or perquisite for the discharge of the duties of his office, Officers to receive no fees.

except as provided in section thirty-seventh, but all fees collected by him by virtue of an ordinance of the Common Council shall be paid into the City Treasury at such times as the Council may direct, and if any officer shall receive and appropriate to his own use any fee or perquisite as above referred to, or any funds belonging to the City, he shall be considered guilty of a misdemeanor, punishable by a fine not exceeding five thousand dollars, or imprisonment not exceeding twelve months, or both such fine and imprisonment, and shall be removed from office.

Council to
fix salaries.

§ 30. The Common Council shall have power to fix the salaries of all City officers, but no salary shall be allowed to any officer (except the Mayor and Recorder) which shall exceed the sum of three thousand dollars per annum, nor shall the salary of the Mayor or Recorder exceed the sum of five thousand dollars per annum; and the salaries or compensation of the City officers shall not be increased or diminished during the period for which said officers were elected.

Officers not to
be interested
in contracts.

§ 31. Neither the Mayor, Recorder, nor any of the Common Councilmen shall be allowed either in his own name, or through the medium of other persons, to become the lessee or bidder for any branch of the revenues of the City, nor for any work or undertaking whatsoever which may be authorized or ordered by the Corporation of said City.

Councilmen
not to receive
pay, nor to
act where
interested.

§ 32. The office of Councilman being merely one of honorable distinction, they shall, under no circumstances, be entitled to or receive any pay or emolument for their services either directly or indirectly; neither shall any of the members of said Council sit in judgment on any claim in which they may be interested, or have acted as Agent or Attorney, and no member of the Common Council shall be eligible to any office of profit or emolument within the gift of the Corporation.

Ordinances
to be laid
before Mayor
for approval.

§ 33. 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 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, or 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
to Council.

§ 34. It shall be the duty of the Mayor to communicate to the Common Council semi-annually, 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 improv-

ment of its government and finances, as he shall deem expedient; to be vigilant and active in causing the laws and ordinances for 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.

§ 35. The Recorder shall have jurisdiction over all violations of city ordinances, and may hold to bail, fine, or commit to prison offenders in accordance with the provisions of such ordinances; of all proceedings for the recovery of any penalty, fine, or forfeiture imposed by ordinance, provided the amount thereof shall not exceed five hundred dollars; of all cases of misdemeanor and wilful injury to property committed within the city limits, punishable by fine not exceeding five hundred dollars, and imprisonment not exceeding three months, and he shall have final jurisdiction in all cases of petit larceny: *Provided*, in all such cases the defendant shall have the right of trial by jury of six men. He shall exercise all the powers of a Justice of the Peace in regard to offences committed within the city limits; subject to all the rules governing Justices of the Peace, and have power to administer all oaths known to the law. In case of the death, sickness, absence from the city, disability, removal, or resignation of the Mayor, the Recorder shall perform the duties of his office during such vacancy, absence, or disability.

Jurisdiction
of Recorder.

§ 36. It shall be the duty of every Councilman to attend the regular and special meetings of the Council, to act upon Committees when appointed thereto by the Mayor or otherwise, to report to the Mayor all subordinate officers who may be guilty of violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the city, and in enforcing the by-laws and ordinances of the Common Council.

Duties of
Councilman.

§ 37. 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, upon the approval of the Mayor, appoint deputies, to be paid by the city, 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. He may also perform all the duties of Collector of Taxes, under the direction of the Common Council, and shall receive for the collection of said taxes two and one half per cent. on the amount collected and paid over.

Of Marshal.

§ 38. It shall be the duty of the City Treasurer to receive and safely keep all moneys that shall come to said City, either by taxation or otherwise, and to pay the same out as provided by law, 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,

Treasurer.

and October of each year, make out and present under oath to the Mayor a full and complete statement of the receipts and expenditures of the city since his last return, which statement the Mayor shall cause to be published three times in some newspaper printed in the city.

Attorney.

§ 39. It shall be the duty of the City Attorney to attend to all suits, matters, and things that the city may be 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.

Secretary
of Council.

§ 40. It shall be the duty of the Secretary of the Common Council to keep the Corporate Seal, and all the papers and documents belonging to the city; to file them in his office under appropriate heads; to attend the sittings of the Common Council, and keep a journal of their proceedings, and a record of all by-laws and ordinances; to countersign all warrants and licenses issued in pursuance of the orders and ordinances of the Common Council, and affix the Corporate Seal thereto; to keep an accurate account in a suitable book, under the appropriate heads of expenditures, of all orders drawn on the Treasury and all warrants issued in pursuance thereof; also to keep an account in an appropriate book of all licenses issued, with the name of the person to whom issued, the date of the issue, the time for which the same is granted, and the sum paid therefor.

Assessor.

§ 41. 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 may direct a correct list of all the property taxable by law within the limits of the city, with the true cash valuation thereof, or what property would probably sell for at public sale as near as can be ascertained, 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 a state tax.

Provision
may be
made for
existing debts
of City.

§ 42. 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. one thousand eight hundred and forty-nine, and all debts contracted by the corporate authorities of Sacramento City under an Act passed February twenty-seventh, one thousand eight hundred and fifty, entitled "an Act to incorporate Sacramento City" and an Act supplementary to an Act entitled "An Act to incorporate Sacramento City," passed March thirteenth, one thousand eight hundred and fifty, 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 accredit it, and by ordinance 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. But no interest shall be allowed any claim or debt exceeding the legal interest of the State, and no interest shall accrue on any claim or debt until such claim or debt shall be allowed by the Council.

§ 43. The Legislature shall always have power to alter or amend this charter whenever the same may be deemed proper. Charter may be amended.

§ 44. The Act entitled "an Act to incorporate Sacramento City," passed February twenty-seventh, one thousand eight hundred and fifty, and the Act entitled "an Act supplementary to an Act to incorporate Sacramento City," passed March thirteenth, one thousand eight hundred and fifty, are hereby repealed. Former Charter repealed.

Chap. 90.

AN ACT to exempt Firemen from Militia Service and Jury Duty.

Passed January 28, 1851.

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

§ 1. The officers and members of any Fire Department regularly organized within this State shall be exempt from serving as jurors. Firemen exempt from Jury duty, and

§ 2. The officers and members of any Fire Department as aforesaid shall be exempt from military duty, except in cases of war, insurrection, or invasion. Military duty.

§ 3. It shall be the duty of each person so exempt to produce, if required by the officer serving the jury summons or militia notice, a certificate signed by the Chief Engineer of the Fire Department and the Chief Magistrate of the city, town, or village exercising jurisdiction over the same. Certificate of exemption.

§ 4. The officer serving the jury summons or militia notice may require the oath of the party summoned or notified before any Magistrate that he has not resigned or been expelled since the date of his certificate. Oath that certificate is still in force.

Chap. 91.

AN ACT authorizing the Governor to call out Troops to defend our frontier, and providing for their pay and compensation.

Passed March 17, 1851.

Whereas, our Eastern frontier is now being ravaged by hordes of savages, who are murdering our citizens and destroying property of great value, and whereas, the existence of such a state of things demands from us prompt, immediate, and determined action. Therefore :

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

Governor may call men into service.

§ 1. The Governor of the State is hereby authorized to call into service any number of men, not exceeding five hundred in addition to those already engaged, that he may deem necessary, and commission any number of officers, in addition to those already in command, which he may deem proper for the purpose of defending our Eastern frontier against the attacks of Indians or others.

Governor may organize forces.

§ 2. The Governor shall also have power to organize such forces as may be raised under the provisions of this Act, by appointing such officers as may be necessary, and define the amount of bonds for the faithful performance of the duties of disbursing officers, and appointing the same : *Provided*, that he appoint no other officer than Quarter Master, Commissary, and Paymaster.

Officers appointed by Governor.

Allowance to troops.

§ 3. All persons now engaged under the command of Major James D. Savage in the County of Mariposa, and those who are employed in the same service under Major James Burney, and all others who may enter the service under the call of the Governor, as provided in this Act, shall be entitled to receive out of the "War Loan Fund," the following pay *per diem*, for the term of actual service rendered by each respectively. Each Major ten dollars per day ; each Captain eight dollars per day ; and each Lieutenant six dollars per day ; each Sergeant five dollars per day ; each Corporal five dollars per day ; each Private four dollars per day ; each Quarter Master eight dollars per day ; each Commissary eight dollars per day ; each Surveyor eight dollars per day ; Adjutant eight dollars per day ; each officer and private who has furnished his own horse or horses, shall be allowed one dollar per day for each horse so furnished : *Provided*, the number furnished shall not exceed the number allowed to officers and privates in the United States Army ; and *further Provided*, that each officer or soldier shall make affidavit before some competent officer that such horse or horses were actually in use in the campaign for the time charged, that they were necessary for the service and not allowed or to be allowed for as property of any other individual in the service.

Provide as to number of horses. *

§ 4. Major James Burney, of the County of Mariposa, is hereby **Paymaster.** appointed Paymaster of the troops now employed, or which may be employed under the provisions of this Act, to pay and liquidate all claims against this State, created as provided herein. Before entering upon the duties of his office the said Paymaster shall execute to the Governor of the State a satisfactory bond, conditioned for the faithful performance of his duties. Upon filing such bond he shall be duly commissioned by the Governor. Paymasters shall observe the same rules and regulations as are adopted in the regular service of the United States in relation to vouchers, pay rolls, and receipts.

§ 5. The Comptroller of State is hereby authorized to issue his warrants payable out of the "War Loan Fund," as hereinafter provided. Said warrants shall not issue until the said Paymaster shall have presented the claims, accounts, and vouchers, of the expenses incurred, and the same shall have been approved by the Board of Examiners as provided by the Act entitled "an Act prescribing the amount of compensation and mode of payment to persons who have performed military services for the State of California, and expenses incurred therein," approved March seventh, eighteen hundred and fifty-one, and filed in the office of the Quarter Master General. When the accounts have been so examined, approved, and filed, the Comptroller shall issue his warrant on the Treasurer, payable out of the "War Loan Fund," in favor of each person for the amount allowed him by such Board of Examiners. Such warrants shall be delivered to the said Paymaster, who shall immediately upon their receipt proceed to the County of Mariposa, and deliver the same to the person or persons in whose favor the same may be drawn, taking from each his receipt for the same. The said Paymaster shall return said receipts and the warrants, if any remain in his hands, within six months after the receipt of said warrants, to the Comptroller of State, with his certificate made under oath that the same is correct and was properly paid out. Such receipt and certificate, when presented to the Comptroller, shall be conclusive evidence that the Paymaster has discharged his duty faithfully.

Warrants for
payment of
Paymaster's
claims.

§ 6. The rate of compensation allowed the Paymaster created by this Act, shall be three per centum upon the whole amount paid out by him under the provisions of this Act. His account shall also be submitted to the Board of Examiners mentioned in section fifth, and if approved, the Comptroller, as provided in said section, shall draw his warrant upon the Treasurer in favor of the said Paymaster, payable out of the "War Loan Fund."

Compensation to
Paymaster.

§ 7. In case of vacancy in the office of Paymaster as herein provided, the Governor shall appoint some person to fill such vacancy.

Office of
Paymaster
vacant.

§ 8. The Paymaster created by this Act shall be liable upon his bond for any misconduct in his office.

Liability of
Paymaster.

§ 9. This Act shall be in force no longer than during the present incursion of the Indians.

Continuance of
Act.

Chap. 92.

AN ACT to repeal "An Act to prevent the Coining of Money by individuals."

Passed March 25, 1851.

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

Act repealed.

§ 1. That the Act entitled "an Act to prevent the Coining of Money by individuals," approved April twentieth, one thousand eight hundred and fifty, be and the same is hereby repealed.

Chap. 93.

AN ACT to provide for the Translation of the Laws into the Spanish Language.

Passed March 15, 1851.

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

Proposals for translating laws.

§ 1. The Secretary of State is hereby authorized and directed, from and after the day of the passage of this Act, until the first day of April, eighteen hundred and fifty-one, to receive proposals for the translation of the laws and such other documents as may be ordered by either branch of the Legislature, into the Spanish language.

Proposal, what to state.

§ 2. Each proposal shall state distinctly at what rate for each folio of one hundred words in English the person proposing will execute the translation into Spanish; and no proposition to translate at a higher rate than one dollar and fifty cents per folio shall be considered.

Opening proposals and selecting translator.

§ 3. It shall be the duty of the Secretary of State, on the second day of April, at the hour of three P. M., to open all proposals filed in his office for the translation of the laws into the Spanish language in the presence of a joint committee, and he shall select from them the proposal containing the lowest bid, and shall award the translation of the laws to the person making the same, at the rate therein specified: *Provided*, that, in the opinion of the Committee, such bidder shall be capable of performing the same.

Certificate to Translator selected.

§ 4. The Secretary of State shall execute and deliver to the person to whom the translation of the laws and joint resolutions herein ordered as aforesaid may be awarded, a certificate of his appointment, and shall

keep a record thereof in his office. The translator so as aforesaid selected and appointed shall, before he enters upon the discharge of the duties of his office, take and subscribe an oath for the faithful and correct translation of the laws and joint resolutions as herein ordered into the Spanish language, and also give bond with one or more securities in the sum of thirty thousand dollars, to be approved by the Governor, Treasurer, and Secretary of State, conditioned for the entire, correct, and complete translation of the laws and joint resolutions as herein ordered and required, as before provided to be translated into the Spanish language, on or before the first day of September, one thousand eight hundred and fifty-one.

Translator to take oath and give bond.

§ 5. The Secretary of State shall cause immediate publication to be made in one or more newspapers, of the aforementioned time and place of receiving proposals for the translation of the laws into the Spanish language, and shall also cause to be published an advertisement for proposals between the first and thirty-first day of January of each succeeding year for the aforesaid translation of the laws, which proposals shall be received, opened, and awarded as provided in the preceding sections of this Act. There shall be appointed a Joint Committee, composed of three members from each branch of the Legislature, whose duty it shall be to designate the laws and resolutions to be translated within the time specified in this Act; and said Committee shall also examine and decide upon the qualifications of such persons as may make proposals for the translation of the laws aforesaid.

Advertisements for proposals.

Joint Committee to designate laws to be translated.

§ 6. The Act entitled "an Act creating the office of State Translator," is hereby repealed.

Act repealed.

Chap. 94.

AN ACT supplementary to an Act entitled "An Act concerning the office of County Treasurer," passed March twenty-seventh, one thousand eight hundred and fifty.

Passed April 11, 1851.

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

§ 1. It shall be the duty of each Collector or County Treasurer, and they are hereby required to make oath to the State Comptroller when making their annual settlement as required by law, that the money paid over by them into the State Treasury at such settlement, whether coin, State, or County warrants, is of the same denomination as that received by them in the discharge of their official duties, and that in no case where gold dust or coin has been received by them for taxes or other-

County Treasurer's oath in making annual settlement.

wise, has the money thus received been converted into or used for the purchase of County or State bonds or warrants: *Provided*, that it shall be the duty of Collectors of taxes to furnish to the parties paying the same in every case a receipt specifying the kind of money in which payment has been made, whether gold and silver, or State or County scrip or warrants, and to file such receipts in duplicate, in the office of the Clerk of the County for three months after the first of January in each fiscal year, after which time they shall be filed in the office of the Comptroller of State.

Treasurer's receipt.

Act, when to take effect.

§ 2. This Act shall take effect from and after the first day of May next after its passage.

Chap. 95.

AN ACT to amend an Act entitled "An Act concerning Crimes and Punishments."

Passed April 22, 1851.

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

§ 59 of subd. 7 amended.

§ 1. Section fifty-ninth of the seventh division of an Act entitled "An Act concerning crimes and punishments," passed April 16th, 1850, which reads as follows: "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 of not less than one year, nor more than ten years," is hereby amended so as to read as follows: "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, or by death, in the discretion of the jury."

§ 60 of subd. 7 amended.

§ 2. Section sixtieth of the seventh division of the same Act which reads as follows: "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," is hereby amended so as to read as follows: "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, or by death, in the discretion of the jury."

§ 3. Section sixty-first of the seventh division of the same Act, which reads as follows: "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 exceeding five hundred dollars, or by both such fine and imprisonment," is hereby amended so as to read as follows: 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 exceeding five hundred dollars, or by any number of lashes not exceeding fifty upon the bare back, or by such fine or imprisonment and lashes, in the discretion of the jury." § 61 of subd. 7 amended.

Chap. 96.

AN ACT to amend Section five hundred and one of the Act, entitled "An Act to regulate proceedings in Criminal Cases," passed April twentieth, one thousand eight hundred and fifty.

Passed April 22, 1851.

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

§ 1. Section five hundred and one of the Act entitled "An Act to regulate proceedings in Criminal Cases," passed April twentieth, one thousand eight hundred and fifty, which reads as follows: "No Judge, Court, or officer, other than the Governor, can relieve or suspend the execution of the judgment of death, except the Sheriff, as provided in section five hundred and two to five hundred and eight inclusive," is hereby amended so as to read as follows: "When an appeal is taken from a judgment of death, the Supreme Court and any justice thereof, in vacation, may suspend the execution of the judgment until such appeal can be heard and determined, except as provided in this section, and in the seven succeeding sections, no Judge, Court, or officer, other than the Governor, can relieve or suspend the execution of the judgment of death." Section 501 amended.

Chap. 97.

AN ACT to amend an Act entitled "An Act concerning Licenses."

Passed April 26, 1851.

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

Section 3
amended.

§ 1. Section third of an Act entitled "An Act concerning Licenses," passed April 22d, 1850, is hereby amended so as to read as follows: "For all other business or occupation, not enumerated in this Act, and not prohibited by law, such sum may be charged as the Court may deem proper; but this shall not be so construed as to require a license to be taken out by any mechanic or laborer for the pursuit of his regular occupation. Each travelling merchant shall be charged as other merchants, in proportion to their business as near as may be, to be judged of by such Court.

Chap. 98.

AN ACT appropriating Money out of the General Fund to defray the Expenses of the Government of the State of California.

Passed May 1, 1851.

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

\$300,000
appropriated for
expenses of
State.

§ 1. The sum of Five Hundred Thousand Dollars shall be and is hereby appropriated to defray the expenses of the Government of the State of California, for the fiscal year commencing on the first day of July, one thousand eight hundred and fifty-one, and ending on the last day of June, one thousand eight hundred and fifty-two; to be expended from and after the first day of July, one thousand eight hundred and fifty-one. Said sum of money to be paid out of the general fund, not otherwise specially appropriated by law.

Chap. 99.

AN ACT to provide for reclaiming certain Swamp or Tule Lands, and for Agricultural Experiments thereon.

Passed May 1, 1851.

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

§ 1. For the purpose of enabling the parties hereinafter named to reclaim and render productive the waste lands hereinafter described, by means of drains and levees, and to encourage the further improvement thereof, by cultivation and otherwise, the Swamp or Tule Lands on that certain Island, lying between and bounded by the Sacramento river and Merritt's Slough, or any part thereof, are hereby conveyed and granted to John F. Booth and David Calloway, together with all the claim or interest which the State of California has or may have in and to said lands, by the Act of Congress, approved September 28th, eighteen hundred and fifty, and entitled "an Act to enable the State of Arkansas and other States to reclaim the 'Swamp' Lands within their limits;" said lands, together with the right, title, and interest of the said State of California in and to the same, are hereby confirmed *in fee* to the said grantees and their assigns: *Provided*, that nothing in this act shall prejudice the rights of actual settlers heretofore acquired; and *Provided*, the lands herein conveyed shall not exceed Six Hundred and Forty Acres; and that within three years from the survey thereof by the United States Surveyor, the said grantees or their assigns shall improve said lands by means of drains and levees as aforesaid, and shall pay into the State Treasury for the benefit of the School Fund of said district, the sum of one dollar and a quarter per acre: and *Provided further*, that said grantees or their assigns shall bring said lands under cultivation, and make to the Legislature a full report of the productions, modes of culture, and agricultural capacities of said lands; otherwise, this act shall be void.

Grant of lands to
John F. Booth &
David Calloway.

Condition of
grant.

Chap. 100.

AN ACT to Apportion the Senatorial and Assembly Districts.

Passed May 1, 1851.

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 shall elect one Senator and one member of the Assembly.

1st. District.

- 2d District. § 2. The County of Los Angeles shall be the second Senatorial District, and shall elect one Senator and two Members of the Assembly.
- 3d District. § 3. The Counties of Santa Barbara and San Luis Obispo shall be the third Senatorial District, and shall elect one Senator jointly, and the former two, and the latter one Member of the Assembly.
- 4th District. § 4. The Counties of Monterey and Santa Cruz shall be the fourth Senatorial District, and shall elect one Senator jointly, and one Member of the Assembly from each county.
- 5th District. § 5. The Counties of Santa Clara and Contra Costa shall be the fifth Senatorial District, and shall elect one Senator jointly, and the former two, and the latter one Member of the Assembly.
- 6th District. § 6. The County of San Francisco shall be the sixth Senatorial District, and shall elect three Senators and seven Members of the Assembly.
- 7th District. § 7. The County of San Joaquin shall be the seventh Senatorial District, and shall elect one Senator and three Members of the Assembly.
- 8th District. § 8. The County of Calaveras shall be the eighth Senatorial District, and shall elect one Senator and three Members of the Assembly.
- 9th District. § 9. The County of Tuolumne shall be the ninth Senatorial District, and shall elect two Senators and five Members of the Assembly.
- 10th District. § 10. The County of Mariposa shall be the tenth Senatorial District, and shall elect one Senator and two Members of the Assembly.
- 11th District. § 11. The County of Sacramento shall be the eleventh Senatorial District, and shall elect two Senators and four Members of the Assembly.
- 12th District. § 12. The County of El Dorado shall be the twelfth Senatorial District, and shall elect two Senators and four Members of the Assembly.
- 13th District. § 13. The County of Placer shall be the thirteenth Senatorial District, and shall elect one Senator and one Member of the Assembly.
- 14th District. § 14. The County of Sutter shall be the fourteenth Senatorial District, and shall elect one Senator and two Members of the Assembly.
- 15th District. § 15. The County of Yuba shall be the fifteenth Senatorial District, and shall elect one Senator and three Members of the Assembly.
- 16th District. § 16. The County of Nevada shall be the sixteenth Senatorial District, and shall elect one Senator and three Members of the Assembly.
- 17th District. § 17. The County of Butte shall be the seventeenth Senatorial District, and shall elect one Senator and three Members of the Assembly.
- 18th District. § 18. The County of Shasta shall be the eighteenth Senatorial District, and shall elect one Senator and two Members of the Assembly.
- 19th District. § 19. The Counties of Marin, Mendocino, and Sonoma shall be the nineteenth Senatorial District, and shall elect one Senator jointly, and Marin and Mendocino shall elect jointly one Member of the Assembly, and Sonoma two Members of the Assembly.
- 20th District. § 20. The Counties of Solano and Napa shall be the twentieth Senatorial District, and shall elect one Senator jointly, and one Member of the Assembly from each county.
- 21st District. § 21. The Counties of Yolo and Colusa shall be the twenty-first

Senatorial District, and shall elect one Senator jointly, and one Member of the Assembly from each county.

§ 22. The Counties of Trinity and Klamath shall be the twenty-^{29d District.} second Senatorial District, and shall elect one Senator jointly, Trinity two Members of the Assembly, and Klamath one Member of the Assembly.

§ 23. There shall be elected at the next general election from the second, third, fourth, eighth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth, twenty-first, and twenty-second Districts one Senator each, and from the sixth, ninth, and twelfth Districts two Senators each, five of whom shall go out of office on the first Monday of January, one thousand eight hundred and fifty-three, which shall be determined between the new Senators by lot; Senators from the same Districts drawing against each other as nearly as may be practicable. The other new Senators shall hold office for the period prescribed by law. ^{Elections at next general election.}

Chap. 101.

AN ACT concerning *Marks and Brands.*

Passed May 1, 1851.

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, brand, and counterbrand (venta) different from the marks, brands, and counterbrands of his neighbors; as far as practicable shall be different from any other in the State, and this mark different from any other in the county, provided that nothing in this section shall apply to such brands or marks as are now recorded in accordance with law.

Owners of cattle to keep a mark, brand, and counterbrand.

§ 2. Every such owner shall record with the Recorder of his county his mark, brand, and counterbrand, by delivering to said Recorder his mark cut upon a piece of leather, and his brand and counterbrand burnt upon it, and the same shall be kept in the Recorder's office, and shall be considered as evidence in any court of law. - The Recorder shall likewise enter in a book, to be kept by him for that purpose, a copy of said marks, brands, and counterbrands, provided that such Recorder shall be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, or as far as his knowledge extends, is different from any other in the State. For recording the mark, brand, or counterbrand, the Recorder shall receive one dollar.

Marks, brands, &c., to be recorded.

Fee for recording

Marks, &c., not lawful unless recorded.

§ 3. No mark, brand, or counterbrand shall be considered as lawful, if not recorded as specified above, within three months after the passage of this act.

At what age cattle to be marked.

§ 4. Every person shall mark or brand his horses and mules before eighteen months old, and cattle before twelve months old, on the hip or hind part, and mark his sheep, goats, and hogs before six months old.

One person to have only one mark, &c., except, &c.

§ 5. No person shall use more than one mark, brand, or counterbrand: *Provided, however,* that this shall not extend to those persons who are the owners of more than one hacienda, rancho, or farm, and no minor living with his parents, nor apprentice, or servant be allowed to use any mark, brand, or counterbrand other than that of his parent or master.

Penalty for using more than one mark, or an unrecorded mark.

§ 6. If any person shall use any mark, brand, or counterbrand other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, or shall use more than one mark, brand, or counterbrand, otherwise than is provided in the previous section, or suffer his ward, child, or apprentice, or servant to use any other than his own mark, brand, or counterbrand on those 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 marks, brands, and counterbrands of such minors, apprentices, or servants shall be recorded as other marks, brands, and counterbrands.

Forms to be observed on sale of cattle.

§ 7. Any person or persons selling cattle which are not intended for slaughter, or any horses, mares, mules, jacks, or jennies, shall be required to counterbrand them on the shoulders, or give a written descriptive bill of sale, and when cattle are purchased for slaughter, any person or persons purchasing said cattle shall be required to go before a Justice of the Peace of the Township where said cattle were purchased, and procure from the Justice a certificate that the cattle were purchased for slaughter, giving the mark and brand, and also the number and class of said cattle, and the names of the person or persons from whom they were purchased.

Fraudulently mismarking cattle.

§ 8. 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, 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.

Owners of

§ 9. All animals without a mark or brand, not recorded in compli-

ance with the requisitions of this Act, shall subject the owner or possessor of such animals to a fine of not less than ten nor more than one hundred dollars.

unbranded cattle liable to fine.

§ 10. No person shall be allowed to use a mark by cutting off the ear (oreja mocha) or by cutting the ear on both sides to a point (punte ajuda), and all persons who may have now such marks shall be obliged to alter them, with respect to the cattle they may have to mark after the passage of this Act.

Certain marks not allowed.

§ 11. It shall be the duty of every Recorder in this State to transmit to the Recorders of the adjoining Counties a transcript of all the marks, brands, and counterbrands recorded in his office, which shall be filed by any such Recorders in their offices, and reference thereto shall be made in every case of application for the record of marks and brands under this Act.

Recorders' duties respecting recorded marks, &c.

§ 12. 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 damages that may occur by such neglect or refusal.

Penalty for non-compliance with this Act.

§ 13. The Court of Sessions shall provide a judicial or County brand, to be used for the sale of cattle on execution.

Sale of cattle on execution.

§ 14. The Act entitled, "An Act concerning Marks and Brands," passed April 12, 1850, is hereby repealed.

Act repealed.

§ 15. This Act shall take effect from and after three months after its passage.

When Act in take effect.

Chap. 102.

AN ACT supplementary to "An Act concerning Marks and Brands."
Passed April twelfth, one thousand eight hundred and fifty.

Passed April 20, 1851.

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

No person shall be permitted to mark any stock with a square crop off each ear which shall exceed more than one fourth part of the entire ear, or cut the ear to a point from each side. Any person violating this provision shall be subject to the penalty provided for a neglect or refusal in the ninth section of the Act to which this is supplementary.

Certain mark prohibited.

Chap. 103.

AN ACT concerning the Office of Public Administrator, and making it Elective.

Passed April 15, 1851.

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

Public Administrator in each County.

§ 1. There shall be elected in and for each of the organized Counties of this State, by the electors thereof, a Public Administrator, who shall continue in office until his successor is qualified.

Public Administrator to give bond, &c.

§ 2. Before entering upon the duties of his office he shall execute a bond, with sureties, to the approval of the Probate Judge, in a sum not less than thirty thousand dollars, and which may at any time be increased in the discretion of the Probate Judge, conditioned for the faithful performance of all the duties enjoined upon him by law, and particularly, that he will account for and pay over all moneys and property that may come to his hands as such Administrator.

Duties and compensation.

§ 3. He shall perform such duties and receive such compensation as may be prescribed by law.

Not to be interested in certain expenditures.

§ 4. No Public Administrator now in office, or hereafter elected under this Act, shall be interested, directly or indirectly, in expenditures of any kind made on account of any estates of deceased persons; nor shall he be associated in business or otherwise with any person who shall be so interested; and he shall annex to his report every six months, as required by this Act, an affidavit taken before a County or District Judge, to that effect.

To make a return semi-annually.

§ 5. The Public Administrator shall, once every six months, make to the Probate Judge, under oath, a return of all estates of deceased persons which have come into his hands, of the value of the same, the expenses, if any, paid thereon, and the balance, if any, remaining in his hands; said return to be published six times in some newspaper in the County, or if there be no newspaper, to be posted, legibly written, or printed, in the office of the County Clerk of the County.

Duties of present Public Administrator.

§ 6. It shall be the duty of the present Public Administrator, each to account for, pay over and deliver to his successor, within twenty days after he shall have qualified, all moneys, papers, and other property belonging to the estates of deceased persons, which may have come into his possession as such Administrator, or be held by him by virtue of his office. Said report shall be made under oath, and shall contain a full and accurate statement of all the estates which have been administered by him; showing what moneys or effects have been received in each case, and from what sources; the sums expended, and for what purposes.

§ 7. If any person now holding the office of Public Administrator shall fail to comply with the requirements of this Act, he shall be liable on his official bond to any person injured thereby, and may be indicted as for a misdemeanor, and punished by fine not to exceed the sum of five thousand dollars, or imprisonment not to exceed two years, or by both such fine and imprisonment.

Penalty for non-compliance with this Act.

§ 8. The first election under this Act shall be held in all the Counties of this State at the general election for State officers, except in the County of San Francisco, where the said election shall be held on the fourth Monday of April.

Time for holding first election under this Act.

§ 9. Should a vacancy occur in the office of Public Administrator for any County, it shall be the duty of the District Judge in whose District said County is situated, to appoint some suitable person to fill the same.

Vacancies.

§ 10. All provisions of law conflicting with this Act are hereby repealed.

Conflicting provisions repealed.

Chap. 104.

AN ACT concerning Offices.

Passed April 28, 1851.

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

ARTICLE I.

OF THE OFFICERS TO BE ELECTED OR APPOINTED.

§ 1. There shall be elected or appointed, as hereinafter declared, the following officers, to wit:—First. A Governor and Lieutenant Governor. Second. Three Justices of the Supreme Court. Third. One District Judge for each Judicial District into which the State is divided by law. Fourth. Senators and Members of Assembly. Fifth. A Secretary of State, Treasurer, Comptroller, Attorney General, and Surveyor General. Sixth. A Clerk of the Supreme Court. Seventh. A Superintendent of Public Instruction. Eighth. For each County, one County Judge, one County Attorney, one County Clerk, one Sheriff, one Coroner, one Public Administrator, one Assessor, one Treasurer, and one County Surveyor, except as otherwise especially provided for the County of San Francisco. Ninth. For each of the Counties of San Francisco, Santa Clara, San Joaquin, Sacramento, and El Dorado, one County Recorder. Tenth. For the City of San Francisco, four Justices of the Peace. For each of the Cities of Sacramento and Stockton, three Justices of the Peace; and for each of the other Incorporated Cities of the State, and

What officers to be elected.

for each Township, two Justices of the Peace, and one Constable for each Justice of the Peace.

ARTICLE II.

ELECTIONS AND TERM OF OFFICERS, EXCEPT TOWNSHIP OFFICERS.

Officers, by whom elected.

§ 2. 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 the State. District Judges, District Attorneys, Senators, Members of Assembly, County Judges, 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 Cities or Townships.

Election of Governor and Lieutenant Governor.

§ 3. 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.

§ 4. 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.

§ 5. 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.

Supreme Court Justices.

§ 6. One Justice of the Supreme Court shall be chosen by the qualified electors of the 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.

§ 7. The Clerk of the Supreme Court, chosen at the general election of the year one thousand eight hundred and fifty, shall hold his office until the first day of January one thousand eight hundred and fifty-three. At the general election in the year one thousand eight hundred and fifty-two, and at the general election every two years 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 after his election, and until his successor is qualified.

Clerk of Superior Court of San Francisco.

§ 8. The Clerk of the Superior Court of the City of San Francisco shall be elected by the electors of said City on the fourth Monday of April, one thousand eight hundred and fifty-one, and thereafter at the same time with the other municipal officers.

§ 9. The Superintendent of Public Instruction, chosen at the General Election in the year one thousand eight hundred and fifty, shall hold his office until the first day of January, one thousand eight hundred and fifty-four. At the general election in the year one thousand eight hundred and fifty-three, and at the general election every three years thereafter, the Superintendent of Public Instruction shall be chosen by the qualified electors of the State, and shall hold his office for the term of three years from the first day of January next after the election, and until his successor is qualified.

Superintendent
of Public
Instruction.

§ 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. A Judge of the Superior Court of the city of San Francisco shall be elected by the electors of said city at the next general election, and at the general election every third year thereafter.

District Judges.

Judge of Superior
Court of San
Francisco.

§ 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.

Members of
Assembly.

§ 12. Senators shall be elected by the electors of their respective districts for two years, at the same time [as] members of the Assembly are chosen.

Senators.

§ 13. County Judges shall, except in the cases otherwise provided by special statutes, be chosen by the electors of their respective counties at the general election, in the year one thousand eight hundred and fifty-three, and at the general election every four years thereafter, and shall enter upon the duties of their office on the first Monday of April subsequent to their election.

County Judges.

§ 14. County Clerks, Sheriffs, Coroners, County Assessors, County Treasurers, and County Surveyors, and the County Recorder of each of the counties of San Francisco, Sacramento, San Joaquin, Santa Clara, and El Dorado, shall be chosen by the electors of their respective counties, at the general election in the year one thousand eight hundred and fifty-one, and at the general election every two years thereafter, and shall enter upon the duties of their respective offices on the first Monday of October subsequent to their election: *Provided*, that the present officers mentioned in this section, shall continue in office until the first Monday in April, one thousand eight hundred and fifty-two.

County Clerks,
Sheriffs,
Coroners, County
Treasurers,
Surveyors, and
Recorders.

§ 15. District Attorneys shall be chosen by the qualified electors of their respective counties at the general election of the present year, and at the general election every two years thereafter, and shall enter upon the duties of their offices on the first Monday of October subsequent to their election.

District
Attorneys.

ARTICLE III.

OF THE ELECTION OF JUSTICES OF THE PEACE AND CONSTABLES.

Counties to be divided into Townships.

§ 16. The Court of Sessions or Board of Supervisors, when provided of each county, shall from time to time as the public good may require, divide said county into a convenient number of townships not exceeding twelve, and shall cause such division to be published. For each of such townships two Justices of the Peace shall be elected, except in the city of San Francisco, which shall be divided into four townships, in each of which shall be elected one Justice. The Justices of the Peace for the several townships and cities of the State shall be chosen, except in the cases otherwise provided by special statutes, at the general election every year thereafter, and shall enter upon the duties of their offices on the first Monday of October subsequent to their election.

Justices for each Township.

When present Justices to continue.

§ 17. 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.

No successor to be elected.

§ 18. 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.

Vacancies to be filled.

Present Constables to continue.

§ 19. 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.

ARTICLE IV.

OF COMMISSIONERS AND CERTIFICATES OF ELECTION.

Commissions of officers, how issued.

§ 20. 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.

Certificates of election.

§ 21. 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.

The like.

§ 22. Any officer elected or appointed to fill any vacancy, shall be commissioned, or receive a certificate of election or appointment to such office.

ARTICLE V.

OF THE OATH OF OFFICE.

§ 23. 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 _____ according to the best of my ability."

Oath of office.

§ 24. 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.

To be endorsed on commission or certificate.

§ 25. Members of the Legislature shall take their prescribed oath before they assume their seats as such members, and an entry thereof shall be made on the Journal of the proper House.

Members of the Legislature to take oath.

§ 26. 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.

Governor and Lieutenant Governor to take oath.

§ 27. 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.

Oath, before whom taken.

§ 28. 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.

Oath, when to be taken.

§ 29. 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.

Deputies to take oaths.

ARTICLE VI.

OF OFFICES BECOMING VACANT BY DEATH, RESIGNATION, OR OTHERWISE.

§ 30. Every office shall become vacant upon the happening of either of the following events, before the expiration of the term of such office: First, The death or resignation of the incumbent. Second, The removal of the incumbent from office. Third, The confirmed insanity of the incumbent found upon a commission of lunacy issued to determine the fact. Fourth, A conviction of the incumbent of a felony or a misdemeanor in office. Fifth, A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in section twenty-fifth

When offices become vacant.

of this Act, or when a 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. Sixth, The ceasing of the incumbent to be a resident of the State, district, county, city, or township, in which the duties of his office are to be exercised, or for which he shall have been elected or appointed. Seventh, The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the State, upon leave, as provided by law. Eighth, The decision of a competent tribunal declaring the election or appointment void, or the office vacant.

Resignation of Governor and Lieutenant Governor.

§ 31. The Governor and Lieutenant Governor shall transmit their resignations to the Legislature if in session, or, if not, then to the Secretary of State.

Resignation of Members of the Legislature.

§ 32. Members of the Legislature, when they resign their seats, shall deliver their resignations to the presiding officer of the body to which they belong.

Of officers commissioned by Governor

§ 33. All officers commissioned by the Governor shall deliver their resignations to him.

Of County Judges.

§ 34. The County Judges, when they resign their offices, shall tender their resignations to the Governor of the State. All other County Officers shall resign their offices to the County Judge.

Duties of County Clerks in cases of vacancies.

§ 35. 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 exercises 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. If such vacancy occurred from the confirmed insanity of the incumbent, or from his conviction of a felony or a misdemeanor in office, the certificate of the County Clerk shall be accompanied by the certified copy of the judgment found upon the commission of lunacy, or a certified copy of the record of conviction for felony, or misdemeanor in office, as the case may be.

Vacancy in office of Member of Legislature.

§ 36. 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.

Duty of Secretary of State, when officer removed by impeachment.

§ 37. 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 State to transmit a certified copy thereof to the officer, 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.

§ 38. 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 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 all the military forces of the State.

Vacancy in office of Governor.

§ 39. 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.

Vacancy in office of Lieutenant Governor.

§ 40. 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.

President of Senate.

§ 41. Vacancies that may happen in offices, the appointment of which is vested 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 whenever the Governor and Senate or the Legislature shall appoint a person or persons to fill said offices.

Vacancies in offices in appointment of Governor.

§ 42. 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.

Governor to report appointments made by him.

§ 43. Whenever any vacancy shall occur in the office of Justice of the Supreme Court, or District Judge, or County 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.

Vacancy in office of Supreme Court, District or County Judge, or Superintendent of Public Instruction.

§ 44. 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.

Vacancy in office of Member of the Legislature.

§ 45. 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.

Vacancy in office of Attorney or Surveyor General, Treasurer, or Comptroller.

Vacancy of office
of Supreme
Court Clerk.

§ 46. 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.

District
Attorney, Clerk,
or other County
officer.

§ 47. When any vacancy shall occur in the office of District Attorney, County Clerk, or in any other County officer, except of the County Judge, the Court of Sessions of the County shall appoint some suitable person to fill the vacancy until the next general election.

Justice or
Constable.

§ 48. When a vacancy shall occur in the office of a Justice of the Peace or of a Constable, the County Judge shall order an election as soon as possible to fill such vacancy.

Term of office.

§ 49. Whenever an election [of a person] to fill a vacancy is had, the person chosen shall hold office for the balance of the term of the person whose place he is elected to fill.

Act repealed.

§ 50. The act entitled "An Act concerning officers," passed April eleventh, eighteen hundred and fifty, is hereby repealed.

Chap. 105.

AN ACT for the Regulation of the Militia whilst in actual service.

Passed January 28, 1851.

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

Army regulations
to apply to
Militia.

§ 1. That the rules and regulations established for the government of the Army of the United States shall, from and after the passage of this Act, be adopted for the government of the Militia of California whilst in actual service.

Chap. 106.

Declaring certain Rivers and Creeks Navigable.

Passed February 18, 1851.

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

Certain rivers
declared
navigable.

§ 1. So much of the San José de Guadalupe river as lies between its mouth and 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 Louis; and so much of Napa river as

lies between its mouth and Napa City; and so much of the 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 the mouth of Clear Creek; and so much of Feather river as lies between its mouth and the northern boundary of the city of Ophir; and so much of Yuba river as lies between its mouth and a point twenty feet west from the east end of the Public Plaza of Marysville; and so much of the San Joaquin river as lies between its mouth and the Tulare Lake; and so much of the Stockton Slough as lies between its mouth and the bridge that is now built above El Dorado street, in Stockton; and so much of the Moquelumne river as lies between its mouth and the first falls; and so much of the Tuolumne river as lies between its mouth and Cañon, or foot of the rapids; 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 town of Brighton, are hereby made and declared navigable.

§ 2. It shall not be lawful for any person or persons to build or construct any bridge or dam whatever across said rivers or creeks, so far as they are by this act declared navigable. Bridges and dams not to be built across said rivers.

§ 3. Nothing contained in the foregoing sections shall be so construed as to prohibit the Court of Sessions of any county, lying and being on said rivers declared navigable, from granting license to any person or persons to erect and construct bridges or ferries where the public convenience may require them: *Provided*, that said bridges and ferries shall not obstruct the navigation of such streams and rivers by steamboats and other water crafts. Except by license of the Court of Sessions.

§ 4. The Act entitled "An Act declaring certain rivers, creeks, and sloughs, herein named navigable, passed March thirtieth, one thousand eight hundred and fifty, is hereby repealed. Act repealed.

Chap. 107.

AN ACT to authorize the Governor of this State to remove and appoint Port Wardens.

Passed March 7, 1851.

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

§ 1. The Governor of this State shall be and he is hereby authorized to dismiss from office any Port Wardens appointed by him at any time when sufficient cause shall be presented to justify the same, and to appoint another in his place, by and with the advice and consent of the Senate. Governor may dismiss Port Wardens, &c.

Governor may
increase the
number of Port
Wardens.

§ 2. The Governor of this State shall be and he is hereby authorized to increase, if necessary, the number of Port Wardens for the Port and City of San Francisco to four, and also all other ports and harbors within this State, two Port Wardens by and with the advice and consent of the Senate.

Chap. 108.

AN ACT to repeal "an Act for the better Regulation of the Mines, and the Government of Foreign Miners," approved April 13, 1850.

Passed March 14, 1851.

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

Act repealed.

§ 1. That the Act entitled "an Act for the better regulation of the Mines, and the Government of Foreign Miners," approved April twelfth, one thousand eight hundred and fifty, be and the same is hereby repealed.

Chap. 109.

AN ACT to repeal the one hundred and seventy-fourth section of the Act entitled "an Act concerning Corporations."

Passed March 17, 1851.

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

Section repealed.

§ 1. That the one hundred and seventy-fourth section of the Act entitled "an Act concerning Corporations," be and is hereby repealed.

Chap. 110.

AN ACT to repeal an Act entitled "An Act to provide for the Inspection of Steamboats."

Passed March 29, 1851.

Whereas, The Congress of the United States has provided a law regulating the inspection of Steamboats navigating in all the waters of

the United States; and whereas, a law enacted by a State upon the same subject is unconstitutional: Therefore,

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

§ 1. "An Act to provide for the Inspection of Steamboats," Act repealed.
approved April tenth, one thousand eight hundred and fifty, be and the same is hereby repealed.

Chap. 111.

AN ACT to provide for the Punishment of Embezzlement of Public Money and other purposes.

Passed April 10, 1851.

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

§ 1. That if any officer of the State, or of any County, City or Town in this State, charged with the safe keeping, transfer, or disbursement of public moneys, shall convert to his own use in any way whatever, or shall use by way of instrument in any kind of property or merchandise, or shall loan with or without interest any portion of the public moneys, bonds, or other evidences of the indebtedness of the State entrusted to him for safe keeping, transfer, disbursement, or any other purpose, every such act shall be deemed and adjudged to be an embezzlement of so much of said moneys as shall be thus taken, converted, invested, used, or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands upon the presentation of a draft, order, or warrant drawn upon him by the Comptroller, or any other officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys as may be in his hands. All persons advising, or knowingly and willingly participating in such embezzlement, upon being convicted thereof, before any court of this State of competent jurisdiction, shall for every such offence forfeit and pay to the State a fine equal to the amount embezzled, and shall suffer imprisonment for a term not less than six months, nor more than five years.]

Embezzlement of public money a felony.

Accessories

Chap. 112.

AN ACT to exempt *Vessels coasting within the limits of this State from paying Pilot Dues.*

Passed April 21, 1851.

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

Certain vessels exempt from pilotage.

§ 1. From and after the passage of this Act, it shall not be lawful for any person whatsoever to exact and demand pilotage from any steamer or sail vessel of any kind whatsoever, running from one port to another within the limits of this State, unless the services of a pilot should be demanded by the master, owner, or owners of said vessel, and the services performed by some commissioned pilot; when such services are demanded and performed, then the master, owner, or owners of said vessel shall pay the same fees as other vessels in similar cases.

Conflicting laws repealed.

§ 2. All laws or parts of laws conflicting with this Act are hereby repealed.

What not affected.

§ 3. The provisions of this Act shall in no manner be so construed as to affect the Act entitled "an Act in relation to the appointment of Pilots for the Bay and Harbor of Humboldt."

Chap. 113.

AN ACT to amend "*an Act concerning Corporations,*" approved April twenty-second, one thousand eight hundred and fifty.

Passed April 22, 1851.

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

Section 160 amended.

§ 1. That the one hundred and sixtieth section of the Act, entitled "An Act concerning Corporations," is hereby repealed, and the following substituted :

§ 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 two public newspapers, from time to time, a copy of the articles of association of such Corporation certified to by the Surveyor General of this State, or by the Clerk of the Court 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, endanger, or obstruct the passage of any vessel or steamboat, where the same is navigable by vessels or steamboats.

Chap. 114.

AN ACT *providing for securing the State Prison Convicts.*

Passed April 25, 1851.

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

§ 1. M. G. Vallejo and James M. Estell are hereby made the lessees of the Prison, Prison grounds of the State, and of all prisoners who are now in custody under sentence of imprisonment in the State Prison, and of all persons hereafter convicted in this State, who may be sentenced to imprisonment in the State Prison, by sentence of a competent Court, or commutation by the Governor, during their terms of imprisonment, for the time and upon the conditions hereinafter provided.

Messrs. Vallejo and Estell declared lessees of prison, &c.

§ 2. The said lessees, before entering upon their duties as provided in this Act, shall file in the office of the Secretary of the State, their bond in the penalty of one hundred thousand dollars, conditioned for the faithful performance of their duties as such lessees, and to hold the State free from every expense for the subsistence, clothing, security, and safe keeping of State Prison convicts, during the continuance of such lease. Such bond shall be given with at least two sufficient sureties, to be approved of by the Governor. Upon filing such bond the Governor shall cause a notice of such fact to be published in as many public newspapers in the State as he may deem necessary. Such notice shall also contain the statement that M. G. Vallejo and James M. Estell have, by filing such bond, become the lessees as provided by this Act.

Lessees to give bond.

Notice of giving bond, &c.

§ 3. Upon filing the bond, as aforesaid, in section two, the said Vallejo and Estell shall be considered the lessees, as provided in section one of this Act, and shall continue as such lessees for the period of ten years from and after this Act. Said lessees shall thereupon immediately prepare suitable temporary buildings upon the grounds herewith leased, or shall have suitable and secure prison ships, or vessels properly arranged for the health and security of the convicts, until the State shall build the State Prison. They shall provide food and clothing, medicine, and medical attendance for all convicts, committed to the State Prison during the continuance of their lease; and shall also, during such time, provide all tools, chains, rings, and bolts necessary, and shall bear all the expense of

Term of lease.

Lessees to prepare building.

Food, clothing, &c.

LAWS OF THE STATE OF CALIFORNIA.

Superintendents, assistants, officers, and guards, employed in or about the Prison, and all other expense attending the keeping and maintenance of the prisoners.

Superintendent
to be appointed.

§ 4. The lessees shall appoint a Superintendent of the State Prison, who shall hold his office during their pleasure. He shall have the general charge, superintendence, and control of the Prison, buildings, or vessel, and of the prisoners confined therein, under the direction of the Board of Inspectors. The Superintendent shall receive and receipt for all prisoners delivered from the proper authorities, and shall appoint assistants, officers, and guards, with the consent of the Inspectors, and shall do all things necessary and proper for the correct government of the prisoners.

Superintendent
to report
annually.

§ 5. The Superintendent shall annually make a report to the Legislature, certified to by the lessees, on or before the first day of February of each year, setting forth particularly the number of convicts, when received, the number discharged, if any, when discharged, from what counties received, the name of each convict, his or her age, or former occupation as near as can be ascertained, the place of their nativity, the terms of their imprisonment, the offence for which each was committed, the number that have escaped, dead, or been pardoned during the preceding year. The Superintendent shall give a bond with sureties to the lessees for the faithful performance of his duties.

Governor to
appoint
Inspectors.

§ 6. The Governor shall appoint, by and with the advice and consent of the Senate, three inspectors of the State Prison, who shall severally take the oath of office which shall be filed in the office of Secretary of State. Any two of the Inspectors shall constitute a board, to perform the duties of Inspectors as provided in the next section.

Inspectors to
make rules.

§ 7. The Inspectors shall make all rules and regulations which they may deem proper for the discipline of the prison and not inconsistent with law, for the safe keeping, health, and cleanliness of the prisoners; copies of which they shall cause to be posted up in conspicuous parts of the prison and prison grounds. On or before the first day of February of each year, the said Inspectors shall make a report in writing to the Legislature, which report shall contain an account of the condition and management of the prison, and a full exhibition of the government and discipline thereof: *Provided*, that this Act shall not be so construed as to confine the labor of the prisoners within the walls of said prison, or to any particular place or labor.

To report
annually.

Male and female
prisoners to be
kept separate.

§ 8. Female prisoners shall not be employed in company with the male prisoners, but may be otherwise employed as the Superintendent may direct, and said female prisoners shall be provided with separate and distinct buildings, and receive their food apart from the male prisoners.

No person to
come upon prison
grounds without
leave.

§ 9. No person or persons shall land upon the shore or grounds or wharf of the State prison, or cause any vessel or boat to touch at said grounds, or at any place or point except the place to be designated by

the Superintendent as the landing, without permission in writing from the Superintendent. Any person violating the provisions of this section of this Act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than one thousand dollars and imprisonment for not more than six months.

§ 10. No person, without the consent of the Superintendent, shall bring into or convey out of the prison or prison ships, or at any time deliver to any prisoner any letter or paper whatever, and whoever shall violate this section shall, on conviction thereof, before any magistrate of any Court of Records, pay a fine not exceeding one hundred dollars, or imprisonment not exceeding twenty days. Nothing shall be so construed in this Act as to require labor of the prisoners on the Sabbath day.

Letters and papers not to be conveyed into prison without leave.

Prisoners not to labor on Sabbath.

§ 11. The Lessees or Superintendent shall receive into the prison and there safely keep, subject to the discipline of the prison, any prisoner or prisoners offending against the laws of the United States; the United States paying the expenses attendant upon the execution of said sentence.

Lessees to receive and keep offenders against U. S. laws.

§ 12. It shall be the duty of the Clerks of the several Courts where convictions are made, the sentence of which is imprisonment in the State prison, to deliver to the Sheriff, or his deputy, a certificate under the seal of his office of the conviction, crime, and punishment of each prisoner, which certificate the Sheriff shall deliver to the Lessees or Superintendent at the time he delivers the convict.

Certificate of conviction.

§ 13. It shall be the duty of the Sheriff, or his deputy, of the different counties, immediately upon the receipt of the Clerk's certificate, to proceed and deliver to the Lessees or Superintendent of the State prison, all persons sentenced to imprisonment in said prison upon the receipt of said Lessees or Superintendent; for which service the Sheriff or his deputy shall receive one dollar per mile for every prisoner taken by him for every mile actually travelled, in going from the place of conviction to the State prison, which account shall be audited by the Comptroller, and paid by the Treasurer of the State out of any moneys not otherwise appropriated.

Sheriff to convey convicts to prison.

§ 14. Whenever any prisoner or prisoners escape, it should be the duty of the Lessees or Superintendent to offer a reward not exceeding twenty-five hundred dollars for his or their apprehension and delivery to said prison, which reward, so offered, shall in no instance be chargeable to the State.

Reward for escaped convicts.

§ 15. The Inspectors, Lessees, Superintendent, Officers, and Guards shall be exempt from military duty, serving on juries, and working roads.

Inspectors, Lessees, &c., exempt from certain duties.

§ 16. The following persons shall be authorized to visit the prison at pleasure:—The Governor, Lieutenant Governor, Members of both branches of the Legislature, while the Legislature is in session; Judges of the Supreme Court, Attorney General, Comptroller, and Secretary of State.

Certain officers may visit prison at pleasure.

Terms of office
of Inspectors.

§ 17. The first Inspectors appointed under this Act shall determine by lot at their first meeting their respective terms of office, which said terms of office shall be as follows:—One Inspector shall hold his office until the first Monday in April, A. D. one thousand eight hundred and fifty-two, and thereafter, one of said Inspectors shall go out of office on the first Monday of April in each year.

Chap. 115.

AN ACT for the Permanent Location of the Seat of Government.

Passed Feb. 4, 1851.

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

City of Vallejo to
be the permanent
seat of
Government.

Proviso.

§ 1. That from and after the close of the present Session of the Legislature, the city of Vallejo, situated upon the Bay of Napa and Carquines, shall be the permanent Seat of Government for the State of California: *Provided*, M. G. Vallejo shall submit a satisfactory Bond to the Legislature, to be approved by the Legislature and Governor, for the performance of the proposition submitted by the said M. G. Vallejo to the last Legislature. The Bond to be entered into by the said M. G. Vallejo with the Governor of the State: *Provided*, That the said M. G. Vallejo shall provide, for the space of three years, a State House and other offices of State, equal or better than those now occupied, without expense to the State: *And provided further*, That if said Vallejo shall fail or refuse to comply with the terms of his proposition, in whole or part, then this Act to be void.

Chap. 116.

AN ACT creating the office of Superintendent of Public Buildings and Property, and defining the duties of that office.

Passed April 25, 1851.

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

Superintendent
of Public
Buildings, &c., to
be elected.

§ 1. There shall be elected by the Legislature, during the present Session, a Superintendent of Public Buildings and Property, who shall hold his office until the first day of January, one thousand eight hundred

and fifty-three, and who, before entering upon the execution of the duties thereafter prescribed, shall take the oath required by the Constitution.

§ 2. It shall be the duty of the Superintendent created by this Act, Duties of Superintendent. to remove to the new seat of Government, take charge of and safely keep, during the recess of the Legislature, all furniture and other moveable property belonging to the State, not actually in use by the State officers, to overlook the furnishing and fitting up of the capitol and other State buildings, and prior to each Session, to see that the halls of the Legislature are suitably prepared for the reception of members.

§ 3. It shall further be the duty of said Superintendent, to procure Further duties of Superintendent. plans and specifications of principal State prisons and other public buildings throughout the United States, and to lay the same before a Board of Commissioners, consisting of said Superintendent, together with the Governor and Secretary of State, the said Board of Commissioners shall select from the plans and specifications so presented, such as may meet their approval, and it is hereby made the duty of the Secretary of State to preserve and safely keep, as part of the records of his office, the plans and specifications selected and approved as aforesaid, together with the certificate of the approval of the same by the Commissioners: *Provided*, that the expenses incurred under the provisions of this section shall not exceed three hundred dollars.

§ 4. Whenever the erection of any public building may be directed or provided for by law, it shall be the duty of the said Superintendent Duty of Superintendent as to erection of buildings. to cause to be advertised the letting of the contract for the erection of the same, according to the plans and specifications selected and approved by the Commissioners. Such advertisement shall be by publication in three of the principal newspapers printed in this State for a period of eight weeks. Sealed proposals received by reason of such publication, shall be opened by the Superintendent, on a day to be fixed by said advertisement, in the presence of the Board of Commissioners, who shall select therefrom the lowest bid, properly guaranteed, and agreeably to law and to said plan and specifications.

§ 5. It shall further be the duty of said Superintendent The like to overlook the erection of the public buildings ordered or provided for by law, and report the progress made in the work to the Board of Commissioners on the first day of every month. He shall also make duplicate reports to the Board and to the Attorney General of all violations of contract on the part of the contractors upon the public works of which he has the superintendence.

§ 6. The Superintendent shall have charge of the grounds belonging State grounds at seat of Government. to the State at the seat of Government, and shall cause the same to be improved and beautified by the planting of shade trees and otherwise: *Provided*, the expenses incurred under the provisions of this section shall not exceed five hundred dollars.

§ 7. The Superintendent of Public Buildings and Property is hereby To remove trespassers from said grounds. authorized, in the name and on behalf of the State of California, to call

upon any Sheriff or Constable to remove from lands belonging to the State at the seat of Government, any person who, with or without force, shall enter or trespass thereupon; and it is hereby made the duty of every Sheriff, Deputy Sheriff, or Constable, upon receiving written notice of any such trespass, signed by the said Superintendent, forthwith to remove the person so trespassing, and to summon a *posse*, if necessary for that purpose.

To notify Governor when State buildings ready for occupation.

§ 8. So soon as, in the opinion of the Superintendent, the temporary State buildings now in process of erection, are so far completed in accordance with the proposition of M. G. Vallejo, as to be ready for the reception of the several State officers, he shall give written notice thereof to the Governor.

Salary.

§ 9. The Superintendent of Public Buildings and Property shall receive such salary as may hereafter be prescribed by law.

Chap. 117.

AN ACT concerning Oysters.

Passed April, 28, 1851.

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

Oyster beds below low water mark not to be staked off, &c.

§ 1. It shall not be lawful for any person or persons to stake off any Oyster bed of natural growth, or to prevent or interrupt any person from taking or carrying off Oysters from any such bed, on any of the lands belonging to this State below low water mark, under a penalty of one hundred dollars for every such offence, to be recovered with costs of suit by any person suing for the same before any Justice of the Peace.

Except where there is no natural growth.

§ 2. Any person or persons may lay down and plant Oysters on any of the lands belonging to this State below low water mark, in which there is no natural growth thereof, and the ownership of and the exclusive right to take up and carry off the same shall be continued, and remain in such person or persons who shall have laid down and planted the same.

Oyster beds may be staked off, &c.

§ 3. Any person or persons who have, or who hereafter may lay down and plant Oysters as hereinbefore provided, shall stake off the land on which the same is, or hereafter may be laid down and planted, and such stakes shall be sufficient marks of the boundaries and limits, and entitle such person or persons to the exclusive use and occupation thereof, for the purposes prescribed in this Act: *Provided*, that nothing herein contained shall be deemed to authorize any impediments or obstructions to the free navigation of the said waters as now used.

Provido.

Penalty for unlawful entry on oyster beds.

§ 4. Any person or persons who shall enter upon any lot of land in which there shall be Oysters laid down and planted, and which at the

time of such entry shall be staked off pursuant to the provisions of this Act, and who shall take up and carry off therefrom such Oysters, without the consent or permission of the occupants and owners thereof, may be sued therefor, and in such suit said occupants and owners shall, upon establishing such fact by competent proof, recover any such damages as he or they may have sustained in the premises, and the judgment in such suit may be satisfied out of the property, either real or personal of the defendant.

§ 5. Any person who shall wilfully destroy or remove, or cause to be removed or destroyed, any stakes or marks intended to designate the boundaries and limits of any land claimed and staked off pursuant to the provisions of this Act, shall be subject to pay a fine of not less than one hundred dollars for every offence, to be recovered with costs of suit by any person suing for the same before any Justice of the Peace having cognizance thereof, and the person so offending shall moreover be deemed guilty of a misdemeanor; and be prosecuted accordingly by indictment, or otherwise.

Penalty for
destroying
stakes, &c.

§ 6. All fines and penalties collected under sections one and five of this Act, shall be appropriated one half to the person prosecuting the same, and one half to the county in which such indictment or prosecution may be brought or sustained.

Application of
penalties.

Chap. 118.

AN ACT to provide for the Incorporation of Railroad Companies.

Passed April 28, 1851.

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

RAILROAD COMPANIES.

§ 1. Any number of persons not less than twenty-five, being subscribers to the capital stock of any contemplated Railroad, may be formed into a corporation for the purposes of constructing, owning, and maintaining such Railroad, of either single or double track, 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, 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 may at any time be increased by filing a

Not less than 25
persons may
become a
Corporation for
constructing a
Railroad.

certificate as hereinafter provided), which shall be the actual cost of constructing the road, together with the cost of 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 track 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 and 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 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 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. Said Articles of Association may, at any time before the capital stock is fully subscribed for, be altered, modified, or changed, by the consent of all the subscribers thereto, by filing new or amended articles subscribed and acknowledged by all the subscribers to the original articles, and thereafter the Corporation shall be conducted under the new and amended articles in the same manner as though no alteration or amendment had been made thereto.

When Articles of Association may be filed.

§ 2. Such Articles of Association shall not be filed in the office of the Secretary of State until ten per cent. on the amount of stock first mentioned in the foregoing section, 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.

Certified copy of Articles of Association to be evidence.

§ 3. A copy of any Articles of Association filed in pursuance of this Act, 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.

Effect of filing articles.

§ 4. 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 articles, and shall be capable in law of purchasing, holding, and conveying any real and personal estate whatever, in every respect, as an individual or natural person might or could do.

Subscription books.

§ 5. The Commissioners for opening books of subscription, named in the Act of Incorporation, shall, from time to time, after the Company

shall be incorporated upon books of subscription to the capital stock of the Company in such places in this State, or elsewhere, as they may designate, after giving such notice as a majority of them shall direct, which books may 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 in proportion to the subscriptions; 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.

§ 6. As soon as practicable after such capital stock shall have been subscribed and distributed as aforesaid, the Commissioners to receive subscriptions 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 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 present at such election, or any subsequent election of Directors, shall be entitled to give one vote for every share of stock which he shall have owned for 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 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 thus chosen shall be Directors for one year, and until others are duly 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 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, or belonging to said Company. All subsequent elections shall be held at such time and place

Meeting for choice of Directors.

Number of Directors and how chosen.

Who eligible as Director.

Term of office.

Inspectors of election.

Subsequent elections.

in one of the counties through which such Railroad shall pass, as shall be directed by the by-laws of the company.

Election may be held after day designated therefor.

§ 7. 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 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 by such by-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.

President and other officers to be elected.

Directors may make calls.

§ 8. 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 of requiring such payment shall have been published in each of the counties through which said road shall be laid out, in which a newspaper shall be published.

Directors may make by-laws.

§ 9. The Directors of such Company shall have power to make such by-laws as they may think proper for the management and disposition of the stock, property, and business affairs of every description whatever of such Company, not inconsistent with the laws of this State or of the United States, and prescribing the duties of officers, artificers, and servants that may be employed by said Company; for the appointment of all officers and the carrying on of all business within the objects and purposes of said Company.

Stock to be deemed personal property, and to be transferable.

§ 10. 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 shall have been fully paid in, or the said shares shall have been declared forfeited for the non-payment of calls thereon.

Certificate of payment of stock to be verified and filed.

§ 11. 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 they shall within the said thirty days file and record the same in the office of the Secretary of State.

Penalty for declaring a dividend when company insolvent.

§ 12. If the Directors of the 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 remain 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 the Company is located, they shall be exempt from the said liabilities.

How directors may become exempt.

§ 13. If the officers of the Company shall make a false certificate, or report, or publish a false notice, for the purpose of deceiving or defrauding the Stockholders or the public, in relation to the concerns and affairs of the Company, 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 Directors or officers thereof.

Penalty for making a false certificate, &c.

§ 14. 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 hold the same stock in his own name.

Persons holding stock as executors, &c., not personally liable.

§ 15. Every such executor, administrator, guardian, or trustee shall represent the 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.

Executors, &c., holding stock may vote.

§ 16. Every such Corporation shall have power: first, 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 or persons, subject to responsibility for all damage which they shall do thereto. Second, to receive, hold, take, and convey such voluntary donations of real estate and other property as shall be made to aid and encourage the construction of said road. Third, 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 in any manner they may deem proper, the same as a natural person might or could do, all such lands and real estate and other property, as the Directors may deem necessary for the construction and maintenance of its Railroad, and the stations, depôts, and for other accommodations and purposes whatever, deemed necessary to accomplish the objects of the Company. Fourth, to lay out its road or roads not exceeding nine rods wide, and to con-

Power of Corporation.

struct and maintain the same with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same, and for the purpose of cutting embankments, and procuring timber, stone, and gravel, may take as much more land as may be necessary for the purposes aforesaid, in the manner hereinafter provided, as may be necessary for the proper construction and security of the road. Fifth, to construct their road across or upon any stream of water, water course, roadstead, bay, navigable stream, or highway, railroad, or canal, which the route of its road shall intersect or cross; but the corporation shall restore the stream or water course, road, or highway, railroad, or canal, thus intersected, to its former state, as near as practicable, so as not to impede its usefulness.

May take possession of land requisite for road.

§ 17. Any Company organized under this Act, may enter upon, take possession of, and use all such real estate and property as may be required for the construction and maintenance of a single or double track Railroad, and the convenient accommodations appertaining to the same, making compensation in the manner hereinafter provided, for all lands, 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 acquired as aforesaid, or which may be affected by any operation connected with such construction and maintenance, it shall be lawful for the Company, or its Agent, to apply to the Judge of the District Court, either in term time, or vacation of the county, where the said lands, real estate, or property shall lie, by 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, setting forth the name and residence of each owner, or other person interested therein as owner claimant, 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 lands, real estate, or property as aforesaid. The Judge 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 five days previously to such owners, personally, or to some person of suitable age at his residence, or on the premises, or by 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 Judge may adjourn such proceedings from time to time when necessary to the furtherance of justice, and may

Petition for Commissioners to assess compensation.

direct any further notice thereof to be given that may seem proper; shall hear the proofs and allegations of the parties interested, touching the regularity of the proceedings; and shall, by an entry in his minutes, appoint five competent and disinterested persons Commissioners to ascertain such compensation as aforesaid, specifying in such entry a time and place for the meeting of the Commissioners. The said Commissioners, before entering upon the duties of their office, shall be sworn, and any one of them may administer oaths to witnesses produced before them, and may adjourn from day to day to enable the parties to procure testimony, but for no longer period than one day, without the consent of both parties, until the matter is finally determined, unless otherwise ordered by the said Judge for good cause shown. Whenever they shall meet to hear proofs or allegations, when they have adjourned any of the Commissioners may issue subpoenas and compel witnesses to appear and testify, they shall hear the proofs and allegations of the parties, and 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, over and above the additional value which such land, real estate, and property will derive from the construction of such road. 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 said ascertainment and assessment in which said lands, real estate, and property shall be described, by map or otherwise, with convenient accuracy and certainty. Either party feeling aggrieved by the decision of the Commissioners, may appeal to the Supreme Court as in other cases tried before the District Court: *Provided*, that such appeal shall not prevent the Company from proceeding with their work, or retaining or taking possession of such lands, real estate, and property as may be necessary for the successful prosecution of their road. The Court, or Judge, upon such certificate and due proof that such ascertainment or assessment has been paid to the parties entitled to the same, or has been paid in to the Clerk of the Court of the proper County, shall make and cause to be entered in his minutes a rule describing such lands, real estate, and property in manner aforesaid. Such ascertainment, or assessment of compensation, with the mode of making it, and such payment or deposit of the same compensation as aforesaid, a certified copy of such rule be Recorded and Indexed in the proper Recorder's office, in like manner and with like effect as if it was a deed of conveyance in fee simple from the said owners and parties interested to the said Corporation. Upon the entry of such rule the said Company 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 what they are not at the time in possession of, and hold and use all described in said rule for the pur-

Appointment of
Commissioners.

Proceedings
before
Commissioners.

Certificate of
assessment.

Appeal.

Property how
vested in
Corporation.

poses of said road, or otherwise for the benefit of the Company; 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 hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this Act. The Court, or Judge in Chambers, may, by a rule in that behalf made, authorize the said Corporation, if already in possession, to continue in the use and 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 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 the said Corporation their reasonable disbursements, and a compensation per day, to be fixed by said Court, or Judge, not to exceed five dollars for each day actually employed by them in the discharge of their duties, such disbursements to be taxed and allowed by the Court or Judge. If any Commissioner so appointed shall die, be unable or fail to serve, the Court or Judge may appoint another in his place on reasonable notice of the application, to be approved by the Court or Judge.

Proceedings
where title to
land fails.

Compensation to
Commissioners.

Vacancies.

Court to appoint
Attorney for
persons under
disabilities.

§ 18. In case any married woman, infant, idiot, or insane person, or any unknown owners not personally notified to appear after such notice on the appointment of Commissioners, shall be interested in any such lands, real estate, or property, the Court or Judge shall appoint some proper person to appear before the said Commissioners, and act as attorney for and in behalf of the said married woman, infant, idiot, or insane person, unknown or nonappearing owner, not personally served with notice.

Line of road may
be altered.

§ 19. If at any time after the location of the track 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 such proceedings, as near as may be, as are authorized under the preceding sections of this Act, and use the same in place of the line for which the new line is substituted.

§ 20. Whenever the track of the 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 case 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 be voluntarily given for the purposes aforesaid; compensation therefor shall be ascertained in the same manner in this Act heretofore provided as near 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.

Road crossing a highway or other railroad.

Company may take additional lands.

§ 21. If any such Corporation shall, for its purposes aforesaid, require any land belonging to the people of this State, or 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, or donate the same; and if they shall not agree upon a sale and price, the same may be taken by the Corporation as is before provided in other cases.

Land belonging to the people.

§ 22. The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of freight or fare upon such road; but the same shall not, without the consent of the Corporation, be so reduced as to produce less than thirty-five per cent. per annum on the capital stock, and the actual amount expended in improving [and] in keeping said road in repair up to the time of the reduction of such fare or freight.

Legislature may regulate rates of fare and freights.

§ 23. 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 stopping place the Conductor shall select.

Passenger refusing to pay his fare.

§ 24. 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 to be offered for transportation at

Corporation to start trains at regular times, &c.

the place of starting and the junctions of other railroads, and at stopping places established for receiving and discharging way passengers and freight; and shall take, transport, and discharge such passengers and property at, from, and to, such places on the due payment of the tolls, freight, and fare established and authorized by said Company or their Directors therefor.

Penalty for refusing to take any passenger, &c.

§ 25. In case of refusal by such Corporation or their agents so to take and transport any passenger or property that can reasonably and properly be carried, or to deliver the same when taken, within a reasonable time, such Corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

Baggage cars, &c., not to be placed in rear of passenger cars.

§ 26. 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 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.

Punishment for being intoxicated while in charge of locomotive.

§ 27. If any person shall, while in charge of a locomotive engine, running upon any railroad for 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 any sum not exceeding five hundred dollars, or imprisoned in the county jail [not] exceeding three months.

Punishment for injuring property of Corporation.

§ 28. 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, or to the track of said road, 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 said Corporation treble the amount of damages sustained by means of such offence, besides a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment in the discretion of the Court.

Map of road to be made and filed.

§ 29. Every such Corporation shall, within a reasonable time after their road shall be finally located, cause to be made, first, a map and profile thereof, and of the lands taken or obtained for the use thereof, and file the same in the office of the Secretary of State, and also like maps of the parts thereof located in different counties, and file the same in the office for recording deeds, in the county in which such parts of said road shall lie, 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 chief or principal Engineer of said Corporation, and certified and signed by the President of said Corporation and the Chief Engineer; second, a certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves.

§ 30. If such Corporation shall not, within two years after its final incorporation, begin the construction of its road and expend thereon five 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 be void. When Act of Incorporation to be void.

§ 31. An Act, entitled an "Act concerning Corporations," passed April twenty-second, eighteen hundred and fifty, is hereby repealed. Act repealed.

§ 32. This Act shall be in force and take effect from and after its passage. When Act to take effect.

Chap. 119.

AN ACT authorizing the Governor to offer Rewards for the Apprehension of Criminals.

Passed April 20, 1851.

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

§ 1. If any person who has been sentenced to confinement in the State Penitentiary by any Court having competent authority within this State, shall escape therefrom, or if any person shall commit treason against the State, or shall be charged with murder or the perpetration of any crime punishable with death, the Governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or their apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the general fund. Governor may offer rewards for the apprehension of certain criminals.

This Act shall take effect from and after its passage.

When Act to take effect.

Chap. 120.

AN ACT concerning the Archives now remaining in Monterey.

Passed May 1, 1851.

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

§ 1. The Secretary of State is hereby authorized and required to employ some competent and suitable person to examine the Spanish Archives now in the possession of the County Recorder and County Clerk of the County of Monterey, bearing date previous to the adoption of the Constitution of the State, to separate such as relate to the Archives in Monterey to be examined, indexed, and classified.

rights of individuals, Titles of Real Estate, Judicial Proceedings and Decrees, Custom House papers, Military and other documents, and other miscellaneous papers, to classify and prepare indexes to all titles to land, Conveyances, Judicial Decrees and Proceedings, Denouncement of mines, and other miscellaneous documents, relating to the rights and property of individuals, and place the same in his department, excepting and reserving such portion thereof as relates to titles of lands in the county of Monterey, and the proceedings and decrees of Courts relative to real estate in said county, which shall remain in the office of the said Recorder and Clerk respectively, and are hereby made and declared a part of the records of their respective offices.

Disposition of
Archives.

§ 2. All the Archives relating to the Custom House and the Military shall be delivered by the Secretary of State to such person as may hereafter be authorized by the Government of the United States to receive the same. The remainder of said Archives shall be kept open for inspection and examination in his office under such regulation as he shall prescribe, and he shall furnish certified copies of the same on application under such regulations, and the payment of like fees as are prescribed for County Recorders in like cases, and such certified copies shall be received as evidence in the Courts of Justice in this State, in all cases where the originals thereof might be introduced.

Appropriation for
said services.

§ 3. The sum of one thousand dollars is hereby appropriated to defray the expenses of the services required in the first section of this Act, and for the removal of said Archives.

Chap. 121.

AN ACT concerning the Salaries of Officers and Pay of Members of the Legislature.

Passed May 1, 1851.

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

Salaries of State
officers.

§ 1. The amount of salaries per annum as hereafter specified shall be and are hereby allowed to the officers of State and persons designated, after the expiration of the term of office of the present incumbents, to wit : To the Governor, six thousand dollars ; to the Lieutenant Governor, and Speaker of the House of Assembly, fifteen dollars per day, and the same mileage which is allowed members of the General Assembly ; to the Secretary of State, three thousand five hundred dollars ; to the State Treasurer, five thousand dollars ; to the Comptroller of State, five thousand dollars ; to the Attorney General, one thousand dollars ; to

the Surveyor General, five hundred dollars; to each of the Judges of the Superior Court, seven thousand dollars; to each of the District Judges in the fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh Judicial Districts, five thousand dollars; and in the first and second Judicial Districts, three thousand dollars; and in the third Judicial District, four thousand dollars; to each of the District Attorneys, as follows: in the county of San Francisco, two thousand dollars; in the counties of Sacramento, San Joaquin, and Yuba, one thousand five hundred dollars — in all the other counties of this State, one thousand dollars, except the counties of San Diego, Los Angeles, Santa Barbara, and San Luis Obispo, in which they shall receive five hundred dollars; to a Clerk for the Secretary of State, and one also for the State Treasurer and Comptroller, each one thousand seven hundred dollars. The foregoing salaries shall be paid at the time and in the manner prescribed by law.

§ 2. Members of the Legislature shall receive ten dollars per diem, for the first sixty days, and five dollars per diem for every day that they may sit thereafter, and eight dollars for every twenty miles travel by the nearest mail route from their residence to the place of holding the Session of the Legislature, and in returning therefrom. The Secretary of the Senate and Clerk of the Assembly, at the close of each Session, shall certify to the Comptroller of State the number of days each member has been absent from the seat of Government during the Session, which number of days shall be deducted from the per diem allowance of such members.

Pay to Members
of the
Legislature.

§ 3. The Act, entitled "An Act concerning the Salaries of Officers," passed March 5th, 1850, and also the "Act defining the compensation of Clerks, employed by the Secretary, Treasurer, and Comptroller of the State," passed April 4, 1850, are hereby repealed.

Acts repealed.

Chap. 122.

AN ACT to Regulate Rodeos.

Approved June 30, 1851.

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

§ 1. Every owner of a stock farm shall be obliged to give, yearly, one general Rodeo, within the limits of his farm from the first of April to the first of July, in the counties of San Luis Obispo, Santa Barbara, Los Angeles, and San Diego; and in the remaining counties from the first of May until the first of August, and the persons giving such general Rodeos shall give notice thereof to all the owners of adjoining

Every owner of
a stock farm to
give yearly one
general Rodeo.

farms at least four days previous to said Rodeos being made, in order that parties interested may meet for the purpose of separating their respective cattle ; it being understood that this requisite will be complied with by giving verbal notice to the owners of such adjoining farms, or by leaving a notice at their respective farm residence with any servant or member of the family.

Refusing to give such general Rodeo.

§ 2. If any person require to give such general Rodeos by the provisions of this Act, shall neglect or refuse so to do, any adjoining stock farmer shall have power to give such Rodeo, and the person so neglecting or refusing shall pay the cost of the same ; in this case the person or persons giving such Rodeo shall give notice as required in section one.

No Rodeo to be required from November to March, except in certain cases.

§ 3. No owner of a stock farm shall be required to give a Rodeo from the first day of November to the first day of March in each year, except on a contract for the delivery of cattle, or on a legal demand from the Sheriff or Constable of his county, having an execution against the owner, and demands a Rodeo for levy or delivery of cattle ; but in other months of the year he shall be required to collect his cattle, upon application of owners of cattle, provided good cause is shown.

Cattle collected at such Rodeo may be examined.

§ 4. When the cattle comprising such general Rodeo shall be collected together, any stock owner, or his agent, shall have the privilege of examining to his satisfaction the cattle so congregated, and to separate such as belong to him. The cattle so gathered together shall not be allowed to disperse until all the adjoining farmers have had sufficient time to separate the cattle belonging to them : *Provided*, that said Rodeo may be continued from day to day until such separation shall be completed.

Cattle may be branded within eight days of such Rodeo.

§ 5. The requirements of the foregoing section being complied with, the owner of the Rodeo may proceed to mark and brand his cattle within eight days from the time of such Rodeo ; but if he should suspend his marking and branding for more than fifteen days, he shall be obliged to give a new general Rodeo, in the same manner as the former one, it being understood that in all cases he shall be obliged to mark his cattle some time within the period designated in the first section, unless the majority of the adjoining proprietors should grant him longer time.

Disputes respecting cattle, how disposed of.

§ 6. Should any dispute arise between the owner of the Rodeo or any of the stock owners, or between any of the latter respecting cattle affairs, said dispute shall be decided by the Judge or Judges of the Plains (Jueces del Campo), who may be present, or in case of their absence, by any three disinterested stock owners present, should the value in dispute not exceed fifty dollars.

Unmarked cattle, to whom deemed to belong.

§ 7. All unmarked neat cattle, the mothers of which are unknown, shall be considered the property of the owner of the farm on which they may be found.

§ 8. No person shall be allowed at any time or under any circumstances to run cattle from without the boundaries of his own farm, except by permission of the person in charge of the farm where he may desire so to do; and whoever shall transgress this provision will be liable, upon conviction thereof, before any Justice of the Peace, to a penalty of not less than one hundred dollars nor more than five hundred dollars, or to imprisonment for not less than three months nor more than six months, at the discretion of the Justice.

No person to run cattle from without the boundaries of his own farm.

§ 9. No person shall be allowed to mark or brand any portion or the whole of his cattle at any other time or in any other manner than as prescribed in this Act; and whoever shall act to the contrary will subject himself, on conviction before any Justice of the Peace, to a penalty of not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the Justice.

Cattle not to be marked at any other time than that before proscribed.

§ 10. Every stock farm, the owner of which shall possess therein more than three thousand head of neat cattle, and not over six thousand, shall be allowed to divide said cattle into two Rodeos, or if the number exceed six thousand head, into three Rodeos, at each of which the provisions respecting general Rodeos shall be complied with; and the whole number of these partial Rodeos shall be considered as the general Rodeo of such farm: *Provided*, that such partial Rodeo be given within the period of fifteen days.

When owner of farm allowed more than one Rodeo.

§ 11. This Act to take effect from and after the first day of June, A. D. one thousand eight hundred and fifty-one.

When Act to take effect.

Chap. 123.

AN ACT to Authorize the Court of Sessions, of Sacramento County to Borrow Money.

Passed May 1, 1851.

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

§ 1. The Court of Sessions of Sacramento County shall have power to borrow money for the purpose of redeeming the Orders now outstanding against the Treasury of said County, for which the Auditor of said County shall give County Bonds, payable on or before the first day of May, A. D. one thousand eight hundred and fifty-three, at a rate of interest not to exceed twelve per cent. per annum: *Provided*, that the sum borrowed under the provisions of this Act shall not exceed sixty thousand dollars, which shall be used or appropriated only for the purposes specified in this Act.

Court of Sessions of Sacramento County may borrow money.

Proviso.

Persons holding orders against Treasurer may exchange same for Bonds.

§ 2. Any person or persons holding any Order or Orders against the Treasurer of said County, legally issued prior to the first day of May, A. D. one thousand eight hundred and fifty-one, upon presenting the same to the County Auditor, shall be entitled to receive from the Auditor a County Bond, payable on or before the first day of May, one thousand eight hundred and fifty-three, bearing interest at a rate not to exceed twelve per cent. per annum, in the stead of his or their said Order or Orders. The Bonds to be issued in not less than par value, and in sums of not less than one hundred dollars, to be signed by the Judge of the County Court, and countersigned by the County Auditor. The County Auditor shall keep a Register of said Bonds, specifying the date, number, amount, and to whom each Bond was issued.

Orders against Treasurer not receivable in payment for County dues.

§ 3. From and after the first day of May, one thousand eight hundred and fifty-one, no Order, or Orders, issued against the Treasurer of said County, shall be received in payment of County Dues, except from the person in whose favor it was drawn, but shall be subject to redemption only in the order in which it stands registered upon the Treasurer's Book of Registering.

Chap. 124.

AN ACT to Regulate the Settlement of the Estates of Deceased Persons.

Passed May 1, 1851.

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

CHAPTER I.

JURISDICTION.

Probate Court and Judge.

§ 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.

Wills, where to be proved.

§ 2. Wills shall be proved, letters testamentary, or of administration, shall be granted: First, 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. Second, in the County in which he may have died, leaving estate therein, and not being a resident of the State. Third, 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.

What Court to have exclusive jurisdiction.

§ 3. When 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 estate.

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. Wills to be delivered 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. The like.

§ 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. Renouncing Executorship.

§ 7. Every person who shall neglect to perform any 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-compliance.

§ 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. 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 admitted to probate. The like.

§ 10. If it be alleged in any petition that any Will is in the possession 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. Order for production of Will.

§ 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. Disobeying order.

§ 12. Applications for the probate of a Will or 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. Applications for Probate when made.

§ 13. When any Will shall have come into the 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 Court to appoint time for proving Will.

to be given thereof by publication, not less than twice a week, in some newspaper, if there is one printed in the County, or if not, by notices in writing, posted in three public places in the County.

Citation when to be issued.

§ 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.

The like.

§ 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.

Subpoenas to witnesses.

§ 16. The Court shall also direct subpoenas to be issued to the subscribing witnesses to the Will, if they reside in the County.

Hearing of 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 the testimony to prove the Will.

Who may contest Will. Minors.

§ 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.

Probate where Will not contested.

§ 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.

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.

All the witnesses to the Will 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 proved to the Court.

Where witnesses reside out of 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 hand-writing of the testator, and of the subscribing witnesses, or any of them.

Testimony to be reduced to writing.

§ 23. The testimony of each witness shall be reduced to writing, and signed by him, and shall be deemed good evidence in any subsequent contests 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 of 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.

§ 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. Will and certificate to be filed.

§ 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. Record and exemplification to be evidence.

§ 27. All Wills which shall have been duly proved, and allowed in any other of the United States, or in any foreign county 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. Wills proved in another 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 a notice shall be given in the same manner as in the case of an original Will for probate. Notice of probate of such Wills.

§ 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. Effect of such Wills.

§ 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. Contesting validity of Will.

§ 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 executors.

§ 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the Court shall proceed to hear the proofs of the parties. If any Devises or Legatees named in the Will shall be minors, and have no guardians, the Court shall appoint some Attorney to represent them. Hearing proofs. Devises, &c., minors.

§ 33. If upon the hearing of 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 amended and revoked. Revoking or amending probate.

§ 34. Upon the revocation being made, the powers of the Executor or Administrator with the Will annexed shall cease; but such Execu- Effect of revocation.

tor or Administrator shall not be liable for any act done in good faith previous to the revocation.

Costs. § 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.

Probate when conclusive. § 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, unmarried women, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Proof of lost Will. § 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 said notice to all persons interested having been first given, as prescribed in regard to proofs of Wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses.

The like. § 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 be clearly and distinctly proved by at least two credible witnesses.

Certificate of proof of lost Will. § 39. When any 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 Wills annexed, shall be issued thereon, in the same manner as upon Wills produced and duly proved.

Restraining proceedings by executors, &c. § 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 Devisors claiming under the lost or destroyed Will.

CHAPTER III.

LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

Letters Testamentary to be issued. § 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.

§ 42. No person shall be deemed competent to serve as Executor, who at the time the Will is proved shall be: First, under the age of twenty-one years; or second, who shall have been convicted of an infamous crime; or third, 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.

Who competent to act as Executor.

§ 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.

Who may object to Executor.

§ 44. When an unmarried woman, who shall have been appointed Executrix, shall marry, her marriage shall extinguish her authority.

Unmarried Executrix.

§ 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.

Executor of an Executor.

§ 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, 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.

Letters of Administration durante minore etate.

§ 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 Executors.

§ 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.

Power of Administrator, with Will annexed.

§ 49. Letters Testamentary and of Administration, with the Will annexed, shall be signed by the Clerk and be under the seal of the Court.

Letters Testamentary, &c., to be signed by Clerk.

§ 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 Testamentary.

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.

Administration
of estate of
intestates.

§ 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:—First, the surviving husband or wife, or such person as he or she may request to have appointed; second, the children; third, the father or mother; fourth, the brothers; fifth, the sisters; sixth, the grandchildren; seventh, any other of the next of kin, who would be entitled to share in the distribution of the estate; eighth, the Public Administrator; ninth, creditors; tenth, any person or persons legally competent.

Who to have
preference.

§ 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.

Discretion in
Court.

§ 54. When there are several persons equally entitled to the administration, the Court may, in its discretion, grant letters to one or more of them.

Who may act as
Administrator.

§ 55. No person shall be entitled to Letters of Administration who shall be: First, under the age of twenty-one years; or, second, who shall have been convicted of an infamous crime; or, third, 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.

Unmarried
Administratrix.

§ 56. When any unmarried woman, who shall have been appointed Administratrix, shall marry, her marriage shall extinguish her authority.

Administration
durante minore
estate.

§ 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

Letters of
Administration,
how applied for.

§ 58. Application for Letters of Administration shall be made by petition, in writing, signed by the applicant or his counsel, and filed by the Clerk of the Court. The petition must state the facts essential to give the Court jurisdiction of the case.

When granted.

§ 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.

Notice of
application.

§ 60. When any petition praying for Letters of Administration, has been filed, the Clerk shall give notice thereof, by causing notices to be posted 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.

§ 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 rights to the Administration, and pray that letters be issued to himself. Who may contest 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 proof of the parties, and to order the issuance of Letters of Administration as the case may require. Hearing of application.

§ 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. Evidence of notice.

§ 64. Letters of Administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves. Grant to any applicant.

§ 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. Proof of death, intestate, &c.

§ 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. Administration may be granted to one or more.

§ 67. When Letters of Administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, 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. Revocation of Letters of Administration.

§ 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. Citation to Administrator

§ 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. Hearing of petition for revocation.

§ 70. The surviving husband or wife, where Letters of Administration have been granted to a child, to the father, or to a brother of the Revocation of Administration in other cases.

intestate, or any 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
make 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.

And give bond.

§ 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 bonds.

§ 74. When two or more persons shall be appointed Executors or Administrators, the Probate Judge shall take a separate bond from each of them.

Several suits in
one bond.

§ 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.

Sureties in bonds
to justify on
oath.

§ 76. In all cases where bonds are required by this Act, the sureties must justify on oath, before the Judge of some Court having a seal, to the effect that they are householders or freeholders, resident within this State, and that they are worth double the amount for which they become liable, over and above their debts; such justification shall be in writing certified by the Judge before whom taken, and attached to and filed with the bond. Whenever the penal sum of the bond amounts to more than five thousand dollars, sureties may be allowed to become liable for portions of said penal sum, making in the aggregate at least two sureties for the whole penal sum, or for each portion thereof.

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.

§ 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. Application for 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 of it at his last place of residence. Citation to Executor, &c., to show cause against such application.

§ 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. Further security may be ordered.

§ 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. Neglecting to obey 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. Suspending powers of Executors, &c.

§ 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 security, and to proceed thereon, as upon the application of any person interested. Further security ordered without application of party in interest.

§ 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. Sureties requiring to be released.

§ 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. New sureties.

§ 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, Neglecting to give new sureties.

or within such reasonable time as the Judge shall allow, not exceeding five days, he shall, by order, revoke the letters granted.

When application may be made.

§ 87. The applications, authorized by the nine 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.

Special Administrator.

§ 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 power 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.

When 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 exercised 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.

Who to be 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.

Special Administrator to give bond.

§ 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.

Duties of Special Administrator.

§ 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 deceased.

When his powers to cease.

§ 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.

To account on oath.

§ 94. The Special Administrator shall also render an account on oath, of his proceedings, in like manner as other Administrators are required to do.

Special Administrator in other cases.

§ 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.

§ 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 Executor or Administrator shall proceed and complete the execution of the Will or Administration.

One of several Executors, &c., becoming incompetent to act.

§ 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 Administrators so appointed shall give bond in the like penalty, with like sureties and conditions as hereinafter required of Administrators, and shall have the like power and authority.

All the Executors, &c., becoming incompetent to act.

§ 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 Administrators shall cease, and he shall render an account of his Administration within such time as the Court shall direct.

Proof of Will after grant of Letters of Administration.

§ 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.

Power of Executor in such a case.

§ 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.

Resignation of Executor, &c.

§ 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.

All acts of Executor, &c., valid until his power is revoked.

§ 102. 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.

Transcript of Court minutes to be evidence.

§ 103. 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 the Will, or when he shall be named as Executor or Trustee in the Will, or shall be a witness thereto.

When Probate Judge not to act.

When Probate Judge of adjoining county to act.

§ 104. 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 is made 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.

Inventory, &c., to be returned.

§ 105. 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.

Appraisement how made.

§ 106. 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; their compensation as allowed shall be in the form of a bill of items of their services, which shall be sworn to by them and filed with the inventory, and which shall not exceed five dollars per day. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed, either by the Probate Judge having jurisdiction of the case, or by the Probate Judge of such county.

Appraisers to take oath.

§ 107. 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 debts, partnerships, and other interests, 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 debt, interest, or security.

Inventory what to contain.

The like.

§ 108. 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 more shall have come to his hands, the fact shall be so stated in the inventory.

§ 109. The naming any person Executor in a Will, shall not operate as a discharge from 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.

Effect of naming a debtor Executor.

§ 110. 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 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.

Discharge or bequest of debt against Executor.

§ 111. 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.

Inventory to be signed.

Oath annexed.

§ 112. 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.

Neglecting to return inventory

§ 113. 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.

Inventory of after discovered property.

§ 114. 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 fixtures thereon which are under his control.

Right of Executor, &c.

§ 115. 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 deceased and the expenses of Administration and the allowances to the family of the deceased, the

Personal estate how chargeable.

whole of the real estate may be sold for that purpose by the Executor or Administrator, in the manner prescribed by this Act.

Embezzling estate before grant of Letters Testamentary.

§ 116. 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.

Citation to person suspected to have embezzled estate, &c.

§ 117. 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, smuggled, conveyed away, or disposed, of any moneys, goods, or chattels of the deceased; or that he has in his possession, or knowledge, any deeds, conveyances, lands, contracts, or other writings, which contain evidences 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. If such person be not in the county where letters have been granted, he may be cited and examined either before the Probate Court of the county where he may be found, or before the Court issuing the order or citation. But if in the latter case he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Person cited refusing to appear and answer.

§ 118. If the person so cited refuse to appear and 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.

Persons entrusted with estate of deceased may be cited to account.

§ 119. The Probate Judge, upon the complaint, on oath, of any Executor or Administrator, may cite any person who shall have been entrusted 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 moneys, 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 answer 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 may remain in

§ 120. When a person shall die, leaving a widow or 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.

deceased's house, &c.

§ 121. 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.

Property to be set apart for widow and children.

§ 122. If the whole 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.

Allowance for maintenance of family.

§ 123. 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.

Allowance to have priority in payment.

§ 124. 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: First, all spinning wheels, weaving looms, and stoves put up or kept for use; second, the family Bible, family pictures, and school-books and library, not exceeding in value two hundred dollars; third, all sheep to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months; fourth, all wearing apparel of the widow and children, and all household goods, furniture, and utensils not exceeding in value seven hundred and fifty dollars; fifth, 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.

What property to be set apart for widow, &c.

§ 125. 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.

Property set apart, how apportioned between widow and children.

When all estate to be assigned for widow and children.

§ 126. 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.

When all property to go to children.

§ 127. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the one hundred and twenty-fifth [fifth] and one hundred and twenty-sixth [sixth] sections of this act, the whole property so set apart shall go to the minor children.

CHAPTER VI.

OF CLAIMS AGAINST THE ESTATE.

Executor, &c., to advertise for claims.

§ 128. 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. Such notice shall be published as often as the Judge may deem necessary, but not less than once a week for four weeks.

Copy notice, &c., to be filed.

§ 129. 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.

Claims when barred.

§ 130. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever: *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 supported by affidavit, &c.

§ 131. 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.

Executor to endorse claims.

§ 132. 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 this 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.

§ 133. Every claim which has been allowed by the Executor or Administrator, shall be filed in the Probate Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. Claims allowed to be filed.

§ 134. 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 forever barred. Rejected claims to be sued for within three months.

§ 135. No claim shall be allowed by the Executor or Administrator, or by the Probate Judge, which is barred by the statute of limitations. Claims barred by statute of limitations.

§ 136. 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. Claims must be presented before suit.

§ 137. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed. Time of limitation.

§ 138. 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 presentments. Claims in action pending at time of decease.

§ 139. 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. Allowance of claim in part.

§ 140. 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. Effect of judgment against Executor, &c.

§ 141. 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 adminis- Claims on judgments.

tration: *Provided*, however, that if the execution shall have been 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.

Claims may be referred.

§ 142. 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.

Proceedings on reference and power of Referee.

§ 143. 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 thereon shall be valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Liability of Executor, &c., for costs.

§ 144. 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 accounts, unless it shall appear that the suit or proceeding, in which the costs were taxed, shall have been prosecuted or resisted without just cause.

Claim of Executor, &c., against estate.

§ 145. If the Executor or Administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the Probate Judge, and its allowance by the Judge shall be sufficient evidence of its correctness.

Executor neglecting to give notice to creditors.

§ 146. 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.

Executor to return statement of claims.

§ 147. 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 neglected by him.

CHAPTER VII.

SALES OF PROPERTY BY EXECUTORS OR ADMINISTRATORS.

148. No sale of any property of an estate shall be valid unless made under order of the Probate Court. Sales to be by order of the Court.

§ 149. 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. Applications for orders of sale.

§ 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 allowance 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, either in vacation or term, giving five days' previous notice in a newspaper, or by the usual public posting 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. The like.

§ 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 specially 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. Order of sale.

§ 152. Sale 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. Sale of personal property.

§ 153. The notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the Judge shall so order, in which shall be specified the time and place of the sale. Notice of sale.

§ 54. 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 County Judge. When real estate to be sold.

§ 155. 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 por- Application for order of sale of real estate.

tions 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 prosecuting the same.

Order nisi for sale of real estate.

§ 156. 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.

Order to be served.

§ 157. 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.

Hearing of application.

§ 158. 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 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 petitioners, and of all persons interested in the estate who may oppose the application.

Infant devisees or heirs.

§ 159. 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 and witnesses may be examined.

§ 160. 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 causes.

Order for sale of part of real estate.

§ 161. 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 authorise the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interests of all concerned.

Order for sale of all the real estate.

§ 162. 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 of 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 parts of the real estate described in the petition, as he shall judge necessary or beneficial.

§ 163. 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 what to specify.

§ 164. 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.

Who may apply for order to sell real estate.

§ 165. 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.

Authority to Executor to sell.

§ 166. 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 sale.

§ 167. 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.

Place and time, &c., of sale.

§ 168. 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 payments.

Sale on credit.

§ 169. 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 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.

When a resale may be ordered.

§ 170. 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 to confirmation of sale.

Order confirming sale.

§ 171. 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 disproportioned, 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.

Executor, &c., to execute conveyance.

§ 172. Such conveyances shall thereupon be executed to the purchaser by the Executor or Administrators. 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, rights, and interest in the premises of the Testator or Intestate, and at the time of his death.

Order of confirmation, what to state.

§ 173. 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.

Sale may be postponed.

§ 174. 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 shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of postponement.

§ 175. In case of the adjournments notice thereof shall be given by a public declaration at the time and place first appointed for the sale, and if the adjournment be for more than one day, further notice shall be given by printing or publishing the same or both, as the time and circumstances may admit.

Sale of real estate to pay legacies.

§ 176. When a Testator shall have given any legacy by Will that is effectual to pass or change real estate, and his goods, chattels, rights, and credits shall be insufficient to pay a 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.

Where payment of debts, &c., provided for by Will.

§ 177. 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, so far as the same may be sufficient.

When real estate may be sold without an order of the Court.

§ 178. 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 the 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.

§ 179. 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.

Where provision by Will insufficient.

§ 180. 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.

Estate subject to debts, &c.

§ 181. 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.

Contribution among Legatees.

§ 182. If a deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his Executor or Administrator, 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.

Contract for the purchase of lands, &c., may be sold.

§ 183. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the Probate Judge, until the purchasers 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.

Conditions of sale.

§ 184. 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 payments thereafter to become due on such contract, no Bond shall be required by the purchaser.

Purchaser to give bond.

§ 185. 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

Executor to assign contract.

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.

Application of purchase money where land sold subject to mortgage.

§ 186. 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 ratification of the mortgage, and the residue in due course of administration.

Expenses of sale.

§ 187. 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.

Misconduct in sale.

§ 188. 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.

Fraudulent sales.

§ 189. 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.

Limitation of actions.

§ 190. 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.

To what cases preceding section not to apply.

§ 191. The preceding section shall not apply to Miners 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.

Account of sales to be returned.

§ 192. 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 neglects 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.

Executor, &c., not to be purchaser.]

§ 193. No Executor or Administrator shall directly or indirectly purchase any property of the estate he represented.

CHAPTER VIII.

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

Executor, &c., to take possession of estates.

§ 104. 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.

§ 195. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, 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.

Executors may sue and be sued for recovery of property.

§ 196. 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 his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime.

And for trespass.

§ 197. 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.

Executors may be sued trespass by Testator.

§ 198. 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 partnership and to settle its business, but the interest of the deceased shall be included in the inventory, and appropriated 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 the application of the Executor or Administrator, the Probate Judge 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 Executors or Administrators may maintain against him any action which his Testator or Intestate could have maintained.

Interest in Partnership.

§ 199. 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.

Actions on Bond of Executor, &c.

§ 200. In actions brought by or against Executors, it shall not be necessary to join those as parties to whom letters shall have been issued, and who have not qualified.

What Executors to join in actions.

§ 201. 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.

Compounding debts.

§ 202. 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 rights or interests therein, with 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

Recovery of property fraudulently disposed of by Testator.

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 Creditor 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.

When Executor to sue as provided in preceding section.

§ 203. 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.

Disposition of estate recovered.

§ 204. 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.

Executor to complete contracts for sale.

§ 205. 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 for Executor to make conveyance.

§ 206. 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.

Hearing petition.

§ 207. 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 who may be produced before him for that purpose.

Order to Executor to

§ 208. 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. execute conveyance.

§ 209. 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 directions 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 order.

§ 210. If upon a hearing in the Probate Court, as herein before provided, the Probate Judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petitioner without prejudice to the rights of the petitioner, who may at any time within six months thereafter proceed in the District Court to enforce a specific performance. Dismissing petition.

§ 211. 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.

§ 212. 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 provision 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. Effect of recording a copy of the decree.

§ 213. The recording of any decree, as provided in the preceding section, shall not prevent the Court making such decree from enforcing the same by other process. The like.

§ 214. If the person to whom the conveyance was to be made shall die before the commencement of the 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 entitled to it, or in the Executor or Administrator for their benefit. Where party to whom conveyance to be made is dead.

CHAPTER X.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS,
AND OF THE PAYMENT OF DEBTS.

When Executor
personally liable.

§ 215. 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 to be
charged with all
estate, &c.

§ 216. 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.

Not to profit or
lose by estate.

§ 217. 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 justly made.

Uncollected
debts.

§ 218. 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.

Compensation.

§ 219. 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 when 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.

Not to purchase
claims against
the estates.

§ 240. 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.

Commission in
lieu of
compensation.

§ 221. 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 seven per cent.; for all above that sum, and not exceeding two thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent., and the same commissions shall be allowed to Administrators. In all cases such further allowance may be made as the Probate Judge may deem just and reasonable for any extraordinary services not required by an Executor or Administrator in the common course of his duty:

Provided, the total amount of such allowances shall not exceed the amount of commission allowed by this section.

§ 222. 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 money 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.

To render an Exhibit of receipts, &c.

§ 223. 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.

Citation to account.

§ 224. 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.

Petition for citation to account.

§ 225. 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.

Citation to account.

§ 226. 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, and if he has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

Objections to account.

§ 227. If any Executor or Administrator neglect or refuse to appear and render an Exhibit after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked in the discretion of the Court.

Attachment for not obeying citation.

§ 228. 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.

Executor to render full account at end of year.

§ 229. 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

Executor to account after his authority revoked.

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.

Revoking authority of Executor, &c.

§ 230. 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 where the attachment has been executed, his letters shall be revoked.

Executor to produce vouchers for all payments.

§ 231. 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.

Except items less than \$20.

§ 232. 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 where 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 payment in behalf of any one estate.

Notice of settling account.

§ 233. 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 a Court.

Exceptions to account.

§ 234. On the day appointed, or 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.

Minors to have Guardian appointed.

§ 235. 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.

Auditors may be appointed.

§ 236. 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.

Settlement of accounts to be conclusive.

§ 237. 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 rights 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.

§ 238. 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. Proof of notice of settlement of accounts.

§ 239. 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 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 to be paid.

§ 204. 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. Where property insufficient to pay mortgage.

§ 241. 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. Estate insufficient, a dividend to be paid.

§ 242. 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, or any legacy until, as prescribed in this Act, the payment has been ordered by the Court. Funeral expenses and expenses of last sickness.

§ 243. 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. Order for payment of debts.

§ 244. 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. Provision for disputed and contingent claims.

§ 245. Whenever a decree shall be made by the Probate Court for the payment of creditors, the Executor or Administrator shall be per- After decree for payment of debts Executor

personally liable therefor.

sonably 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 proceeding 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.

Claims not included in order for payment of debts.

§ 246. 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.

Order for payment of legacies.

§ 247. 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 final account.

§ 248. 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 final account.

§ 249. 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.

CHAPTER XI.

OF THE PARTITION AND DISTRIBUTION OF ESTATES.

Petition by heir or devisee for his portion of estate.

§ 250. At any time subsequent to the third term of the Probate Court, after the issuing of Letters Testamentary or of Administration, any heir, devisee, or legatee, may present his petition to the Court, that the legacy or share of the estate to which he is entitled may be given to him, upon his giving Bonds with security for the payment of his proportion of the debts of the estate.

Notice of application.

§ 251. 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.

§ 252. 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.

Executor, &c., may resist application.

§ 253. 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.

Decree as prayed.

§ 254. 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.

Decree may order whole or part of share of heir, &c., delivered.

§ 255. 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.

Where partition necessary.

§ 256. 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.

Costs.

§ 257. 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.

Order for payment of Bond.

Action on bond.

§ 258. 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 residue.

§ 259. 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.

Form of decree.

On whose application decree made.

§ 260. 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.

Partition of estate in common.

§ 261. 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.

Real estate in different counties.

§ 262. If the real estate shall be in different counties, the Probate Court may, if it shall judge proper, appoint different Commissioners for each county; and in such cases the estate in each county shall be divided separately, as if there was no other estate to be divided; but the Commissioner first appointed shall, unless otherwise directed by the Probate Court, make division of such real estate wherever situated within this State.

Who may apply for partition, &c.

§ 263. 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 shall reside in this State, or their guardians, and to 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 may be made although some of heirs, &c., have parted with their interest.

§ 264. 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.

Shares to be set out by metes and bounds.

§ 265. 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.

Whole estate may be assigned to one on certain conditions.

§ 266. 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.

§ 267. 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 sections: *Provided*, the party so accepting 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.

Payments for equality of partition.

§ 268. 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.

Estate may be sold and proceeds divided.

§ 269. 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 in which it lies in common, and such division so made and established by the Probate Court shall be binding upon all the persons interested.

Estate in common, how divided.

§ 270. Before every 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 Agent 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.

Guardians for minors to be appointed before making partition.

§ 271. 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 remit 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.

Probate Court may set aside partition.

§ 272. 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 shall be made.

When Commissioners to make partition not necessary.

§ 273. All questions as to advancements made, or alleged to have been 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

Questions as to advancements to be decided by Probate Court.

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 parties interested in the estate.

Court may
appoint Agent to
take possession
for absentees.

§ 274. 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 give
Bond.

§ 275. 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.

Unclaimed
estate.

§ 276. 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 Treasury duplicate receipts, one of which he shall file in the office of the Comptroller, and the other in the Probate Court.

Liability of
Agent.

§ 277. 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.

Certificate to
claimant.

§ 278. 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 upon the presentation of the certificate to the Comptroller, he shall draw his Warrant on the Treasurer for the amount.

Decree
discharging
Executor, &c.

§ 279. 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.

Letters of
Administration
may issue after
such decree.

§ 280. 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.

CHAPTER XII.

REMOVAL OF EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

§ 281. 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.

Powers of Executors, &c., may be suspended.

§ 282. 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 Administrator to take charge of the effects of the estate, who shall give the Bond, and account as other Special Administrators are required to do.

Special Administrator may be appointed.

§ 283. 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.

Executor to have notice of his suspension and to be cited to appear.

§ 284. 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.

Any party interested may appear on hearing.

§ 285. 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.

Executor, &c., absconding.

§ 286. 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.

Attachments to compel attendance.

CHAPTER XIII.

MISCELLANEOUS PROVISIONS.

§ 287. 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 the proceedings.

Orders, decrees, &c., to be entered.

Personal notice,
how given.

§ 288. 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 or Judge, as the case may be, at a time and place to be named in the citation. In the body of the citation shall be briefly stated the nature or character of the proceeding.

Citation, how
served.

§ 289. 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.

Time for service
and return.

§ 290. When no other time is specially prescribed, citation shall be served and returned at least five days before the return day thereof.

Clerk of Probate
Court may
administer oaths,
issue citations,
&c.

§ 291. 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 specially required by law for the issuing of a citation.

Process.

§ 292. 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.

Practice.

§ 293. The practice in the District Court shall be applicable to proceedings in the Probate Court, so far as the same does not conflict with any enactment specially applicable to the Probate Court, or is not inconsistent with the provisions of this Act, or the Act to provide for the appointment and prescribe the duties of Guardians.

Appeals.

§ 294. Appeals shall be allowed from the decisions of the Probate Court to the District Court of the same county in the following cases: First, on all decisions issuing Letters Testamentary or of Administration or Guardianship; second, on all decrees admitting any Will to probate or determining the validity of any Will; third, on all decrees admitting any Will to probate; fourth, on all orders setting apart property or making allowances for the widow or child or children; fifth, on all orders for the sale or conveyance of real estate; sixth, on all settlements of Executors or Administrator or Administrators; seventh, on all orders directing the payment of debts or legacies, or the distribution of the estate among Heirs, Legatees, or Distributees; eighth, on all orders revoking Letters Testamentary or of Administration; ninth, on any allowance, order, decree, rule, or decision whatever, made by the Probate Court or Judge manifestly irregular or unjust.

§ 295. 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 or by filing a notice of appeal with the Clerk of the Court, and serving written notice upon all others interested, if within the county at any time within twenty days after the decision complained of is made. Who may appeal.

§ 296. The appeal shall be deemed waived unless the appellant shall, within twenty days after the appeal is taken, 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 promote the appeal, and pay any debt and all damages and costs which may be adjusted 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 the appeal is taken from any decision made by the Probate Judge out of term, it may be heard by the District Judge out of term, at any time after the appeal is perfected, upon previous notice of five days being given to all parties interested, if in the county. Appeal, how taken, and when deemed waived.

§ 297. 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. Effect of appeal

§ 298. 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 Courts. Errors, &c., disregarded.

§ 299. 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. Trial of issues of fact.

§ 300. 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, and shall carry the same into effect. Remittitur.

§ 301. 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.

§ 302. 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.

Punishment for
misdemeanor in
office.

§ 303. For any wilful misdemeanor in office, the Public Administrator may be indicted and fined in any sum not exceeding two thousand dollars, and removal from office.

Duty of persons
in whose house
any stranger
shall die, &c.

§ 304. Whenever any stranger or person without known heirs shall die intestate in house or premises of any other person, it shall be the duty of such person, or any one knowing thereof, to give immediate notice to the Public Administrator; and in default thereof he shall be liable to any damage that may be sustained thereby, to be recovered by the Public Administrator, or any party interested.

The like.

§ 305. He shall make a perfect inventory of all such estate taken into his possession, and administer an account for the same as near as circumstances will permit, according to the law prescribing the duties of administration, subject to the control and direction of the Probate Court.

The like.

§ 306. 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.

Civil officers to
give notice of
waste, &c.

§ 307. 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 injury or waste, and which by law ought to be in the possession of the Public Administrator.

Suits for property
of decedents.

§ 308. 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.

Order to examine
party charged
with embezzling
estate.

§ 309. 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.

Punishment for
refusing to
attend.

§ 310. If the person so cited refuse to appear and to submit to such an examination, or to answer to 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.

Order on Public
Administrator
to account.

§ 311. 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 Executors or Administrators regularly appointed.

§ 312. The Public Administrator shall render a yearly account to the County Auditor of: First, a list of the estates which have come under his charge, the condition in which they are at the time of reporting, the disposition which has been made of any during the year; second, the sums of money which have come into his hands, in each estate, and what disposition has been made of them, and the amount of his fees; which said amount shall be published in at least two journals of the State, one of which shall be in his own county, if there is one published.

Public Administrator to account annually

§ 313. The Act entitled "An Act to regulate the settlement of the estate of deceased persons," passed April twenty-second, eighteen hundred and fifty, is hereby repealed, but the validity of any proceedings heretofore had or commenced shall not be affected hereby.

Former Act repealed.

Chap. 125.

AN ACT prescribing the Amount of Compensation and Mode of Payment to Persons who have Performed Military Services for the State of California, and Expenses incurred therein.

Passed March 7, 1851.

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

§ 1. There shall be paid to the Officers and Soldiers who have heretofore rendered actual military service to the State of California, in compliance with an order from the Executive of this State, in all Indian wars, since the thirteenth day of November, one thousand eight hundred and forty-nine, the following pay per diem for the number of days of actual service rendered by each, to wit: To each Major, fifteen dollars per day; to each Captain, twelve dollars per day; to each Lieutenant, ten dollars per day; to each Sergeant, seven dollars per day; to each Corporal, six dollars per day; to each Private, five dollars per day; to each Quartermaster, twelve dollars per day; to each Commissary, twelve dollars per day; to each Surgeon, twelve dollars per day; to each Adjutant, twelve dollars per day. Each Officer and Private who may have furnished his own horse or horses, shall be allowed one dollar per day for each horse so furnished: *Provided*, the number furnished shall not exceed the number of horses allowed to Officers and Privates in the United States Army: *And further provided*, that each Officer shall make affidavit before some Judge or Justice of the Peace, that such horse or horses were actually in use by him in the campaign for the time charged, were necessary for the service, and are not allowed for or to be allowed as the property of any other individual in service, which affi-

Officers and Soldiers engaged in Indian Wars to be paid.

dvants shall be returned by the Paymasters, as hereinafter provided for in the return of vouchers.

Amount of compensation, how ascertained. § 2. The amount of compensation to be paid under the provisions of the first Section of this Act, shall be ascertained from the returns of the proper Commanding Officer or Officers, now on file in the Adjutant General's office.

Expenses of equipment. § 3. All necessary expenses incurred in arming, equipping, and for provisions and clothing furnished to or for the use of persons who have been in actual military service, shall be paid on the certificate of the proper Officer or Officers, now on file in the Adjutant General's office.

Paymasters. § 4. That William Rogers, of El Dorado County, and William Foster, of Los Angeles, are hereby appointed Paymasters, to pay and liquidate all claims against this State for actual military services rendered, as hereinafter provided.

Paymaster Rogers. § 5. Said William Rogers shall pay and liquidate all claims for services rendered and expenses incurred by the troops under command of Major William Rogers, in El Dorado, Sutter, and Yuba Counties.

Paymaster Foster. § 6. Said William Foster shall pay and liquidate all claims for services rendered and expenses incurred by the troops under the command of General Joseph C. Morehead, engaged in what has been commonly denominated the Gila expedition.

When and where Paymasters to perform duties. § 7. The said Paymasters may attend at such times and places to perform the duties assigned them in this Act as the Commander-in-Chief may direct.

Board to audit accounts of Paymasters. § 8. The Comptroller and Treasurer of State are hereby jointly constituted an examining board, to whom the accounts and vouchers of the Paymasters shall be returned for examination and approval, on or before the first day of January, one thousand eight hundred and fifty-two; in default of which settlement, it shall be the duty of the Comptroller to proceed against such defaulter in the manner provided by law for the enforcement of payments due the State, and the defaulter shall likewise be subject to the same damages as provided by law in like cases.

Comptroller to issue his Warrant to Paymaster. § 9. The Comptroller of State is hereby authorized to issue his Warrant on the Treasurer of State for the sum of one hundred thousand dollars, payable to William Rogers out of the "War Loan Fund," and a similar Warrant to William Foster for one hundred and twenty-five thousand dollars, payable out of the same fund, to enable them to make the payments specified in this Act.

Treasurer to deliver War Loan Bonds to Paymasters. § 10. The Treasurer may pay and deliver to said Paymasters on such Warrants in Bonds of the War Loan, that in their judgment can be paid out or sold in discharge of any indebtedness to be liquidated under this Act.

Paymaster to give bond. § 11. Each of the Paymasters appointed by this Act shall execute a Bond in the penal sum of such amount as may be by each received, with sureties, to be approved by the Governor, Comptroller, and Treasurer,

for the faithful performance of the duties entrusted to them by this Act.

§ 12. Said Paymasters shall each receive for his services rendered under this Act, seven per centum on the amount disbursed by each in discharge of his duties. Compensation to Paymasters.

§ 13. That in default of said Paymasters accepting their appointments, or in the event of the death or resignation of either, the vacancy shall be filled by appointment by the Governor, and the person appointed shall give like Bond as required by this Act. Vacancy in office of Paymaster.

§ 14. The Comptroller shall file in his office all accounts and vouchers which may have been rendered by either Paymaster, and shall hold such accounts subject to the examination of the Legislature. Comptroller to file Paymasters' accounts.

§ 15. In the application and construction of the payments to be made as herein contemplated, it shall be the duty of the disbursing Officers to be guided by the rules and regulations in force for like disbursements to Volunteers in the service of the United States. Rules as to payments.

Chap. 126.

AN ACT concerning Common Schools and Public Instruction.

Passed May 1, 1851.

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

ARTICLE I.

§ 1. The proceeds of all lands granted by the National and State Governments, or by individuals for the benefit of Common Schools, shall be used solely for such purposes. Proceeds of School Lands, how applied.

§ 2. It shall be the duty of the Governor to secure a survey of said lands, at as early a day as practicable. Survey of lands.

§ 3. It shall be the duty of the Surveyor employed to lay off all the School lands in the agricultural regions into lots not exceeding eighty acres, nor less than forty acres. All such lands situated within the limits of a city or village should be laid off in lots of such dimensions as shall correspond with the average size of lots laid off by individual enterprise. How lands to be laid off.

§ 4. The Surveyor shall furnish the Superintendent of Public Instruction with a schedule of his survey, and deposit a similar copy in the office of Secretary of State. In these schedules he shall truly report the number of lots surveyed, their dimensions, the county, city, or village in which such lots are situated, and the number affixed to said Schedules of survey.

lots. He shall number the lots in each county, town, or village, from one upward.

Sale of lands
by auction.

§ 5. All or any portion of the School lands within any county may be sold at auction to the highest bidder, upon an order from the Court of Sessions in the county where such lands are situated, to the Superintendent of Public Instruction, for that purpose.

Rules to be
observed on
sales.

§ 6. In all sales of School lands, the following rules shall be observed :

First, The Court of Sessions shall not issue an order for the sale of any portion of the School lands, except upon the votes of two thirds of the legal voters of such county in favor of such sale, at the Annual County Election.

Second, Notice shall be given in the order calling the County Election, that the voters will be required to vote upon the sale of such lands.

Third, Public notice shall be given by the Superintendent of Public Instruction of the proposed sale, at least thirty days prior to the selling of such lands ; such notice shall contain the order of the Court of Sessions authorizing the sale, the number of lots to be sold, and their numbers.

Fourth, None of these lands shall be disposed of for a less price than the minimum price fixed for the public lands belonging to the United States.

Fifth, Every purchaser shall, on the day of sale, pay to the County Treasurer, or his Deputy, one third of the purchase money, and give good and satisfactory security on the land for the payment of the balance, with interest at ten per cent. per annum, in two annual instalments.

Sixth, The County Treasurer shall give a certificate of payment to such purchaser on receiving the money for the lands so sold, stating in said certificate whether it is for the first, second, or third payment.

Seventh, The County Treasurer shall report to the Superintendent of Public Instruction, and to the State Treasurer, the number of lots sold, together with their numbers, the names and residences of the purchasers, and amount of moneys received by him, and from whom.

Eighth, Whenever the whole sum, with the interest, has been paid by the purchaser of any lot, according to the terms of sale, and the Superintendent and State Treasurer shall have been duly notified of the same, the Superintendent shall direct the County Attorney of the county where said lands were sold, to make out a good and sufficient deed to the purchaser, charging said purchaser five dollars for such service, and holding the deed subject to the purchaser's order.

Ninth, If any purchaser shall neglect for a period of sixty days, after a payment becomes due, to meet the same, he shall for such neglect forfeit the moneys already paid to the State, for the use of the

School Fund, and the land shall then be classed with the unsold school lands, subject to the same regulations as if it had never been sold.

§ 7. Each County Recorder shall make an annual report to the Superintendent of Public Instruction, of the deeds recorded in his office during the year of all School lots sold, giving the number and size of each lot, together with the name of the purchaser.

County Recorder to report deeds recorded, &c.

§ 8. All moneys accruing from the sale of school lands shall be credited to the School Fund of the State, and it shall be the duty of the State Treasurer to invest said fund in United States six per cent. stock.

Proceeds of sale to be credited to School Fund.

§ 9. The State Treasurer shall, at the close of each fiscal year, furnish the Superintendent of Public Instructions with a statement of the net income of the School Fund.

Treasurer to furnish statement of net income of School Fund.

§ 10. Each County Treasurer shall, during the first week of January, April, July, and October in every year, make returns to the State Treasurer, of all School moneys received by him.

County Treasurer to report quarterly.

§ 11. Any citizen of the United States who may have occupied a lot of land prior to January first, eighteen hundred and fifty-two, not exceeding one hundred and sixty acres, selected as School lands, shall have the privilege, as against all other persons, of purchasing the same at the rate of three dollars per acre; payments to be made as provided in the sale of other School lands.

Pro-emption rights in certain cases.

ARTICLE II.

APPORTIONMENT OF SCHOOL MONEYS.

§ 1. Every year in which the State or United States shall take a census of the population, the Superintendent of Public Instruction shall divide the net increase of the School Fund, after deducting the amount of necessary expenses, by the whole number of children in the State, between the ages of five and eighteen years, and shall furnish the State Treasurer with a correct statement of the sums to be paid the respective counties; and every year when no census shall be taken, he shall furnish a like statement, using the latest census as a basis.

Superintendent of Public Instruction to furnish annual statement.

§ 2. He shall also furnish each County Treasurer annually with a correct list of the moneys to be paid to each City or Town Treasurer.

Statement to County Treasurers.

§ 3. The County Treasurers, in order to draw the school money belonging to their respective counties, shall be required to present to the Comptroller an order for the amount from the Superintendent of Public Instruction, which order shall be paid by the Treasurer on the Warrant of the Comptroller.

Proportion of School moneys, how drawn.

§ 4. The Treasurer of each city, town, or incorporated village, shall be entitled to draw the amount of School Funds belonging to his city, town, or incorporated village, upon an order from the Superintendent of Public Instruction, and each Superintending School Committee shall

The like.

draw from the city, town, or village Treasurer the amount belonging to their respective districts.

Fund, how expended.

§ 5. Not less than sixty per cent. of the amount paid each District shall be expended in Teachers' wages, the balance may, at the discretion of the District, be expended in building or repairing School-houses, purchasing a library or apparatus, or for the support of a High School.

What Districts not entitled to share in School Fund.

§ 6. No District shall be entitled to any portion of the School Fund which does not employ a competent teacher at least three months in each year; and which does not raise, by taxation or otherwise, a sum equal at least to one half of its share of the School Fund.

Moneys, how apportioned.

§ 7. The apportionment of money to the district shall not be according to the number of children in said district, between the ages of seven and eighteen years, but according to the number actually attending the district School or Schools.

Disposition of moneys uncalled for.

§ 8. All school moneys remaining in the hands of the County Treasurers, on the first day of January of each year, uncalled for by the districts authorized to receive them, shall be returned to the State Treasurer, and shall revert to the General School Fund; and all school moneys appropriated to the counties, and remaining in the hands of the State Treasurer, on the first day of January of each year, shall also revert to and form a part of the General School Fund.

ARTICLE III.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

Superintendent of Public Instruction to be elected.

§ 1. At the Annual Election of State Officers in eighteen hundred and fifty-three, the people of the State shall elect a Superintendent of Public Instruction, who shall hold his office for three years, and until his successor shall be elected and qualified.

Duties of Superintendent.

§ 2. It shall be the duty of this officer: first, to present annually to the Legislature at the commencement of the Session, a full report of the condition of Public Instruction in the State, accompanied with such suggestions as he may deem it expedient to make; he shall also state in his Annual Report the number and grade of Schools in each county, the number of children in each between the ages of seven and eighteen years, the number of such attending School, with the average time of attendance in each county, and the number of stated visits paid each school by the Superintending Committee; second, his Report shall also contain estimates and accounts of expenditures of the school moneys, plans for the improvement and better management of schools, and the better construction of School-houses, together with statements of the amount of school lands sold during the year, and the amount of receipts in money and rates for the same; also the amount of school money appropriated to each county, and the expenditures in them for teachers' wages, erection or repairing of School-houses, the purchase of libraries or apparatus, and the Report of High Schools.

§ 3. He shall superintend the printing and distribution of his Annual Report, in such manner as the Legislature may direct. The like.

§ 4. He shall, by lectures, publications, letters, and personal interviews with the friends of Education in the State, to the extent of his ability, endeavor to disseminate intelligence among the people respecting the value and methods of Education, and endeavor to secure the sympathies and co-operation of the people in all such educational measures as the Legislature may direct. He shall open a correspondence with officers similar to himself, in other States, and by means of the exchange of letters and reports with them shall make himself acquainted with the progress of educational movements in other States, so as to select from them whatever may be useful to this State. The like.

§ 5. He shall examine and recommend a uniform series of school books, to be used in the different Schools in the State, excluding from his list all books sectarian in their character; and he shall prepare plans for the construction of School-houses, and their interior arrangements; and shall furnish a copy thereof to every Financial School Committee that shall request a copy of the same. He shall also have a general supervision over such Normal Schools or Teachers' Institutes as may be established by law. The like.

§ 6. If it shall be made to appear that, owing to defects in the census, or to any other cause, the apportionment directed in Article second, Section first, be materially inaccurate, he shall ascertain, according to the best of his ability, the data upon which the rates of distribution should be made, and shall apportion the School money accordingly. All reasonable expenditures of money incurred by him in the discharge of his official duties shall be paid out of any funds in the Treasury not otherwise appropriated. Apportionment of School Fund.
To be reimbursed his expenditures.

ARTICLE IV.

SUPERINTENDING SCHOOL COMMITTEES.

§ 1. Each city, town, or incorporated village shall have a Superintending School Committee, consisting of three persons; and if there be more than one school therein, a similar committee for each additional school. Superintending School Committee.

§ 2. Said committee or committees shall be elected in the same manner as the town officers, at the election next ensuing the passage of this Act, and thereafter at each Annual Election for town or charter officers. They shall serve for one year, and until their successors shall have been chosen. Notice of the election shall be given by the County Judge at least ten days prior thereto, and in the same manner as the town elections are notified. How elected.

§ 3. As soon after their election as practicable the committee shall proceed to organize a School, if there be none in operation, and if the circumstances of the District admit of it. School to be organized.

Committees
may co-operate.

§ 4. The Superintending Committee of two or more adjoining Districts may unite or co-operate for the mutual benefit of the schools under their charge, but each School shall be under the especial care of a District Superintending Committee.

Examination of
Candidates as
Teachers.

§ 5. The Superintending School Committee shall examine all candidates who shall come before them as Teachers, but no examination shall be had by a less number than two of the Committee appointed.

To whom to
furnish
Certificates.

§ 6. They shall not furnish any person with a certificate unless he have a good moral character, and should be found, on a rigid examination, possessed of knowledge and that aptness to teach, which are indispensably necessary to a Teacher of youth.

Committee may
dismiss Teachers.

§ 7. The Committee shall have full power to dismiss any Teacher who, after entering upon the duties of the School, shall, through neglect of duty, lack of adaptation to the employment, or any other cause, prove unfit for the place; they shall dismiss any Teacher who may be guilty of intemperance, gambling, profanity, or any other vice which may endanger the morals of the scholars, notwithstanding the certificate they may have given, or the contract made by the Committee.

Committee to
provide for
Books, &c.

§ 8. They shall see that the books directed by the Superintendent of Public Instruction to be used in the Schools, are used as far as practicable. If the parents or guardians of any of the scholars are too poor to purchase for them the necessary books, the Superintending School Committee shall report the same to the Financial School Committee, who shall purchase for them such books and pay for them out of the School Fund belonging to the District. If any parent or guardian who has the ability to make the purchase shall neglect to provide the books for their children or wards, the same Committee shall supply all such children with such books as the Superintending School Committee may direct, and shall recover before any Justice of the Peace thrice the value of such books, together with costs, and shall pay the sum so recovered into the School Fund of the district, for the use and benefit thereof.

Committee to
receive and
disburse funds.

§ 9. The Superintending School Committee shall be the receiving and disbursing agent of the School Funds in the district.

Superintend
erection, &c., of
School houses.

§ 10. It shall superintend the erection or repair of the School-house or houses within District or city, and shall purchase for the same such articles as may be necessary for the School.

To hire and pay
Teachers, &c.

§ 11. The Superintending Committee shall hire and pay the Teacher or Teachers, and agree with them upon the length of time the term of service shall embrace, and the compensation to be allowed for such service per day or month.

To regulate
School Terms,
&c.

§ 12. It shall be the duty of the Superintending School Committee to regulate the time when the school will commence and close; said Committee shall visit each School under its care at least once a month, and by personal examination ascertain the progress of the pupils, and the order and condition of the School.

§ 13. They shall furnish the Teacher with such blanks as the Superintendent of Public Instruction may desire each Teacher to fill, and shall withhold the Teacher's pay, until said blanks, duly filled and signed, have been returned to them.

To furnish blanks for returns.

§ 14. The Superintending School Committee shall make annually to the town authorities a report of the condition, prospects, wants, expenditures, &c., of all the Schools under their care, embodying in their report such statistical information as the Superintendent of Public Instruction shall direct; a duplicate of said report shall be forwarded to the Superintendent of Public Instruction.

To report annually.

§ 15. The power to judge of the Teacher's acquirements, capability, and fidelity, shall rest solely with the Superintending School Committee; but if two thirds of the legal voters in any School District shall petition for the removal of the Teacher of their School, the Superintending School Committee shall give both parties a hearing, and shall dismiss the Teacher or not, as in their judgment will best subserve the interests of the school.

Power to judge of fitness of Teachers.

§ 16. In all cases of difficulty the Teacher shall be entitled to the counsels of the Superintending Committee; they shall give him their countenance in carrying out such measures as may be directed by themselves, or the Superintendent of Public Instruction, or such reasonable rules as he may himself establish for the government of the school.

To advise and assist Teachers.

§ 17. The Superintending Committee shall have full power to suspend or expel a scholar from the School, for a refusal to comply with the reasonable regulations thereof.

May expel Scholars, &c.

§ 18. It shall be the duty of the Superintending Committee to recommend to the town authorities the creation of new Districts, and such alterations in the old ones as in their opinion may be necessary.

New districts.

§ 19. The said Committee shall be allowed all reasonable expenses incurred in the discharge of duties.

Expenses to be reimbursed.

§ 20. The Superintending Committee shall keep a regular journal of their proceedings, subject to the inspection of the town authorities and the State Superintendent.

To keep a journal.

§ 21. Vacancies occurring in the Superintending Committee by death, resignation, or otherwise, may be filled by the constituted authorities of the district.

Vacancies, how filled.

§ 22. All persons by this Act having charge of School moneys, shall give ample bond, with security to be approved of by the County Judge of the county in which he resides.

Bonds by persons having charge of moneys.

ARTICLE V.

SCHOOL DISTRICTS.

§ 1. Whenever any town, city, or corporated village shall contain over sixty children between the ages of five and eighteen years, the legal voters of such town, city, or village may divide said District; but no such division shall take place, unless two thirds of the votes cast upon

Dividing districts.

the question shall be in favor of it, nor shall such question be voted upon except at the annual election for county officers, and after at least ten days' public notice thereof.

Disbursement of share of School Fund.

§ 2. The Superintending Committee of each School shall apply not less than sixty per cent. of the amount drawn annually from the School Fund, to the salary of the Teacher, or Teachers, and they may expend the balance, together with all moneys received from taxation, or otherwise, for the erection, or repair of the School-house, the purchase of books or apparatus, and for any other purpose in accordance with the general design.

School District may levy a tax.

§ 3. Any School District may, by a vote of two thirds at any annual meeting, tax itself to raise a fund for education, or necessary improvement of a School-house; for furnishing the same with a library, and apparatus; or to add to the sum ^{drawn} drawn from the School Fund for the support of a High School. The amount of money necessary to draw the quota of the School Fund, and for other educational purposes, may be raised by voluntary subscription, or by any other mode chosen by the District in preference to taxation.

When children may be sent to School out of the District in which they reside.

§ 4. If owing to any circumstances a parent or guardian finds his location such that his children or ward will be better accommodated with schooling in another District than the one in which he resides, he may petition the Committee of his District to dismiss him, and the money apportioned to his children or ward shall be given to the District with which he shall become connected. If the School Committee shall not comply with the petitioner's request, he may petition the Legislature to grant it.

The like.

§ 5. Any parent or guardian residing in a District in which no School is taught, shall have the right to send his children or ward to the School of a neighboring District, on paying to that District his share of tax or contribution as if he were a resident thereof.

High School may be opened.

§ 6. Whenever the number of scholars in any township, city, or village shall exceed four hundred, the constituted authorities thereof throughout the Superintending School Committees may open a High School, if two thirds of the legal votes within the said township, city, or village shall petition so to do.

Amount of funds to be devoted to High Schools.

§ 7. Not over one fourth of the money appropriated to said township, city, or village, for School purposes, shall be devoted to the High School; nor shall over the same proportion of the money raised by taxation for School purposes be appropriated to such School.

Districts may unite to support a High School.

§ 8. Any two or more School Districts shall have power to unite for the support of a High School for their benefit, while remaining separate in other respects.

Towns may unite to support a School.

§ 9. Any two or more adjoining towns which shall not be able severally to support Schools, may unite for that purpose, with the sanction of the constituted authorities of said towns.

§ 10. If a School be formed by the enterprise of a religious Society, in which all the branches of education of the District Schools shall be taught, and which from its private and public examination the Committee will find it to be well conducted, such School shall be allowed a compensation from the Public School Fund, in proportion to the number of its pupils, in the same manner as is provided for District Schools by this act.

Certain Schools may be allowed compensation from School Fund.

§ 11. Schools established under charitable auspices, such as orphan asylums, schools for the blind, alms-house schools, etc., shall be subject to the general supervision of the laws on education, but under the immediate management of their respective Trustees, Managers, or Directors; and said schools shall participate in the apportionment of the school moneys in the same manner as other Common Schools.

Certain Schools subject to Laws on Education.

ARTICLE VI.

§ 1. Every teacher to receive wages for services rendered, must have a certificate of qualification from the Superintending Committee of the School in which services were rendered.

Every Teacher must have a certificate of qualification.

§ 2. Before any teacher shall enter upon the duties of Instructor in any School he has not previously taught, or from which he has once been dismissed, he shall undergo a new examination before the Superintending School Committee.

Teachers to be examined.

§ 3. He shall endeavor in good faith to carry out all the rules and recommendations of the Superintendent of Public Instruction and of the Superintending Committee, and shall be entitled to all the counsel and aid specified in section eleventh of Article fourth.

To carry out rules of Superintendent

§ 4. The Teacher of a School may admit thereto, on the recommendation of the Superintending Committee, persons not within the ages of five and eighteen years. But no such person shall be included in the number of pupils which forms the basis of distribution of the School Fund.

Teachers may admit Pupils.

§ 5. All the provisions of this article shall apply to female as well as male Teachers.

These provisions to apply to female Teachers.

ARTICLE VII.

CLASSIFICATION OF SCHOOLS.

§ 1. Whenever the number of Schools in any township, city, or village, will admit of it, the schools therein shall be classed as follows, viz: First, primary; second, intermediate; third, grammar; fourth, High Schools.

Schools to be classed.

§ 2. The instruction given in each School shall be upon the following branches, with such additions and modifications as the State Superintendent may advise or approve: Primary Schools, alphabet, spelling, reading, and grammar; Intermediate Schools, the elementary rules of arithmetic, spelling, and reading, grammar, the first principles of geography, and writing; Grammar Schools, spelling, reading, writing,

Course of instruction in Schools.

arithmetic, grammar, geography, history, declamation, natural philosophy, natural science physiology, chemistry, astronomy, the Constitution of the United States and that of California; High Schools shall add to the above book-keeping, surveying, drawing, music, political economy, Greek and Latin, equal to that what is required for admission into College, Spanish and French.

§ 8. It shall be the duty of the Superintending School Committee to remove the scholars from a lower to a higher School, as fast as they may become qualified; and no scholar shall be allowed to make such change, except by order or permission of said Committee.

Removing
Scholars from
one School to
another.

Chap. 127.

AN ACT to create a State Hospital in the City of Sacramento.

Passed April 15, 1851.

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

State Hospital at
Sacramento
City.

§ 1. There shall be established within the City of Sacramento, in the manner hereinafter provided, a State Hospital.

Trustees of
State Hospital.

§ 2. The administration of said Hospital shall be confined to a Board of Trustees, to be composed of eight members, to be chosen by the Legislature. Said Trustees shall be divided by the Legislature equally by lot into two classes. The Trustees of the first class shall go out of office at the expiration of one year, so that one half shall be chosen annually. They shall be permanent citizens of the City of Sacramento, and shall elect by ballot, from their number, a President to preside over their deliberations, and a Vice-President to act as President in his absence. They shall be known by the name and style of "The Trustees of the State Hospital," and by that name they and their successors shall be known in law, have perpetual succession, may sue and be sued in all Courts of the State, and may receive and hold property, real and personal, for the use and benefit of said Hospital.

Powers of
Trustees.

§ 3. The Board of Trustees shall have full power to manage and administer the affairs of said Hospital; to purchase the necessary lands not exceeding ten acres, for the purpose of erecting thereon the requisite Hospital buildings, whenever sufficient funds over and above all liabilities and current expenses shall be received by them in their official capacity: *Provided*, however, that the whole cost of the buildings, together with the grounds and improvements to be made thereon, shall not exceed the sum of fifty thousand dollars; and until such time as the necessary funds shall accrue, the Trustees are authorized to make temporary arrangements for the establishment and organization of said

Hospital. They shall not alienate, sell, or dispose of any property whatsoever, belonging to or claimed by the Hospital, without the consent of the Legislature.

§ 4. The Trustees shall have power to make by-laws for their own The like. government and the government of the Hospital: *Provided*, that they are not repugnant to the laws of the United States, of this State, or of Ordinances of the City of Sacramento. They shall cause to be kept a record of their proceedings, which shall at all times be open to the inspection of a Committee of the Legislature. During the first week of each session, an Annual Report, showing the amount of the receipts and expenditures, the condition of the Hospital, the condition of the number of patients admitted and discharged during the year, the nature of their disease, the number of patients remaining in the Hospital at the date of their Report; and such other matters touching the general affairs of the Hospital as they may deem advisable. They shall have power to appoint suitable persons necessary to be employed in said Hospital, to fix their compensation, and shall have power to fill all vacancies which may occur in their own body or otherwise; they shall have stated meetings at least once a month, and a majority shall constitute a quorum to transact business.

§ 5. The said Hospital with all the lands and buildings, as also any Hospital, &c., to be held in trust for people of the State. and all property of whatever nature or kind appertaining thereto, shall be held in trust by the Board of Trustees for the people of the State, and for the purposes contemplated in this Act. The said Board of Trustees shall have no power to issue or put in circulation any paper or device as a representative of value or evidence of indebtedness; but this section shall not be construed to prohibit the auditing and certifying of accounts in manner as provided in this Act. Trustees not to exercise banking powers.

§ 6. Within thirty days after the passage of this act the Trustees Trustees to take oath of office, to elect a Treasurer &c. shall take the oath of office, and shall undertake the organization of said Hospital, in conformity with the provisions of this Act. They shall, by ballot, elect annually a Treasurer, who shall hold office for the term of one year, or until his successors shall be qualified, and who, before entering upon the duties of his office, shall give Bond with sureties to be approved by the Trustees, in the sum of twenty-five thousand dollars, payable to the Trustees of the State Hospital, conditioned for the faithful discharge of his duties: *Provided*, however, that no officer to be created under this act shall receive or be entitled to any pay until the said Hospital shall have been duly organized and ready for operation.

§ 7. It shall be the duty of the Treasurer to collect all moneys due Duties of Treasurer to the Hospital, to keep a correct account of its property, assets, and revenue, receive and safely keep all moneys, and pay the same out as herein provided, which shall be called the Hospital Fund. He shall also act as Secretary to the Board of Trustees; he shall make a monthly report to said Trustees of his official transactions, keep the books, and

have charge of all Hospital accounts, and perform such duties connected with his office as the Trustees may direct. His compensation shall not exceed the sum of three thousand dollars, to be paid quarterly out of the Fund of the Sacramento State Hospital.

Resident
Physician.

§ 8. The Legislature shall elect by ballot a Resident Physician, who shall hold office for the term of two years; he shall be a graduate in medicine, and shall have practised at least five years from the date of his diploma. It shall be his duty to have a general supervision of the Hospital, give orders for the admission of patients, have the immediate control of its inmates, and make rules and orders for its government. By consent of the Trustees he shall employ and discharge all matrons, nurses, and attendants, and shall prescribe in cases of emergency; he shall not be allowed to engage in any private practice which shall interfere with his official duties, and he shall reside in the Hospital. He shall receive a salary not exceeding five thousand dollars, to be paid quarterly out of the fund of the Sacramento State Hospital.

Visiting
Physician.

§ 9. There shall also be elected in the same manner a Visiting Physician, who shall be a regular graduate in medicine, and who shall have practised his profession at least five years from the date of his diploma. He shall visit the said Hospital at least once every day, unless prevented by sickness or other such lawful hindrance: he shall have charge of the wards and shall prescribe for the sick therein, and shall keep records of all prescriptions, and shall have a salary not exceeding five thousand dollars per annum, to be paid quarterly out of the fund of the Sacramento Hospital.

Additional
Medical
assistance,
Qualification of
officers.

§ 10. The Trustees may employ, from time to time, such additional medical assistance as the temporary wants of the Hospital and the inmates thereof may require. All officers appointed or elected under this Act shall be citizens of the United States, and shall, before entering upon their duties, take an oath of office faithfully to discharge their respective trusts, and no officer shall be allowed to charge or appropriate any fee or perquisite to his own use: *Provided*, that not more than two Visiting Physicians shall be elected.

Accounts against
Hospital to be
audited.

§ 11. It shall be the duty of the Trustees to audit all bills and accounts against the Hospital, and all claims thus audited shall be paid out of the "General Fund" on the order of the Resident Physician, countersigned by the President of the Board, and no funds shall be paid out except as provided in this section. No interest shall be allowed on any claim exceeding the legal interest of the State.

Interest on
claims.

Treasurer to
deposit funds
weekly.

§ 12. All funds collected or received shall be deposited by the Treasurer at least once in each week, and oftener if required by the Trustees, in some banking-house, or other place of safe keeping, in the city of Sacramento, to be designated by the Trustees, and no moneys thus deposited shall be drawn out, except as provided in section eleven.

Treasurer
refusing to
deposit funds.

§ 13. Should the Treasurer refuse to deposit the funds as provided in this Act, or withhold any of the funds of the Hospital which may

come into his hands exceeding the term of seven days, he shall be deemed guilty of a misdemeanor, and on conviction before any competent tribunal, shall be fined in a sum not exceeding twenty thousand dollars, or imprisonment not exceeding twelve months, or both such fine and imprisonment.

§ 14. Should either of the Resident or Visiting Physicians neglect or refuse to discharge their duties as herein prescribed, or absent themselves without the consent of the Board, they shall be suspended or removed from office at the discretion of the Trustees: *Provided*, that no such removal shall be had except by a vote of two thirds of the whole Board, nor until the party sought to be removed shall be first heard in his own defence.

Removal, &c., of Physicians.

§ 15. The Treasurer shall enter in a suitable book to be kept for the purpose, an exact account of all funds, property, or articles of value which may be deposited at the Hospital for safe keeping, belonging to the estate of persons who shall have died therein, the date when received, a description of the property, and to whom belonging, and the said property or effects shall be returned to the rightful owner or owners, his or their legal representatives, whenever demanded.

Treasurer to keep an account of property of persons dying in Hospital.

§ 16. Any member of the Board of Trustees who for three consecutive sittings shall not have attended its legal meetings, except prevented by sickness or some other reasonable cause, or who may be implicated in a criminal suit, his office shall be declared vacant and another immediately appointed in his place. The Board of Trustees may expel any of its own members for cause, by a two third vote of the whole number.

When office of Trustee deemed vacant.

§ 17. Neither any member of the Board of Trustees, nor any other officer or employe of the Hospital, shall be permitted in his own name or through the medium of others to have any interest in any undertaking or contract for account of said Hospital, whether for supplies or any other purpose; and any violation of this section shall operate as a forfeiture of office. The Board of Trustees are expressly prohibited from borrowing money or increasing any responsibility or debts which shall in the aggregate exceed the sum of ten thousand dollars, and at no time shall the liabilities of the Hospital in any manner exceed such sum.

Trustees, &c., not to be interested in contracts relating to the Hospital.

§ 18. Any person in good health, on the payment of ten dollars to the Treasurer of the Hospital, shall be admitted to all the benefits of the Hospital for the term of one year from date of the receipt. In such case it shall be the duty of the Treasurer, upon presentation of a certificate from the Resident Physician that the party making application is in good health, and on the payment of ten dollars, to enter in a book which shall be kept for the purpose, the name, age, complexion, and full description of the person, to whom he shall give a corresponding receipt, which shall entitle the party to admission when sick, but said receipt shall in no case be transferable.

A payment of \$10 to insure benefit of Hospital for one year.

Invalids to be admitted to Hospital on payment of fees, &c.

§ 19. All invalid persons desirous of being admitted into the Hospital shall apply to the Resident Physician, and on the certificate of said Physician, and the payment of such fees as shall from time to time be determined by the Trustees of the Hospital, the party shall be admitted as a patient therein, and shall be allowed to remain so long as the party is invalid: *Provided*, said fees shall be promptly paid, and that no one shall be admitted under the provisions of this section to the prejudice of those who may have complied with the provisions of the eighteenth section, or of the indigent sick who may be objects of State charity, and who may have been admitted to the Hospital by order of the Trustees.

Sick seamen may be sent to Hospital.

§ 20. It shall be lawful for the Collector of the Port of Sacramento to send all sick and disabled seamen to the State Hospital upon such terms and under such rules and restrictions as shall be agreed upon between the Collector and the Trustees.

Indigent sick citizens may be sent to Hospital.

§ 21. The Corporate authorities of the city of Sacramento are authorized to send to the State Hospital any of the indigent sick citizens of the city, upon such terms as the city authorities and the Board of Trustees may determine: *Provided*, however, that the Trustees shall make no charge for any city patient exceeding the real expenses incurred by reason of the admission of said patient.

Managers of certain exhibitions to pay tax to Hospital.

§ 22. All Directors, Managers, or any other person or persons interested with the administration of any circus, theatre, or show open to the public of Sacramento, shall pay in coin to the Treasurer of the Hospital, for each and every representation, the sum of five dollars, and for every public and subscription ball or concert the sum of two dollars shall be paid in coin to the Treasurer of the Hospital, by the person for whose benefit such diversions are given; and the Mayor of the city shall prohibit any diversion herein named, unless the applicant shall first exhibit to him the receipt for said tax signed by the Treasurer of the Hospital.

State Treasurer to pay moneys recovered on forfeited recognizances, &c., to President of Hospital.

§ 23. From and after the passage of this act the Treasurer of the State is hereby authorized and required to pay, upon the Warrant of the President of the Board of Trustees of the State Hospital, to the order of the Treasurer thereof, quarterly, the net proceeds of all sums of money which may be collected and paid into the State Treasury, arising from the recovery of forfeited bonds, recognizances, and fines, which may be assessed in criminal cases, and for contempt of Courts: *Provided*, that no more than thirty thousand dollars shall be paid in any one year. He shall also be, and is hereby authorized to hold and set apart for the benefit of the State Hospital, to be paid over in the manner as provided in this section, one fourth of the total amount of taxes which may accrue net to the State Treasury from licenses for gambling and sales at public auction: *Provided*, said one fourth shall not exceed the sum of thirty thousand dollars.

And one fourth of moneys paid for gambling licenses.

Payments by State Treasurer during first year.

§ 24. The State Treasurer is hereby required to pay in quarterly instalments during the first year after the passage of this Act, out of any

money not otherwise appropriated, on the Warrants of the President of the Board of Trustees of the State Hospital, countersigned by the Treasurer thereof, the sum of thirty thousand dollars, whereof fifteen thousand dollars shall be held and set apart by the Trustees of the Hospital to provide for insane persons, the balance to be employed for the use of the institution: *Provided*, it shall be the duty of the Trustees to receive into the establishment all lunatics sent from any part of the State.

Trustees to receive lunatics.

§ 25. All charges, fees, fines, or penalties collected by virtue of the provisions of this Act, shall be wholly for the use and benefit of the State Hospital, and shall be applied to no other purpose whatever.

Application of fines, &c.

§ 26. The Legislature shall have power to alter or amend this Act whenever the same by them may be deemed proper.

Act may be amended.

Chap. 128.

AN ACT amendatory of an Act entitled "An Act to create a State Hospital in the City of Sacramento."

Passed April 28, 1851.

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

§ 1. The twenty-third section of the Act, entitled "An Act to create a State Hospital in the City of Sacramento," approved April fifteenth, one thousand eight hundred and fifty-one, which reads as follows: "From and after the passage of this Act, the Treasurer of the State is hereby authorized and required to pay upon the Warrant of the Board of Trustees of the State Hospital to the order of the Treasurer thereof, quarterly, the net proceeds of all sums of money which may be collected and paid into the State Treasury, arising from the recovery of forfeited bonds, recognizances, and fines which may be assessed in criminal cases and for contempt of Court: *Provided*, that no more than thirty thousand dollars shall be paid in one year. He shall also be and is hereby authorized to hold and set apart for the benefit of the State Hospital, to be paid over in the manner as provided in this section, one fourth of the total amount of taxes which may accrue net to the State Treasury, from licences for gambling and sales at public auction: *Provided* said one fourth shall not exceed the sum of thirty thousand dollars"—is hereby amended so as to read as follows:

§ 23 amended.

§ 23. From and after the passage of this Act, the Comptroller of State is hereby authorized and required to audit and issue his Warrant in favor of the Trustees of the State Hospital, to be paid over in the manner as provided in this section, one fourth of the total amount of

taxes which may accrue net to the State Treasury, from licences for gambling and sales at public auction : *Provided* said one fourth shall not exceed the sum of thirty thousand dollars.

§ 24 amended.

§ 2. The twenty-fourth section of the Act entitled "An Act to create a State Hospital in the City of Sacramento," which reads as follows : "The State Treasurer is hereby required to pay, in quarterly instalments, during the first year after the passage of this Act, out of any moneys not otherwise appropriated, on the Warrants of the President of the Board of Trustees of the State Hospital, countersigned by the Treasurer thereof, the sum of thirty thousand dollars, whereof fifteen thousand dollars shall be held and set apart by the Trustees of the Hospital to provide for insane persons, the balance to be employed for the use of the Institution : *Provided*, it shall be the duty of the Trustees to receive into the establishment all lunatics sent from any part of the State"—is hereby amended so as to read as follows :

§ 24. The Comptroller of State is hereby required to audit and issue his Warrants upon the Treasurer of State in favor of the President of the Board of Trustees of the State Hospital, countersigned by the Treasurer thereof, payable out of any moneys not otherwise appropriated out of the General Fund, the sum of thirty thousand dollars, payable quarterly during the first year after the passage of this Act, whereof fifteen thousand dollars shall be held and set apart by the Trustees of the Hospital to provide for insane persons, the balance to be employed for the use of the Institution : *Provided*, it shall be the duty of the Trustees to receive into the establishment all lunatics sent from any part of the State.

Act, when to take effect.

§ 3. This Act to be in force from and after its passage.

Chap. 129.

AN ACT to Create a State Hospital in the City of Stockton.

Passed April 30, 1851.

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

Stockton State Hospital established.

§ 1. There shall be established within the City of Stockton a Hospital to be styled the Stockton State Hospital, in the manner hereinafter provided.

To be under control of a Board of Trustees.

§ 2. The Administration of said Hospital shall be under the control of a Board of Trustees, to consist of six members, to be chosen by the Legislature; they shall be citizens of the United States, and residents of the City of Stockton, and shall elect by ballot a President from their

number, who shall preside over their deliberations, and a Vice President to act as President in his absence. They shall be known by the name Style of Trustees and style of the Trustees of the Stockton State Hospital, and by that name they and their successors shall be known in law, have perpetual succession, may sue and be sued in all Courts of this State, may receive and hold property, real and personal, for the use and benefit of said Hospital.

§ 3. The Board of Trustees shall have full power to manage and administer the affairs of said Hospital, to purchase the necessary land for the purpose of erecting said Hospital buildings whenever a sufficient amount of funds, over and above all liabilities, shall be received by them in their official capacity. The Trustees are authorized to make temporary arrangements for the establishment and organization of said Hospital. Power of Trustees.

§ 4. The Trustees shall have power to make by-laws for their own The like. government and the government of the Hospital: *Provided*, that they are not repugnant to the laws of the United States, of the State, or the ordinances of the City of Stockton; they shall cause to be kept a record of their proceedings, which shall at all times be open for the inspection of a committee, appointed by the Legislature. They shall submit to the Legislature during the first week of each Session, an Annual Report, showing the amount of the receipts and expenditures, the condition of the Hospital, the number of patients admitted and discharged during the year, the nature of their disease, the number of patients remaining in the Hospital at the date of their report, with such other matter touching the general affairs of the Hospital. They shall have power to appoint suitable persons necessary to be employed in said Hospital, to fix their compensation, and shall have power to fill all vacancies which may occur by death, resignation, or removal from office in their own body, by election or otherwise; said vacancies so filled shall expire on the first week of the ensuing Legislature, when the Trustees chosen by the Legislature shall be divided by lot into two classes. The Trustees of the first class shall go out of office at the expiration of the first year, so that one half be chosen annually. They shall have stated meetings at least once a month. A majority shall constitute a quorum to transact business.

§ 5. Within thirty days after the passage of this Act, the Trustees shall take the oath of office, and shall immediately undertake the organization of said Hospital, in conformity with the provisions of this Act. They shall by ballot annually elect a Treasurer, who shall hold his office for the term of one year, or until his successor shall be qualified, and who, before entering upon the duties of his office, shall give bond and security to be approved by the Board of Trustees, in the sum of twenty thousand dollars, payable to the Trustees of the Stockton State Hospital, conditioned for the faithful discharge of his duties: *Provided*, however, that no Officer to be created under this Act shall receive or be entitled to any pay, until said Hospital shall have been duly organized and ready for operation. To take oath of office, elect a Treasurer, &c.

Duties of
Treasurers.

§ 6. It shall be the duty of the Treasurer to collect all money due the Hospital; to keep a correct account of its property, assets, and revenue; receive and safely keep all moneys, and pay the same out as herein provided, which shall be called the "Hospital Fund." He shall also act as Secretary to the Board of Trustees; he shall make a monthly report to said Trustees of his official transactions, keep the books and have the charge of all Hospital accounts, and perform such duties connected with his office as the Trustees may direct. His compensation shall not exceed the sum of two thousand dollars, to be paid quarterly out of the fund of the Stockton State Hospital.

Resident
Physician.

§ 7. The Legislature shall elect a Resident Physician, who shall hold office for the term of two years; he shall be a graduate in medicine, and shall have practiced at least five years from the date of his diploma. It shall be his duty to have a general supervision of the Hospital, give orders for the admission of patients, have the immediate control of its inmates, and make rules and orders for its government. By consent of the Trustees he shall employ and discharge all mates, nurses, and attendants, and shall prescribe in cases of emergency; he shall not be allowed to engage in any private practice which shall interfere with his official duties, and he shall reside in the Hospital. He shall receive a salary not exceeding four thousand dollars per annum, to be paid quarterly out of the funds of the Stockton State Hospital.

Visiting
Physician.

§ 8. There shall also be elected in the same manner a Visiting Physician, who shall be a regular graduate in medicine, and who shall have practiced his profession at least five years from the date of his diploma. He shall visit the said Hospital at least once every day, unless prevented by sickness or such other such lawful hindrance. He shall prescribe for the sick therein, and shall keep records of all prescriptions, and shall have a salary not exceeding four thousand dollars per annum, to be paid quarterly out of the funds of the Stockton State Hospital.

Additional
Medical
assistance.

§ 9. The Trustees may employ from time to time such additional medical assistance as the temporary wants of the Hospital and the inmates thereof may require. All officers appointed or elected under this Act shall be citizens of the United States, and shall, before entering upon their duties, take an oath of office faithfully to discharge their respective trusts, and no officer shall be allowed to charge or appropriate any fee or perquisite to his own use: *Provided*, that no more than two Visiting Physicians shall be elected.

Trustees to audit
accounts against
Hospital.

§ 10. It shall be the duty of the Trustees to audit all bills and accounts against the Hospital, and all claims thus audited shall be paid out of the General Fund, on the order of the Resident Physician, countersigned by the President of the Board, and no funds shall be paid out except as provided in this section. No interest shall be allowed on any claim exceeding the legal interest of the State.

Interest on such
accounts.

§ 11. All funds collected or received shall be deposited by the Treasurer at least once in each week, and oftener if required by the Trustees, in some banking-house or other place of safe keeping in the City of Stockton, to be designated by the Trustees, and no moneys thus deposited shall be drawn out except as provided in section ten.

Treasurer to deposit receipts weekly.

§ 12. Should the Treasurer refuse to deposit the funds as provided in this Act, or withhold any of the funds of the Hospital which may come into his hands, exceeding the term of seven days, he shall be deemed guilty of a misdemeanor, and on conviction before any competent tribunal, shall be fined in a sum not exceeding twenty thousand dollars, or imprisonment not exceeding twelve months, or both such fine and imprisonment.

Treasurer refusing to deposit, &c.

§ 13. Should either the Resident or Visiting Physician neglect or refuse to discharge their duties as herein prescribed, or absent themselves without consent of the Board, they shall be suspended or removed from office, at the discretion of the Trustees: *Provided*, that no such removal shall be had except by a vote of two thirds of the whole Board, nor until the party sought to be removed shall be first heard in his own defence.

Removal, &c., of Physicians.

§ 14. The Treasurer shall enter in a suitable book to be kept for the purpose an exact account of all funds, property, or articles of value, which may be deposited at the Hospital for safe keeping belonging to the estate of persons who shall have died therein, the date when received, a description of the property and to whom belonging; and the said property or effects shall be returned to the rightful owner or owners, his or their legal representatives, whenever demanded.

Treasurer to keep account of decedents in Hospital.

§ 15. Any member of the Board of Trustees who for three consecutive sittings shall not have attended its legal meetings, except prevented by sickness or some other reasonable cause, or who may be implicated in a criminal suit, his office shall be declared vacant, and another immediately appointed in his place. The Board of Trustees may expel any of its own members for cause, by a two third vote of the whole number.

Vacancies in office of Trustee.

§ 16. No member of the Board of Trustees, nor other officer or employee of the Hospital shall be permitted in his own name, or in the name of others, to have any interest in any undertaking or contract on account of said Hospital, whether for supplies or any other purpose; any violation of this section shall operate as a forfeiture of office.

Trustees, &c., not to be interested in contracts.

§ 17. Any person in good health, on the payment of ten dollars to the Treasurer of the Hospital, shall be admitted to all the benefits of said Hospital, for the term of one year from the date of his receipt. In such case it shall be the duty of the Treasurer, upon presentation of a certificate from the Resident Physician that the person making application is in good health, and on payment of ten dollars, to be entered in a book kept for the purpose, the name, age, complexion, with a full

Persons in health may secure benefits of Hospital.

description of the person, to whom he shall give a duplicate copy of said receipt, which shall entitle the party to admission when sick, but said receipt shall in no case be transferable.

Invalide may be admitted to Hospital on payment of fees, &c.

§ 18. All invalid persons desirous of being admitted into the Hospital shall apply to the Resident Physician, and on the certificate of said Physician and the payment of such fee as shall from time to time be determined by the Trustees of the Hospital, the party shall be admitted as a patient therein, and shall be allowed to remain so long as the party is invalid; *Provided*, said fees shall be promptly paid, and that no person shall be admitted under the provisions of this section, to the prejudice of those who may have complied with the provisions of the seventh section, or of the indigent sick who may be objects of State charity.

Sick seamen, &c., may be sent to Hospital.

§ 19. It shall be lawful for the Collector of the Port of Stockton to send all sick and disabled seamen to the State Hospital, upon such terms and under such rules and regulations as shall be agreed upon between the Collector and the Trustees.

Managers of certain exhibitions to pay tax to Hospital.

§ 20. All Directors, Managers, or any other person interested with any circus, theatre, or exhibition of any kind, open to the public of the City of Stockton, shall pay in coin to the Treasurer of the Hospital, for each and every representation, the sum of five dollars; and for every public and subscription ball or concert, and all lectures and public exhibitions of any kind, the sum of ten dollars shall be paid in like manner. The Mayor of the city shall prohibit all entertainments or diversions herein named, unless the applicant shall first exhibit to him the receipt for said tax, signed by the Treasurer of the Hospital.

Comptroller to issue Warrants in favor of Trustees.

§ 21. From and after the passage of this act, the Comptroller of State is hereby authorized and required to audit and issue his Warrants upon the Treasurer of State in favor of the President of the Board of Trustees of the State Hospital, countersigned by the Treasurer thereof, quarterly, the net proceeds of all sums of moneys which may be allowed and paid into the State Treasury arising from the one fourth of the total amount of taxes which may accrue net to the State Treasury, from licenses for gambling and sales at public auction; *Provided*, said one fourth shall not exceed the sum of twenty thousand dollars.

The like.

§ 22. The Comptroller of State is hereby required to audit and issue his Warrants upon the Treasurer of State in favor of the President of the Board of Trustees of the State Hospital, countersigned by the Treasurer thereof, payable out of any money not otherwise appropriated out of the General Fund, the sum of fifteen thousand dollars, payable quarterly during the first year.

Application of penalties, &c.

§ 23. All charges, fees, fines, or penalties, collected by virtue of the foregoing provisions of this Act, shall be wholly for the use and benefit of the State Hospital, and shall be applied to no other purpose whatever.

§ 24. The Legislature shall have power to alter or amend this act whenever the same by them may be deemed proper. Act may be amended.

Chap. 130.

AT ACT to provide for the establishment of a State Marine Hospital at San Francisco.

Passed April 30, 1851.

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

§ 1. There shall be established in the City of San Francisco, and for the State of California, a Hospital, to be called the State Marine Hospital at San Francisco. State Marine Hospital at San Francisco established.

§ 2. There shall be elected annually, by the Legislature, five suitable persons, residents of said city, to hold office for the term of one year, or until their successors shall be elected and qualified, who, together with the Mayor and President of the Chamber of Commerce of said city, shall constitute a Board of Trustees, of which the Mayor shall be President. They shall choose from their own number a Vice-President, who in the absence of the President shall perform his duties. If any vacancies occur in the Board of Trustees by death, resignation, or otherwise, the Governor shall appoint some suitable person for the unexpired term. Board of Trustees. President and Vice-President. Vacancies.

§ 3. The Board of Trustees shall meet on the first Mondays of each month, or oftener if necessary; and three members and the President, or if the President be absent, then four members shall constitute a quorum for the transaction of all business; they shall keep, or cause to be kept, a record of their proceedings, which shall be open to the inspection of the Legislature, or a committee appointed by them for that purpose. Meetings of Trustees.

§ 4. The Board of Trustees shall have full power and authority to control and administer the affairs of the said State Marine Hospital at San Francisco, to rent or to purchase, to retain and improve its property, of whatsoever kind or nature it may be, and to accept of any donation or legacy in the name and for the benefit of the State Marine Hospital at San Francisco, to sue and defend on behalf of said Hospital, and to appoint persons suitable and necessary to be employed in the State Marine Hospital at San Francisco, to fix their compensation; but they shall not alienate, sell, or dispose of in any way, property belonging to or claimed by the State Marine Hospital at San Francisco, without the consent of the Legislature. Powers of Trustees.

§ 5. The Board of Trustees shall make a detailed report annually to the Legislature during the first week of its session, showing therein the amount of receipts and expenditures, the condition of the property of Trustees to report annually.

the State Marine Hospital at San Francisco, the number of patients admitted during the year, their names, diseases, and places of nativity, the number who have died, were cured or discharged, and the number remaining in the State Marine Hospital at San Francisco, at the end of the year.

Trustees may make and enforce by laws, &c.

§ 6. The Board of Trustees are thereby empowered to form, adopt, and put into execution, all ordinances and by-laws requisite for the government of themselves and the State Marine Hospital at San Francisco: *Provided* such ordinances and by-laws are not repugnant to the laws of the United States or of this State, or of the ordinances of the city of San Francisco.

Dismissal of Trustees.

§ 7. Any member of the Board of Trustees who shall not have attended the regular meetings of the Board for three successive sittings, unless prevented by sickness or some other reasonable cause, or may be convicted in a criminal suit, shall be dismissed from office, and the vacancy filled by the Governor.

Treasurer, his term of office, and duties.

§ 8. A Treasurer shall be chosen by the Board of Trustees, who shall hold his office at the will of the Board, and who, before entering upon the duties of the office, shall give bond to the Board of Trustees, with good and sufficient sureties, in the sum of thirty thousand dollars, conditioned to be paid to the said Board of Trustees, upon a failure to discharge, faithfully, the duties of his office. It shall be his duty to collect all debts due the State Marine Hospital at San Francisco, to keep a correct account of its property, credits, and revenues, and such other duties connected with his office as the Board of Trustees may direct, and to make all such disbursements as shall have been previously authorized by the Board of Trustees, and not otherwise, and to make a monthly report to the Board of Trustees.

Two Visiting Physicians.

§ 9. There shall be elected by the Legislature after the passage of this Act, and every two years thereafter, two Visiting Physicians, who shall be regular graduates in medicine, and who shall have practiced their profession at least five years from the date of their diplomas; they shall visit the said State Marine Hospital at San Francisco twice every day, unless prevented by sickness; they shall take charge of the medical and surgical wards, and shall prescribe for the sick therein, and shall keep records of all prescriptions. They shall each receive a salary of five thousand dollars a year, to be paid quarterly by the Treasurer of said State Marine Hospital at San Francisco. There shall also be elected by the Legislature, after the passage of this Act, and every two years thereafter, a Resident Physician, who shall be a graduate in medicine, and shall have practiced at least five years from the date of his diploma; it shall be his duty to have a general supervision of said State Marine Hospital at San Francisco, to see that the patients are properly cared for, that the prescriptions and orders of the Visiting Physicians are duly and properly executed, and shall prescribe for patients in cases of emergency, and those entering during the absence

Resident Physician.

of the Visiting Physicians; he shall discharge such other duties required of him by the Board of Trustees, and appertaining to his office. He shall reside within the State Marine Hospital at San Francisco, and shall receive a salary of five thousand dollars a year, to be paid quarterly by the Treasurer of said State Marine Hospital at San Francisco. Said Resident Physician shall not be allowed to engage in any private practice, but shall at all times be in attendance at the State Marine Hospital at San Francisco: *Provided*, however, that no officer created by this Act shall reserve or be entitled to any pay until the said State Marine Hospital at San Francisco shall have been duly organized and ready for operation.

§ 10. If either the Resident or Visiting Physicians shall absent themselves without the consent of the Board of Trustees, or neglect to discharge their duties as hereinbefore mentioned, he or they shall be suspended from office by the Board of Trustees, with the assent and approbation of the Governor, till the meeting of the next Legislature, which, after having the representations of the Board of Trustees and Physician so suspended, shall either dismiss or reinstate him. Any vacancy which shall be made by a suspension, death, or resignation of either or both of the Visiting Physicians, or the Resident Physician, shall be filled by the Board of Trustees, with a person or persons having the prescribed qualifications.

Removal of
Physicians.

Vacancies,
how filled.

§ 11. It shall be the duty of the Treasurer of the said State Marine Hospital at San Francisco, upon the presentation of a certificate from the Resident Physician, that the party applying is in good health, and on the payment of five dollars, to enter upon a book which shall be kept for that purpose, the name, age, and description of the person so applying, and give to the person so applying a corresponding receipt, which receipt shall admit the party to whom such receipt is given to all the benefits of said State Marine Hospital at San Francisco, for the term of one year from the date of said receipt.

Party in health
may secure
advantages of
Hospital.

§ 12. All persons desirous of being admitted into the State Marine Hospital at San Francisco who are invalids, shall apply to the Resident Physician, and upon the certificate of said Physician and the payment of such fees as shall from time to time be agreed upon by the Trustees of said Institution, which fees shall form part and parcel of the funds of said State Marine Hospital at San Francisco, he, she, or they shall be admitted as a patient into said State Marine Hospital at San Francisco, and shall be permitted to remain as long as said person is an invalid, and said fees are promptly paid: *Provided, however*, that no one shall be admitted under the provisions of this section, to the prejudice of those who may have complied with the provisions of the eleventh section, or of the indigent sick, who are objects of State charity, and who have been admitted to the State Marine Hospital at San Francisco by the authority of the Trustees.

Terms for
admitting
invalids to
Hospital.

The late Board of Health to deliver to Trustees property held in trust.

§ 13. It shall be the duty of the persons heretofore constituting the Board of Health to deliver to the said Board of Trustees all of the property, both real and personal, held by them in trust for the State Marine Hospital at San Francisco; and it shall be the duty of the Board of Trustees of the said State Marine Hospital at San Francisco to take care of and provide for the patients which may be in the State Marine Hospital at San Francisco at the time this Act shall take effect, and all moneys now belonging to the State Marine Hospital shall be transferred to the Trustees of the said State Marine Hospital at San Francisco; and the said Trustees shall pay out of any funds which may come into their hands all of the debts which may be owing by the said State Marine Hospital, which have been created in accordance with the Marine Hospital law.

Trustees, &c., not to be interested in contracts.

§ 14. No Trustee, officer, or employee of the State Marine Hospital at San Francisco shall have any interest in any undertaking or contract for account of said State Marine Hospital at San Francisco, and any violation of this section shall operate as a forfeiture of office, and no officer shall be allowed to charge or appropriate any fee or perquisite to his own use.

Trustees not to borrow money, &c., exceeding \$10,000.

§ 15. The Trustees are prohibited from borrowing money or incurring any responsibility or debts which shall in the aggregate exceed the sum of ten thousand dollars, and no rate of interest shall be allowed exceeding the legal rate of interest as established by the State.

Resident Physician to keep account of property of decedents in Hospital.

§ 16. The Resident Physician shall cause to be kept an exact account in a book for the purpose, of all effects of persons who may die at the State Marine Hospital at San Francisco, the date of receipts, the name of the owner, and a full description of the property; if in money the same shall at once be placed in the hands of the Treasurer, which shall constitute a part of the General Fund of the State Marine Hospital at San Francisco, unless claimed by some person legally entitled thereto. All other property of said deceased persons, if not claimed in a reasonable time, shall be sold by the Trustees, and the funds accruing therefrom shall be in like manner disposed of.

Property to be sold.

Trustees to audit claims on Hospital.

§ 17. The Trustees shall audit all bills against the State Marine Hospital at San Francisco, and all accounts or bills thus audited shall be paid out of the General Fund of the State Marine Hospital at San Francisco, on the order of the Resident Physician, countersigned by the President of the Board of Trustees.

Former laws repealed.

§ 18. The Act providing for the creation of a Marine Hospital for the State of California, approved April ninth, eighteen hundred and fifty; also an Act amendatory of an Act providing for the creation of a Marine Hospital for the State of California, approved February, eighteen hundred and fifty-one, be, and the same are hereby, repealed. No suit or suits, claim or claims shall be affected by such repeal.

Effect of repeal.

Chap. 131.

AN ACT concerning *Judges of the Plains (Jueces del Campo)*, and defining their duties.

Passed April 25, 1851.

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

§ 1. The Court of Sessions of each county throughout this State shall, at its regular term for county business, appoint such a number of Judges of the Plains, for their respective counties, as said Court may deem necessary.

Judges of the Plains to be appointed.

§ 2. That the term of office shall be for one year, and said Judges of the Plains shall attend all rodeos or gathering of cattle, whether for the purpose of marking and branding, or for the purpose of separating cattle, when called upon by any Ranchero, farmer, or owner of stock, that may be made in their respective counties.

Term of office: to attend rodeos.

§ 3. Whenever any dispute arises respecting the ownership, mark, or brand of any horse, mulo, jack, jenny, or horned cattle, it shall be the duty of the Judges of the Plains to decide on such dispute.

To decide disputes as to ownership of cattle.

§ 4. Any party interested in the dispute of the ownership, mark, or brand of any animals as enumerated above, may appeal from the decision of the Judges of the Plains to a Justice of the Peace of the township where such dispute may arise: *Provided*, such appeal be made within twenty-four hours after the judgment has been notified to him.

Appeal from decision.

§ 5. All persons travelling with cattle, sheep, hogs, horses, or mules, shall, in case said animals be not of their own mark and brand, be obliged to procure from the person or persons from whom they obtain such cattle, or from the Justice of the Peace residing nearest to the farm or place where they obtain the same, a certificate of the number and kind of such cattle, and the mark and brand which distinguished the same; and they shall allow such animals to be subject to the inspection of owners of lands through which they may pass, and upon arriving at any city, town, or village, shall present themselves to a Judge of the Plains, and state the number and kind of such animals; and it shall be the duty of the Judge of the Plains to examine the band or drove, and accompany them out of the precinct of such city, town, or village.

Persons travelling with cattle, the property of others, to have certificate of owners.

§ 6. That if the number and kind of animals do not agree with the report of the owner or person in charge, and with the certificates in his possession, the Judge of the Plains shall detain the band or drove, and take the owner or person in charge before the nearest Magistrate for examination.

When cattle to be detained.

May arrest persons accused of killing the cattle of others.

§ 7. That the Judge of the Plains shall arrest and take before any Magistrate any person who may be accused of killing, hiding, or otherwise taking away animals belonging to others.

Dereliction of duty.

§ 8. That should complaint be brought against any Judge of the Plains for dereliction of duty, the same being sustained, shall be considered as guilty of a misdemeanor, and shall be liable to prosecution for the same.

Compensation.

§ 9. The Judge of the Plains shall receive such compensation for his services as may be determined by the Court of Sessions in their respective counties, not exceeding the sum of five dollars per day while actually employed, and which shall be paid by the party in default, or the party requiring his services.

Regulations respecting.

§ 10. The Court of Sessions may make such other local regulations with respect to the duties of the Judges of the Plains, that they may deem necessary.

Act, when to take effect, &c.

§ 11. This Act shall take effect from and after the first day of July; and all laws now in force in this State, having relation to Judges of the Plains, are hereby repealed.

Chap. 132.

AN ACT to provide for the Organization of the Counties of Nevada, Placer, Trinity, and Klamath.

Approved May 28, 1851.

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

Election for County officers.

§ 1. There shall be held an election for County Officers, in the Counties of Nevada and Placer, on the fourth Monday of May; and in the Counties of Trinity and Klamath, on the second Monday of June, of the present year.

Officers to be chosen.

§ 2. At the elections mentioned in the preceding section there shall be chosen for each of the said Counties, one County Judge, one District Attorney, one County Clerk, one Sheriff, one County Surveyor, one Assessor, one Coroner, and one Treasurer.

Commissioners designate election precincts, &c.

§ 3. Henry Miller, J. N. Turner, J. R. Crandall, J. S. Allen, and Amos T. Laird, of Nevada City, in Nevada County, are hereby appointed and constituted a Board of Commissioners to designate the election precinct in the County of Nevada for the said election, to appoint the Inspectors of Election at the several precincts designated to receive the returns of the election, and to issue certificates of election. Douglas Fry, Joseph Walkup, William Gwynn, H. M. Honn, and Jonathan Roberts, of

Auburn, in Placer County, are hereby appointed and constituted a Board of Commissioners for the like purposes in the said County of Placer. Geo. O. McMullin and David Buck, of Humboldt, W. L. Blanchard and C. S. Ricks, of Eureka, and B. Kelsey, of Union Town, in Trinity County, are hereby appointed and constituted a Board of Commissioners for the like purposes in said County of Trinity. Robert A. Parker, W. W. Hawks, Edward Fletcher, Smyth Clark, and B. W. Bullitt, of Klamath County, are hereby appointed and constituted a Board of Commissioners for the like purposes in the said County of Klamath.

§ 4. The provisions of the Act, entitled "An Act to regulate Elections," passed March twenty-third, one thousand eight hundred and fifty, shall apply to the County elections ordered by this Act, except that the said several Boards of Commissioners, in their respective counties, shall designate the election precincts, appoint the Inspectors of Election at such precincts, receive the returns of election, and issue the several certificates to the persons elected.

General law regulating elections applied to election under this act.

§ 5. For the purpose of designating the several precincts in their respective counties, the said Boards of Commissioners shall meet on the Monday two weeks previous to the day of election, and at said meeting shall designate the precincts of their respective counties, and appoint the Inspectors of Election at such precincts. The said Boards shall appoint one of their number as President and one as Clerk. A record of their proceedings shall be kept. The attendance of two thirds of the members of each Board shall be necessary for the transaction of business.

Meetings of Commissioners.

To appoint a President and Clerk, and keep record of proceedings.

§ 6. The said several Boards shall, immediately after designating the precincts in their respective counties and appointing the Inspectors thereof, give notice of such precincts and Inspectors by advertisement published in some newspaper printed in their respective Counties, if there be one, but if there be none, then by notices posted at each of said precincts.

To designate election precincts and appoint Inspectors.

§ 7. If precincts be not established according to the provisions of this Act, the election may be held at any place or places where there are not less than thirty resident electors present.

Elections where precincts not designated.

§ 8. Sealed Returns from the officers of election may be delivered to any member of the said Boards. The said Boards shall meet in their respective Counties on the first Monday subsequent to the election, and the Returns shall then be opened and read; and under their direction and in their presence a tabular statement shall be made out, showing the vote given at each precinct of their respective counties, or if precincts be not established at each place where the polls were opened, for each person and for each of the offices to be filled at the election, and also the entire vote given in their respective counties for each person. The statement thus made out by each Board shall be signed by its President and Clerk.

Election returns and statement of results of elections.

§ 9. So soon as the statement and certificate are made out by any Board, its President shall declare the result, and immediately make out

President to declare result of election.

and send, or deliver to each person chosen, a certificate of election, signed by him as President of the Board of Commissioners, and attested by the Clerk.

Persons elected to qualify.

§ 10. Each person chosen shall qualify and enter upon the discharge of the duties of his office within ten days after the receipt of his certificate of election. The person elected as County Judge shall qualify before the President of the Board of Commissioners of his county. Persons elected to the other offices may qualify before the said President or before the County Judge.

Statement of result of election to be forwarded to Secretary of State.

§ 11. The President of each Board shall transmit without delay a copy of the tabular statement, prepared as provided in section eighth, to the Secretary of State. The election returns of each county, and the tabular statement shall be retained by the said President of the Board of Commissioners of the county, until the person elected as Clerk of such county has qualified and entered upon his duties: after which they shall be filed in the office of said Clerk.

Places of meetings of Commissioners.

§ 12. The said Boards of Commissioners shall meet at the following places in their respective counties, namely: in Nevada County at Nevada City; in Placer County at Auburn; in Trinity County at Humboldt; in Klamath County at Trindad.

Terms of office of officers elected.

§ 12. The County Judges chosen under this Act shall hold their offices for four years; the other officers elected shall hold their respective offices for two years, and until their successors are elected and qualified. The successors of the officers elected under this Act shall be chosen at the General Elections established by law, which take place next preceding the expiration of their respective terms.

Court of Sessions of Nevada county to appoint Commissioners, &c.

§ 14. At the first term of the Court of Sessions held in Nevada County, there shall be appointed by said Court two Commissioners to meet a corresponding number of Commissioners to be appointed by the Court of Sessions of Yuba County, for the purpose of assigning to each of said counties its just proportion of the indebtedness of Yuba County. For the amount found by such Commissioners as justly chargeable to Nevada County, the Court of Sessions of said county shall issue a Warrant on its Treasury, payable out of any funds which may come into its possession belonging to the county. The said Commissioners shall meet on the first Monday of July, at Marysville, Yuba County.

Court of Sessions of Placer county to appoint Commissioners.

§ 15. At the first term of the Court of Sessions held in Placer County, there shall be appointed by said Court two Commissioners to meet a corresponding number of Commissioners to be appointed by the Court of Sessions of Sutter County, for the purpose of assigning to each of said counties its just proportion of the indebtedness of Sutter County. For the amount found by such Commissioners as justly chargeable to Placer County the Court of Sessions of said county shall issue a Warrant on its Treasury, payable out of any funds which may come into its possession belonging to the county; the said Commissioners shall meet on the first Monday of July at Vernon, Sutter County.

Chap. 133.

AN ACT To provide for the early publication and distribution of the Laws.

Passed May 1, 1851.

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

§ 1. The Secretary of State is hereby authorized and directed to contract with the proprietors of the "Evening Picayune" newspaper, printed in San Francisco, with the proprietor of the "Sacramento Transcript" newspaper, printed in Sacramento City, for the publication of all Laws and Joint Resolutions of a general character passed at this session of the Legislature; and with the proprietors of the "State Gazette," printed at Benicia, the proprietor of the "Stockton Times" (or of its successor), printed at Stockton, and the proprietor of the "Sonora Herald," published at Sonora, for the publication alternately in each of said two last-mentioned papers, of such of the Laws and Joint Resolutions of a general nature, passed by this Legislature, as he may select, for publication in such two last-mentioned Journals; and also with the proprietor of the "Los Angeles Star," published at Los Angeles, or with the State Paper, for the publication of such laws in the Spanish language as the Secretary of State shall designate, out of those translated into the Spanish language, upon the best terms practicable; *Provided*, That in no case shall such contracts provide for a greater number than three insertions of each of said Laws and Joint Resolutions in any one paper, nor shall a contract be made for such publication for a greater rate of compensation than one dollar and fifty cents, for each square of three hundred oms; and provided, also, that each proprietor with whom a contract is made as aforesaid, shall bind himself to distribute said Laws and Joint Resolutions by delivering five copies of each of the same to the Clerk of each County of this State.

§ 2. The newspapers publishing the Laws according to this Act shall copy the same from the State paper, and it shall be the duty of the publisher of said paper to furnish correct printed copies of the laws designated by Secretary of State to the newspaper mentioned in this Act.

§ 3. All Laws and Joint Resolutions published in the Spanish in the *Los Angeles Star*, according to this Act, may be read in evidence in the Courts of Justice in this State.

Secretary of State to contract with proprietors of newspapers for publication of laws, &c.

Laws to be copied from State Paper.

Laws published in Spanish to be evidence.

Chap. 134.

AN ACT authorizing the Treasurer of the State to negotiate a loan upon the faith and credit of the State, for the purpose of defraying the expenses which have been and may be incurred, in suppressing Indian Hostilities in this State, in the absence of adequate provision being made by the General Government.

Passed February 15, 1851.

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

Loan not exceeding \$500,000 may be negotiated.

§ 1. By virtue of the power given to the Legislature by the Constitution of this State, article eighth, "In case of war to repel invasion, or suppress insurrection," a loan not exceeding five hundred thousand dollars is hereby authorized to be negotiated upon the faith and credit of the State, payable in ten years, and at any period after five years, at the pleasure of the State; said loan to bear a rate of interest not exceeding twelve per cent. per annum, payable annually or semi-annually, at such place as the contracting parties may agree: *Provided*, however, that the interest of the first year may be paid in advance out of the loan thus made.

Bonds to be provided.

§ 2. That the Treasurer be, and he is hereby authorized and required, to cause suitable Bonds to be provided for said loan, in sums not less than one thousand dollars.

Bond, how signed, and to whom made payable, &c.

§ 3. All such Bonds shall be signed by the Treasurer, in his official character, made payable to and endorsed by the Governor, in his official character, who shall affix the seal of the State thereto, and countersigned by the Comptroller, which Bonds, executed as aforesaid, shall be transferable on delivery, and bind the State for the faithful payment thereof.

Comptroller to register bonds.

§ 4. After the Bonds aforesaid shall have been countersigned by the Comptroller, it shall be his duty to make a register of the same in a book to be kept for that purpose, with the number and amount thereof, and deliver them to the Treasurer, charging him with the same. The Treasurer shall also keep a register of such Bonds as may be negotiated.

Coupons for interest.

§ 5. Coupons for the interest shall be attached to each Bond so that they may be removed without injury or mutilation to the Bond.

Loan, how and when may be negotiated.

§ 6. The Treasurer shall be, and he is hereby authorized with the approval of the Governor of the State, to negotiate such loan as speedily as possible, at such time and place, and in such amounts as they may determine the exigencies of the State require; but no loan shall be negotiated below the par value thereof.

§ 7. Any claim which this State has now, or may hereafter have, upon the General Government for moneys expended out of this loan, for the purposes aforesaid, shall be and the same is hereby set apart and pledged for the payment of the principal and interest arising upon said Bonds, together with all other moneys in the Treasury not otherwise appropriated, or so much thereof as may be necessary.

Claim of State on the General Government pledged for payment of loan.

§ 8. The Treasurer is hereby authorized to defray such expenses as may be incurred in obtaining the above loan: *Provided*, that it does not exceed the sum of two thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated: *Provided*, said loan be negotiated in this State.

Treasurer to defray expenses of loan.

Loan, where to be negotiated.

Chap. 135.

AN ACT amendatory of "an Act providing for the Creation of a Marine Hospital for the State of California."

Passed February 7, 1851.

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

§ 1. Section eleven is so amended as to read as follows:

§ 11 amended.

It shall be the duty of the Board of Health to require the owners or consignees of the said ships or vessels 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 every City, Town, or County in this State, from any cost which said Commissioners of Health, or such City, Town, or County shall incur for the relief or support of the persons named in the Bond—five years from the date of the Bond; and also indemnify and refund to the Board of Health of any City, Town, or County any expense or charge they may necessarily incur for the support or medical care of the person therein named.

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 the owner of freehold in this State of the value of Three Hundred Dollars, over and above all claims or liens thereon against him, including therein any contingent claim, which may accrue from or upon any former Bond given under the provisions of this Act. If any owner or consignee aforesaid shall refuse or neglect to give any such Bond or Bonds and security therefor, as herein before required for each person or passenger landing from his ship or vessel, within three days

after the landing of such person or passenger, or shall not within the time pay the money authorized in section twelve of this Act, to be received in case where such Bonds are herein authorized to be commuted for, every such owner or consignee of such ship or vessel respectively, shall be subject to a penalty of Five Hundred Dollars for each and every person or passenger on whose account such Bond may have been required, or for whom such commutation might have been paid under this Act; such penalty to be sued for as provided in the nineteenth section of this Act.

Chap. 136.

AN ACT to prohibit Officers from being interested in Certain Contracts.

Passed May 1, 1851.

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

Certain officers
not to be
interested in
certain contracts.

§ 1. That it shall not be lawful for any Officer of State or Member of Legislature, Alderman, or Member of the Common Council of any City in this State, or for the Trustees of any City, Town, or Village, or for the Supervisor of any County to become a Contractor under any Contract or order for supplies authorized by or for the State, or any department thereof, or the Legislature, or either branch thereof, or by or for the Aldermen or Common Council, Board of Trustees, or Board of County Supervisors of which he is a member, or to be in any manner interested directly or indirectly as principal in any such contract.

The like.

§ 2. That it shall not be lawful for any Town, City, County, or State Officer, or Member of the Legislature, to be interested in any Contract made by such Officer or Legislature of which he is a member; or be a purchaser, or be interested in any purchase at any sale made by such Officer, or a seller at any purchase made by such Officer in the discharge of his official duties.

Contracts in
violation of this
Act void.

§ 3. That all Contracts made in violation of the provisions of the first and second sections of this Act may be declared void at the instance of the City, Town, or Village, or County interested, or of any other party interested in such contract, except the Officers prohibited in said sections from making or being interested in such contract.

Punishment for
violation of this
Act.

§ 4. Any person violating the provisions of this Act directly or indirectly, shall forfeit his office, and shall be punished by fine not less than Five Hundred, nor more than Five Thousand Dollars, or by imprisonment in the County Jail for not more than six months, or both.

Chap. 137.

AN ACT to Designate the Holidays to be Observed in the Acceptance and Payment of Bills of Exchange and Promissory Notes.

Passed April, 2, 1851.

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

§ 1. The following days, namely : the first day of January, the fourth day of July, the 25th day of December, commonly called Christmas day, shall for all purposes whatsoever as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this Act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills or drafts ; and any one of the Holidays specified in this Act coming within the three days of grace shall be counted as one of such days.

Holidays designated.

Days of grace.

Chap. 138.

AN ACT to Provide for the Incorporation of Mutual Insurance Companies.

Passed April 26, 1851.

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

§ 1. Any seven or more persons who desire to form a Mutual Insurance Company, shall make, sign, and acknowledge, before some officer competent to take the acknowledgement 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 proposed amount of the capital stock, the proposed term of its existence, not to exceed twenty years, the proposed 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.

Seven or more persons may make, &c., a certificate.

Provisions of "Act concerning Corporations" applied.

§ 2. All the provisions of chapter second of the Act entitled "An Act concerning Corporations," passed April twenty-second, eighteen hundred and fifty, expecting sections thirty-four, thirty-seven, forty-two, forty-three, fifty-one, and fifty-two of said chapter, shall be applicable to Mutual Insurance Companies.

The filing certificate to create a body corporate.

§ 3. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and those who shall thereafter subscribe to the Capital Stock, or who shall become issuers under such certificate of organization, shall be a body politic and corporate by the name stated in the certificate.

Directors may make calls.

§ 4. 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 shall have been made at least six weeks previously, or if a notice requiring such payment shall have been published for six successive weeks in some newspaper of the place where the business of said Company is carried on, or if no newspaper be published in such place, then in a newspaper published nearest thereto.

May make insurance.

§ 5. Every Company incorporated under this Act may make insurance upon vessels, freight, money, goods, and effects, and against captivity of persons, and on the life of any person during his or her absence at sea, and on money lent on bottomry and respondentia, and may also make insurance against fire, on any dwelling-house, buildings, merchandise, or other property situated in the State of California, and may also make insurance upon the life of any person, whether at home or abroad, for a limited term, or during his or her natural life.

Amount of single risk limited.

§ 6. No Company incorporated under this Act shall take on any one risk, whether it be a marine risk, an insurance against fire, or an insurance on the life of any person, a sum exceeding one tenth part of their capital subscribed.

Notes of Subscribers may be taken as capital stock.

§ 7. Notes of the Subscribers to the Capital Stock, approved by the Directors of the Company, and upon which shall have been paid not less than ten per cent. in cash, may be taken as part of the Capital Stock, and such Notes shall be subject to such Assessments from time to time as the Directors of the Company may require, but no debts shall be contracted, and no policies shall be issued by such Company before such Notes shall have been given, and such ten per cent. paid thereon. All promises upon Policies of Insurance issued by such Companies shall be required to be paid in cash. No loan of money shall be made by any such Company to any Stockholder thereto, 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 re-

Policies to be paid in cash. Loans to Stockholders prohibited.

payment of the same so loaned. No declaration of profit shall be made until the net earnings of the Company shall have accumulated to a sum equal in amount to the original Capital Stock subscribed, which shall there remain with the Company as a cash Capital, not subject to division amongst the Stockholders until the business of the Company shall have been closed, its debts paid, and its outstanding policies cancelled; and if any deficiency shall ever at any time occur in such cash Capital, from any cause, no further division of profits shall take place until such deficiency shall have been made up entire.

When declaration of profits to be made.

§ 8. No Company shall issue policies until the sum of two hundred thousand dollars shall have been subscribed, and conditions complied with, as required in section seventh.

When policies may be issued.

§ 9. No Company shall directly or indirectly deal or trade in buying or selling any goods, wares, merchandise, stock, or commodities whatever; but this shall not be construed to prevent such Company from selling any goods, wares, merchandise, stock, or commodities which may have been hypothecated or pledged with them as securities, for the loan or investment of money, whenever the same is made in good faith to protect the Company from loss upon such loan or investment.

Company not to engage in Trade.

§ 10. Companies incorporated under this Act may cause themselves to be reinsured when deemed expedient against any risk or risks against which they have made or may make insurance.

May make' reinsurance.

Chap. 139.

AN ACT concerning the Fees of Public Administrator.

Passed April 28, 1851.

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

§ 1. The Fees of Public Administrator shall be four per cent. upon the amount of the estates administered by them, which per centage shall be the only compensation allowed for their services.

Fees of Public Administrator.



4

JOINT RESOLUTIONS
OF THE
SENATE AND ASSEMBLY.

Joint Resolution Granting Leave of Absence to the Honorable Robert Hopkins, District Judge of the Seventh District.

Resolved (the Assembly concurring), That the Honorable Robert Hopkins, District Judge of the Judicial District, is hereby granted leave of absence from this State, from and after the fifteenth day of January, one thousand eight hundred and fifty-one, for four months, for the purpose of removing his family from their present place of residence to this State.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved January 16, 1851.

JOHN McDOUGAL.

Joint Resolution Granting Leave of Absence to the Honorable Charles Creanor, District Judge of the Fifth District.

Be it Resolved (the Senate concurring), That the Honorable Charles M. Creanor, Judge of the Fifth Judicial District, have leave of absence from this State from and after the first of May next, for four months.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved January 16, 1851.

JOHN McDOUGAL.

Joint Resolution requiring the Secretary of State to request the United States Commissioner taking the Census of this State to furnish a Statement of the Census to this State.

Resolved (the Senate concurring), That the Secretary of State is hereby required to respectfully request of the Honorable J. Neely Johnson, United States Commissioner, appointed to take the Census of this State of California, to furnish, for the use of the Legislature of this State, a Statement of the Census of the population within the different Counties of this State, as soon as the same shall come to his knowledge, and such other statistical information as in his opinion is proper and important to be communicated.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved February 5, 1851.

JOHN McDUGAL.

Joint Resolution in regard to the London Industrial Exhibition.

Whereas, it appears from a public notice given by the Secretary of the Treasury and from a correspondence had with the Governor of this State, that the States in the East will be largely represented in the approaching London Industrial Exhibition; and whereas, there are yet no State Societies organized in this State for the encouragement of its purposes:

Therefore, Resolved, by the Senate (the Assembly concurring), That his Excellency the Governor be requested to give an official recommendation to such Citizen or Citizens of this State as may signify an intention to attend said exhibition, and in the opinion of his Excellency may be entitled thereto: *Provided*, that no appropriation shall be made for this purpose.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved March 10, 1851.

JOHN McDUGAL.

**Joint Resolution requiring the Comptroller to Audit the
Accounts of the State Printer for Stated Sums.**

Resolved (the Senate concurring), that the Comptroller of State be required to Audit the Accounts of the State Printer as follows: For eight hundred copies of the Journals of the Legislature, fourteen thousand three hundred and ninety-six dollars and forty-four cents; also, for one thousand and fifty copies of English Statutes, eleven thousand five hundred and eighty-five dollars and forty-one cents; also, for freight and all other incidental expenses for said Journals and Laws, four thousand two hundred and forty-one dollars, and shall issue his Warrants upon the Treasury for such account.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved March 13, 1851.

JOHN McDUGAL

**Joint Resolution for the purpose of paying the Postage
Expenses of the Legislature.**

Resolved, by the Senate and Assembly, That the Treasurer of the State be and he is hereby authorized to draw upon the Tax Collector of Santa Barbara County, in favor of Hon. Pablo De La Guerra, for such amount as he may pay the Post-Master of San José, on account of the postage expenses of this Legislature.

JOHN BIGLER,
Speaker of the Assembly.

ELCAN HRYDENFELDT,
President of the Senate pro tempore.

Approved March 17, 1851.

JOHN McDUGAL

**Joint Resolution for the relief of Captain William Waldo,
Charles N. Hall, and J. J. Petrie.**

Resolved (the Assembly concurring), That our Senators in Congress be instructed and our Representatives requested, to use their influence and

efforts to obtain an appropriation from Congress for the relief of J. J. Petrie ; also for the relief of Captain William Waldo and Charles N. Hall, for money expended by them in affording relief to the destitute and suffering overland immigration, while acting under the direction of the Sacramento Relief Company ; and that the Governor of this State be requested to forward this resolution to our Senators and Representatives in Congress.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved March 26, 1851.

JOHN McDUGAL.

Joint Resolution in relation to establishing Forts on our Borders.

Whereas, a large portion of our State is unprotected from the different tribes of Indians that live upon our borders, and that these tribes are frequently engaged, and are now at war, with the citizens of this State ; and in consequence of our present unprotected condition, there is no security for either life or property ; and this State not having the means of extending that protection to its citizens which their present necessities require ; *and whereas*, it is the duty of the Federal Government to protect its citizens from the incursions of either internal or external enemies, therefore :

Resolved, the Senate concurring, That our Senators be instructed, and our Representatives be requested, to use their best efforts to have a portion of the United States troops established on our borders, and also to have a line of forts erected along the same for the purpose of protecting our citizens.

Resolved, That the Governor be requested to forward a copy of the foregoing Preamble and Resolutions to each of our Senators and Representatives in Congress.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved March 25, 1851.

JOHN McDUGAL.

Joint Resolution for the relief of Nathaniel McMenafee.

Resolved, by the Senate and Assembly of the State of California, that our Senators be instructed, and our Representatives in Congress requested, to use their efforts to procure the passage of a law by Congress, appropriating the sum of nine hundred and eighty dollars and seventy-five cents, to Nathaniel McMenafee, for services and provisions given to the destitute overland immigration to this State; and that His Excellency the Governor be requested to transmit copies of this resolution to our Senators and Representatives in Congress.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 5, 1851.

JOHN McDUGAL.

Joint Resolution in relation to the Pious Fund of California.

Resolved, by the Senate and Assembly of California, That the President of the United States be and he is hereby requested to cause an investigation as to the rightful ownership of this Fund; and if it shall appear to him that it is due and of right belongs to the State of California, he will cause the amount and interest so due to be retained out of the balance of the instalments due by the United States to Mexico, under the treaty of Guadalupe de Hidalgo.

Resolved, That a copy of this Report and Resolutions be forwarded to our Senators and Representatives in Congress, with a request that they use all lawful and proper means to urge this claim upon the attention of the Federal Government.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 5, 1851.

JOHN McDUGAL.

Joint Resolution providing for the Distribution of the Convention Journals.

Resolved (the Senate concurring), That it be the duty of the Secretary of State to distribute to each of the Members of the Senate and Assembly, and the principal officers thereof, one copy of the Convention Journal and two copies to the County Library of each county of this State; also to deposit in the State Library one hundred copies, subject to all the rules governing said Library; the remaining copies to be retained in the Secretary's Office for future distribution.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 10, 1851.

JOHN McDUGAL.

Joint Resolution for payment of Fees to the Sergeant-at-Arms.

Resolved, by the Senate and Assembly of the State of California, That the Comptroller of State be authorized to issue his Warrants on the General Fund for the fees of Sergeant-at-Arms in summoning witnesses in the cases of Judges Parsons and Turner.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 11, 1851.

JOHN McDUGAL.

Joint Resolution Directing Adjutant General to Enter Names on Muster Roll of Gila Expedition.

Resolved, by the Senate and Assembly of the State of California, That the Adjutant General is hereby directed to enter the name of John T. Smith in the Muster Roll of Company A, commanded by Captain W. B. Reynolds, of

the Gila expedition, now on file in his office, and that the Paymaster to that expedition be directed to audit and pay the account of said Smith for services as a soldier therein from the time of his enlistment to the discharge of said Company.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 11, 1851.

JOHN McDUGAL.

Joint Resolution in Relation to the Translator of the Laws.

Resolved (the Assembly concurring), That the Secretary of State be and is hereby authorized and directed to furnish to the Translator of the Laws of this State a copy of the Statutes passed by the last Legislature, and the manuscript copies of such Laws on file in his office, as may be selected by the Joint Committee of the Legislature, to be translated into the Spanish language, and the Translator is hereby directed to furnish to the Secretary of State for publication the Laws translated at as early a period as practicable.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 15, 1851.

JOHN McDUGAL.

Joint Resolution Relative to the Per Diem Pay and Mileage of Witnesses in the Cases of Judges Parsons and Turner.

Resolved, by the Senate and Assembly of the State of California, That the Comptroller of State is hereby authorized and directed to issue Warrants for the payment of all witnesses summoned to appear before the Select Committees of the House of Assembly to testify in the cases of impeachment of Judges

Levi Parsons, of the Fourth Judicial District, and William R. Turner, of the Eighth Judicial District, at the rate of five dollars per day while in actual attendance on said committees, and fifty cents per mile travelled by the usual routes; the accounts for mileage and per diem to be certified as correct by the Chairman of the several Committees: *Provided*, however, the time consumed in travelling shall not be calculated in the per diem allowed.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 21, 1851.
JOHN McDUGAL.

Joint Resolution in reference to Payment of Claims of those who have heretofore rendered Military Service for the State of California.

Whereas, Provision has been made by law for the payment of those who have heretofore rendered Military Service for the State of California; *And whereas*, such persons have in many instances, by informal transfers in writing, transferred their certificates of discharge or other voucher to bona fide purchasers:

Therefore, Resolved, by the Senate and Assembly, That the Paymasters heretofore created by law to pay and settle the accounts of those who have heretofore rendered Military Service for the State of California, and whose claims are filed in the office of the Adjutant General, are hereby authorized to pay the amount of any claim due to any individual under such law to the bona fide holder of regular certificate of discharge or other written evidence of indebtedness which shall have been transferred by any memorandum in writing, with the signature of the original holder: *Provided*, That the Paymasters shall require the person presenting such voucher to make an affidavit that he is the bona fide possessor and owner of the same.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 22, 1851.
JOHN McDUGAL.

**Joint Resolution for the Payment of certain Claims arising
- out of the Gila Expedition.**

Resolved, by the Senate and Assembly of the State of California, That the several claims of José Maria Lugo for the sum of six hundred dollars, of Bernardo Yorba for the sum of three hundred dollars, of Henry C. Matsell for the sum of two hundred and fifty dollars, of Archibald Henshowould for the sum of thirty-five dollars, and of Toler Dunn for the sum of fifty dollars, with the accompanying vouchers, for supplies furnished and services rendered in the Gila Expedition, under the command of General Joseph C. Morehead, be placed on the same footing with and entitled to all the advantages of the claims which were filed in the office of the Adjutant General on or before the seventh March, A.D. eighteen hundred and fifty-one, and that the Paymaster of the Gila Expedition be authorized to pay the same out of the amount appropriated from the War Loan Fund for the payment of the expenses of the Gila Expedition, and that the ~~claims of J. P. and R. D. Israel and Hugh Foster be entered on file in the Adjutant General's Office, and the Paymaster of the Gila Expedition authorized to pay the same out of the money appropriated from the War Loan Fund for that Expedition.~~

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved April 24, 1751.

JOHN McDUGAL.

Joint Resolution for the relief of Le Cock and Lewis.

Resolved, by the Senate and Assembly of the State of California, That a receipt to L. A. Bensaçon, from Messrs. Le Cock and Lewis, for Five Hundred and One Dollars, the amount of their claim against the State, shall be a good voucher in favor of the said L. A. Bensaçon, in the settlement of his accounts with the State.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved April 25, 1851.

JOHN McDUGAL.

Joint Resolution for the payment of Witnesses in the Case of A. W. Adams.

Resolved, by the Senate and Assembly, That the witnesses who have attended before the Senate Committee, in the case of A. W. Adams, shall receive Five Dollars for each day's attendance on said Committee, and Fifty Cents for each mile travelled in coming from and returning to their places of residence; and the Comptroller of the State is authorized to audit such claims, and draw his warrant for the amount on the Treasurer of State, payable out of the general fund.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 25, 1851.

JOHN McDUGAL.

Joint Resolution authorizing the Comptroller to issue his Warrant to the Serjeants-at-Arms of the Senate and Assembly.

Resolved, by the Senate and Assembly of the State of California, That the Comptroller of State be and he is hereby authorized and directed to issue his warrant to the Sergeant-at-Arms of the Assembly for the amount due him for services rendered in procuring the attendance of witnesses before the Committee appointed to investigate charges of bribery and corruption, &c., at the rates fixed by the standing rules of the Assembly; also to the Sergeant-at-Arms of the Senate, for services rendered by him in procuring the attendance of witnesses before the Committee appointed by the Senate to investigate charges against Hon. A. W. Adams, at the rate fixed by the standing rules of the Senate.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 25, 1851.

JOHN McDUGAL.

Joint Resolution for the relief of Sacramento City.

Whereas, the city of Sacramento has incurred a heavy amount of debt in providing for the sick and the burial of the dead, who never were residents or in any manner identified with said city: *and whereas*, most of the persons so provided for were emigrants from other states of the Union, who arrived impaired in health, and many of them in a total state of destitution: *and whereas*, the people of said city are at this time burdened with taxation to pay the interest of the debt thus incurred, and which in justice ought to be speedily liquidated by the General Government, therefore:

Resolved, by the Senate and Assembly of the State of California, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to secure the passage of a Bill, apportioning a sum sufficient to pay the debt incurred by the City of Sacramento, before the first day of December, one thousand eight hundred and fifty, in providing for the sick and the burial of the dead, who never were residents of said city.

Resolved, That the Governor be and he is hereby required to transmit to each of our Senators and Representatives in Congress, a copy of the foregoing preamble and resolution; and he is also further authorized to transmit, accompanying the above, a statement of the expenditures made for the objects above stated, properly authenticated by the Mayor of said city of Sacramento.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved April 28, 1851.

JOHN McDUGAL.

Concurrent Resolution Granting Leave of Absence to Hon. Henry A. Tefft, Judge of the Second Judicial District.

Resolved, by the Senate and Assembly of the State of California, That the Hon. Henry A. Tefft, Judge of the Second Judicial District, have leave of absence from the State for the space of four months, from and after the first day of June next.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved April 29, 1851.

JOHN McDUGAL.

Joint Resolution as to an Additional Ferry across the Sacramento River.

Resolved, by the Senate and Assembly of the State of California, That the Court of Sessions of the County of Sacramento be, and they are hereby, authorized and required at the first regular term of said Court, for the determination of all matters connected with County business, held after the passage of this Joint Resolution, upon application for that purpose being made according to law, to examine whether an additional Ferry across the Sacramento River, opposite the City of Sacramento, is necessary for the accommodation of the public; and if it shall be made appear then that such additional Ferry is necessary, they shall grant a license to establish and keep such Ferry, in accordance with the provisions of the existing Laws regulating Ferries.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved April 30, 1851.

JOHN McDUGAL.

Joint Resolution Authorizing the Paymaster of the Gila Expedition to Pay Claims of Crenshaw and Blackburn.

Resolved, by the Senate and Assembly of the State of California, That the Paymaster appointed to disburse the fund appropriated to defray the expenses of the Gila Expedition, is hereby authorized to pay the Claim of Miles R. Crenshaw for the sum of eleven hundred and seventy-six dollars, and that the said Claim be placed on file in the office of the Adjutant General; also, the Claim of S. D. Blackburn, for services rendered in said Expedition, amounting to one hundred and fifty dollars.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL.

Joint Resolution for the Benefit of Citizens of Los Angeles County.

Resolved, by the Senate and Assembly of the State of California, That the Comptroller of the State be authorized, and he is hereby required, to issue State Warrants to be paid out of the War Loan Fund to the following persons, to wit: One for the sum of thirty dollars to Mariana Lopez, and for the sum of forty-five dollars and thirty cents to Manuel Romera, one to Dr. William Jones for the sum of five hundred and three dollars, and for the sum of forty-seven dollars to F. G. Baxter, and one for the sum of two hundred and fifty-nine dollars and sixty-three cents to the Treasurer of Los Angeles County; and the Adjutant General is directed to make a record among the papers now on file in his office, in relation to the Gila Expedition, of the payment of all demands now existing in favor of the above-named parties for services in said Expedition.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL.

Joint Resolution Instructing the Superintendent of Public Buildings to Sell Certain Property.

Resolved, by the Senate and Assembly of the State of California, That the Superintendent of Public Buildings and Public Property is authorized and directed to Sell at public Auction, or otherwise, any part of the public Furniture and Fixtures connected with the present Legislative building that are in a dilapidated and ruinous condition and unfit for transportation to the Capitol at Vallejo, and to appropriate the proceeds of such sale to the defrayment of the expenses incurred in the discharge of his duties as defined by law; and the Comptroller of State is directed to issue his Warrant upon the Treasurer of State in favor of said Superintendent, on his certified account of actual expenses incurred in moving the public property and securing the same as required by law. The Comptroller shall keep an account of the Warrants so issued, and report to the next Legislature: *Provided*, that all expenses

incurred under the provisions of this Act shall not exceed one thousand five hundred dollars.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL,

Joint Resolution for the erection of Part of the State Prison at Vallejo.

Resolved, by the Senate and Assembly of the State of California, That the Board of Commissioners of the State Buildings are authorized to receive sealed proposals for the erection of a portion of the State Prison Buildings, on the ground selected by the Commissioners of the State for that purpose; said building to conform to a plan to be adopted by said Board, and form part of the same; to be made of stone or brick, and in a very substantial manner: *Provided*, that a sum not exceeding that donated by M. G. Vallejo, for that purpose, be expended, and the contractors to accept for payment the obligation of said Vallejo, without any discount whatever.

JOHN BIGLER,
Speaker of the Assembly.

DAVID C. BRODERICK,
President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL.

Joint Resolution relative to the "Civil Fund" of California.

Resolved, by the Senate and Assembly, That we view with feelings of surprise and regret the action of Congress in refusing to refund to the State of California moneys collected in her ports, and from the honest industry of her citizens, previous to her admission into the Federal Union.

Resolved, That we consider the Fund heretofore known as the "Civil Fund of California" to be the property of this State, and that any other appro-

priation of it by the General Government we hold to be unjust and ungenerous. Taxation without representation is a principle always repudiated by American people.

Resolved, That our Senators and Representatives be requested to continue all honorable exertions to procure from Congress the recognition of our right to the moneys taken from us by the General Government, and an appropriation to that effect; and that we call upon our sister States to see that this act of justice is performed towards the youngest of the Republic.

Resolved, That the Governor be requested to present to our Senators and Representatives each a copy of the foregoing Resolutions.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL.

Joint Resolution for the Relief of J. D. Hoppe, Postmaster.

Resolved, by the Senate and Assembly of the State of California, That the Comptroller of State be and he is hereby authorized to draw Warrants on the Treasurer, to be paid out of the General Fund, for the sum of three thousand and eight dollars, in favor of Jacob D. Hoppe, Postmaster, at San José, being for postage to first of May inclusive.

JOHN BIGLER,

Speaker of the Assembly.

DAVID C. BRODERICK,

President of the Senate.

Approved May 1, 1851.

JOHN McDUGAL.