

THE
ACTS AMENDATORY
OF THE
CODES OF CALIFORNIA
PASSED AT THE
TWENTY-THIRD SESSION OF THE LEGISLATURE,
1880.

BEGAN ON MONDAY, JANUARY FIFTH, AND ENDED ON FRIDAY, APRIL
SIXTEENTH, ONE THOUSAND EIGHT HUNDRED AND EIGHTY.



SACRAMENTO:
STATE OFFICE : : : J. D. YOUNG, SUPT. STATE PRINTING.
1880.



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47	An Act to amend Sections 682, 784, 787, 788, 789, 790, 792, 800, 801, 802, 806, 888, 949, 950, 951, 953, 954, 955, 957, 958, 959, 960, 961, 964, 965, 966, 967, 968, 970, 971, 972, 976, 977, 981, 982, 985, 988, 989, 990, 996, 997, 998, 999, 1004, 1005, 1008, 1009, 1012, 1018, 1019, 1021, 1022, 1024, 1033, 1043, 1047, 1048, 1052, 1065, 1074, 1093, 1095, 1098, 1099, 1100, 1103, 1104, 1113, 1114, 1115, 1117, 1121, 1125, 1126, 1131, 1141, 1148, 1150, 1158, 1159, 1160, 1165, 1170, 1185, 1187, 1188, 1200, 1207, 1238, 1284, 1285, 1289, 1310, 1326, 1335, 1346, 1349, 1354, 1358, 1368, 1370, 1373, 1382, 1383, 1395, 1396, 1401, 1429, and to repeal Sections 969 and 1025 of the Penal Code, and to add a new section thereto, to be known as Section 809, to provide for prosecutions by information, and to adapt the provisions of said Code thereto—approved April 9th, 1880-----	S. B. 39-----	10
48	An Act to amend sections eight hundred and twenty-five and eight hundred and sixty-nine of the Penal Code, relating to proceedings in criminal actions prosecuted by indictment—approved April 9th, 1880-----	A. B. 210-----	30
49	An Act to amend section fifteen hundred and eighty-six of the Penal Code, relating to transportation of convicts to State Prisons—approved April 9th, 1880-----	S. B. 226-----	31
50	An Act to amend Sections 712, 728, 732, 760, 771, 772, 818, 820, 850, 890, 935, 1197, 1330, 1466, 1468, 1469, 1515, 1516, and 1556 of the Penal Code, providing for certain proceedings before the Superior Courts, or the Judges thereof—approved April 12th, 1880-----	S. B. 32-----	31
58	An Act to add a new section to the Penal Code, to be known as section three hundred and nine, to prevent the admission of minors to houses of prostitution—approved April 12th, 1880-----	S. B. 264-----	35
59	An Act to amend section six hundred and seven of the Penal Code, relating to malicious mischief—approved April 12th, 1880-----	S. B. 366-----	36
60	An Act to amend eight hundred and seventy-two and eight hundred and seventy-five, and to repeal section eight hundred and seventy-four of the Penal Code, relating to commitments of persons charged with crime—approved April 15th, 1880-----	S. B. 34-----	37

Chap.	TITLE OF ACT.	No. of bill and where introduced.	Page.
65	An Act to amend the Penal Code, by adding a section thereto, to be known as section five hundred and thirty-six, relative to cheats—approved April 15th, 1880-----	A. B. 142-----	37
66	An Act to amend section six hundred and nineteen of the Penal Code, relative to disclosing the contents of a telegraphic message—approved April 15th, 1880-----	A. B. 185-----	38
72	An Act to amend section three hundred and one of the Penal Code, in relation to keeping open places of business on Sunday—approved April 15th, 1880-----	A. B. 134-----	38
88	An Act to amend section four hundred and twenty-four of the Penal Code, relating to embezzlements and falsifications of accounts by public officers—approved April 16th, 1880-----	S. B. 89-----	39
94	An Act to add a new section to the Penal Code, to be known as section three hundred and eighteen, relating to crimes against good morals, and to punish decoys—approved April 16th, 1880-----	S. B. 351-----	40
95	An Act to amend section three hundred and thirty-two of the Penal Code, in relation to swindling by cards or other means—approved April 16th, 1880-----	S. B. 307-----	40
104	An Act to add two new sections to the Penal Code, to be numbered four hundred and four hundred and one, relative to the keeping or sale of animals afflicted with glanders, or other contagious or infectious diseases—approved April 16th, 1880-----	S. B. 253-----	41
107	An Act to amend sections six hundred and twenty-six (626) and six hundred and thirty-one (631) of the Penal Code, relating to violations of the laws for the preservation of fish and game—approved April 16th, 1880-----	S. B. 242-----	41
108	An Act to amend sections one hundred and five and one hundred and six of the Penal Code, relating to escapes and attempts to escape from State Prison—approved April 16th, 1880-----	S. B. 232-----	42
109	An Act to amend the Penal Code by adding a new section thereto, to be known as section nine hundred and twenty-eight, relating to the duties of the grand jury—approved April 16th, 1880-----	S. B. 182-----	43
118	An Act to amend section nine hundred and ninety-five, one thousand and sixteen, one thousand and seventeen, one thousand and twenty, one thousand and twenty-three, and one thousand and forty-one of the Penal Code, relative to pleadings and proceedings after indictment and before the commencement of the trial—approved April 26th, 1880-----	A. B. 211-----	43

POLITICAL CODE.



ACTS AMENDATORY
OF
THE POLITICAL CODE

PASSED AT
THE TWENTY-THIRD SESSION OF THE LEGISLATURE.

CHAPTER II.

An Act to repeal Chapter Four of Title One, Part Two, of the Political Code, and all laws creating judicial districts in this State, defining the boundaries thereof, and fixing the terms of Court therein.

[Approved February 13th, 1880.]

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

SECTION 1. Chapter Four of Title One, Part Two, of the Political Code, and all other laws and parts of laws creating judicial districts in this State, defining the boundaries thereof, or providing terms of Courts therein, are hereby repealed.

Repealing
chapter four,
title one,
part two,
Political
Code.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER VIII.

An Act to repeal section forty-three hundred and twenty-nine of the Political Code, regulating the salaries of County Judges.

[Approved February 25th, 1880.]

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

SECTION 1. Section forty-three hundred and twenty-nine of the Political Code is hereby repealed.

Repealing.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER IX.

An Act to repeal sections four hundred and ninety-nine and six hundred and eighty-four of the Political Code, relating to the salaries and compensation of public officers.

[Approved February 25th, 1880.]

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

Repealing. SECTION 1. Sections four hundred and ninety-nine and six hundred and eighty-four of the Political Code are hereby repealed.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER X.

An Act to amend sections thirty-nine hundred and seventy-seven, thirty-nine hundred and seventy-nine, thirty-nine hundred and eighty-one, thirty-nine hundred and eighty-four, and to repeal section thirty-nine hundred and seventy-eight of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to the removal of county seats.

[Approved March 2d, 1880.]

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

SECTION 1. Section three thousand nine hundred and seventy-seven of said Code is hereby amended so as to read as follows:

Supervisors
to order
election.

3977. If the petition is signed by qualified electors of the county, equal in number to at least three-fifths of all the votes cast in the county at the last preceding general election, the Board must, at the next general election of county officers, submit the question of removal to the electors of the county.

SEC. 2. Section three thousand nine hundred and seventy-nine of said Code is hereby amended so as to read as follows:

Election,
how held and
conducted.

3979. Notice of such election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made in all respects in the manner prescribed by law in regard to elections for county officers.

SEC. 3. Section three thousand nine hundred and eighty-one of said Code is hereby amended so as to read as follows:

Notice of
result.

3981. When the returns have been received and compared, and the results ascertained by the Board, if two-thirds of all the legal votes cast by those voting on the proposition are in favor of any particular place, the Board must

give notice of the result by posting notices thereof in all the election precincts in the county.

SEC. 4. Section three thousand nine hundred and eighty-four of said Code is hereby amended so as to read as follows:

3984. When the election has been held and two-thirds of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter. No second election to be held within four years.

SEC. 5. Section thirty-nine hundred and seventy-eight of said Act is hereby repealed. Repealed.

SEC. 6. This Act shall take effect immediately.

CHAPTER XII.

An Act to amend sections three hundred and ten and three hundred and eleven of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to the enactment of statutes.

[Approved March 2d, 1880.]

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

SECTION 1. Section three hundred and ten of said Code is hereby amended so as to read as follows:

310. When the Governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the Secretary of State. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor. Approval of bills.

SEC. 2. Section three hundred and eleven of said Code is hereby amended so as to read as follows:

311. When a bill has passed both Houses of the Legislature and is returned by the Governor without his signature, and with objections thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration, such bill, or item, or items, pass both Houses by the constitutional majority, the bill, or item, or items must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed on or attached to the copy of the statement of objections, in the following form: "This bill having been Bills returned without approval.

returned by the Governor with his objections thereto, and, after reconsideration, having passed both Houses by the constitutional majority, has become a law this — day of —, A. D. —;” or, “The following items in the within statement (naming them) having, after reconsideration, passed both Houses by the constitutional majority, have become a law this — day of —, A. D. —,” which indorsement, signed by the President of the Senate and the Speaker of the Assembly, is a sufficient authentication thereof. Such bill or statement must then be delivered to the Governor, and by him must be deposited with the laws in the office of the Secretary of State.

SEC. 3. This Act shall take effect immediately.

CHAPTER XXIX.

An Act to amend section two thousand eight hundred and fourteen of the Political Code, concerning public ways.

[Approved March 12th, 1880.]

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

SECTION 1. Section two thousand eight hundred and fourteen of the Political Code, concerning public ways, is amended so as to read as follows:

2814. The following persons and none other are exempt from payment of toll on wagon, turnpike, or plank roads:

Persons
exempt from
tolls.

First—Persons going to or from any funeral and all funeral processions.

Second—Troops in actual service of the State or of the United States, and persons going to or from a military training which by law they are required to attend.

Third—Persons going to or from the Court-house in obedience to a subpoena in a criminal action.

Fourth—Persons living within one mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of other or the property of others.

Fifth—Farmers living on their farms within one mile of any gate by the most usually traveled road, may pass free when going to or from their work on such farms.

Sixth—School children attending school within three miles of their parents' or boarding-house.

Seventh—The Road Overseer of the road district through which road passes, or the Commissioners of Highways for the purpose of inspecting the condition of the road.

CHAPTER XXX.

An Act to amend section seven hundred and fifty-one of the Political Code, relative to Deputy Clerks of the Supreme Court, and to make an appropriation for their salaries.

[Approved March 15th, 1880.]

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

SECTION 1. Section seven hundred and fifty-one of the Political Code is hereby amended so as to read as follows:

751. He may appoint four deputies, one to reside at San Francisco, one at Los Angeles, one at the State Capital, and one Court-room Deputy, to accompany the Court at the direction of the Clerk. Deputy Clerks, Supreme Court.

SEC. 2. The sum of six hundred sixty-six and sixty-seven one hundredths dollars is hereby appropriated out of any money in the State treasury not otherwise appropriated, for the purpose of paying the salary of the Court-room Deputy in the foregoing section provided for, during the period of five months next succeeding his appointment. Appropriation.

SEC. 3. This Act shall take effect immediately.

CHAPTER XXXI.

An Act to amend Sections 3607, 3617, 3627, 3628, 3629, 3630, 3634, 3640, 3643, 3650, 3651, 3652, 3663, 3673, 3678, 3679, 3717, 3730, 3752, 3756, 3839, 3861, and to repeal Sections 3680 and 3887 of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to revenue, and to add two new sections numbered 3664 and 3665.

[Approved March 22d, 1880.]

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

SECTION 1. Section thirty-six hundred and seven of the Political Code is hereby amended so as to read as follows:

3607. All property in this State, not exempt under the laws of the United States, excepting growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, is subject to taxation. Property subject to taxation.

SEC. 2. Section thirty-six hundred and seventeen of said Code is hereby amended so as to read as follows:

3617. Whenever the terms mentioned in this section are employed in this Act, they are employed in the sense hereafter affixed to them. Definition of terms.

First—The term "property" includes moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second—The term “real estate” includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries, in and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, when land is pledged for the payment and discharge thereof, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the land so pledged.

4. Improvements.

Third—The term “improvements” includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land.

2. All fruit, nut-bearing, or ornamental trees and vines, not of natural growth.

Fourth—The term “personal property” includes everything which is the subject of ownership not included within the meaning of the term “real estate.”

Fifth—The terms “value” and “full cash value” mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term “growing crops” includes only those crops which require an annual planting or sowing, or an annual harvesting.

Seventh—The term “credits” means those solvent debts not secured by mortgage or trust deed, owing to the person, firm, corporation, or association assessed. The term “debts” means those unsecured liabilities owing by the person, firm, corporation, or association assessed to bona fide residents of this State, or firms, associations, or corporations doing business therein.

SEC. 3. Section thirty six hundred and twenty-seven of said Code is hereby amended so as to read as follows:

Property
assessed at
full cash
value.

3627. All taxable property must be assessed at its full cash value. The proportionate value of the capital stock of corporations, associations, and joint stock companies having their principal place of business in this State, for the purposes of assessment and taxation, shall be its market value, deducting therefrom the value of all property assessed to them in this State, or elsewhere, of which such capital stock is the representative. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land of the same quality, and similarly situated, shall be assessed at the same value. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad, and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the

owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year; and every contract by which a debtor is obligated to pay any tax, or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 4. Section thirty-six hundred and twenty-eight of said Code is hereby amended so as to read as follows:

3628. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, shall be assessed by the State Board of Equalization as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels or subdivisions not exceeding six hundred and forty acres each, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States Government, shall be assessed by sections or fractions of sections. The Assessor must, between the first Mondays of March and July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the State Board of Equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this State.

Assessments,
how and by
whom made.

Assessment,
to be made
when.

SEC. 5. Section thirty-six hundred and twenty-nine of said Code is hereby amended so as to read as follows:

3629. He must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock M. on the first Monday in March. Such statement shall be in writing, showing separately:

Assessor to
require a
statement
containing,
what.

Assessors to
require a
statement
containing,
what.

1. All property belonging to, claimed by, or in the possession or under the control or management of such person;

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;

3. The capital stock and all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is President, Secretary, Cashier, or Managing Agent;

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made), also the city, town, township, school district, road district, or other revenue districts in which it is situated;

5. An exact description of all lands in parcels or subdivisions not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States Government, improvements and personal property, including all vessels, steamers, and other watercraft, and all taxable State, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and the certificates of shares of the capital stock of any corporation, association, or joint stock company not having its principal place of business in this State, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found, all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is President, Secretary, Cashier, or Managing Agent, deducting from the sum total of such credits such debts only, unsecured by trust deed, mortgage, or other lien on real or personal property, as may be owing by such person, firm, or corporation, to bona fide residents of this State. No debt shall be so deducted unless the statement shows the amount of such debt as stated, under oath, in aggregate; *provided*, in case of banks, the statement is not required to show the debt in detail, or to whom it is owing; but the Assessor shall have the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him, but his statement must show the name of the person or officer who made the statement in which such property is included.

SEC. 6. Section three thousand six hundred and thirty of said Code is hereby amended so as to read as follows:

3630. The Board of Supervisors must furnish the Assessor

with "blank forms" of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ———, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am President, Cashier, Secretary, or Managing Agent, owned, claimed, possessed, or controlled at twelve o'clock M. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county, or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are owing to bona fide residents of this State, or to firms or corporations doing business in this State." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform, substantially, to the preceding form.

Supervisors
to furnish
blank forms
of statement,
etc.

Sec. 7. Section thirty-six hundred and thirty-four of said Code is hereby amended so as to read as follows:

3634. When the Assessor has not received from the owner of a tract of land the statement required by section three thousand six hundred and twenty-nine, or when such statement does not sufficiently describe a tract of land to enable the Assessor to assess the same as required by law, and the owner or his agent, or in case they cannot be found or are unknown, the person in possession thereof, neglects for ten days after demand by the Assessor to furnish said Assessor with such description, the Assessor shall cite such owner, or agent, or person in possession, to appear before the Superior Court of the county wherein such land is situated, within five days after service of such citation, and the said Superior Court shall, upon the day named in such citation, to the exclusion of all other business, proceed to hear the return and answer of the said owner, or agent, or person in possession, to the said citation; and if the Court shall find that the land has not been surveyed or divided into subdivisions of six hundred and forty acres, or less, so that each part or parcel may be described by metes and bounds, then the Court shall, by order duly entered in open Court, direct the County Surveyor to make a survey, and define the boundaries and location of said land by parcels or subdivisions not exceeding six hundred and forty acres each, and deliver the same to the County Assessor. The expense of making such survey and description by the County Surveyor shall be a lien upon the land, and shall, when approved by the said Superior Court, be certified by said Court to the Tax Collector of the county where the land is situated, and be added to the taxes upon said land, and be collected as other taxes are collected.

Assessor,
how to
obtain
description
of property.

Superior
Court,
duties of.

Expense of
survey a lien
upon the
land.

SEC. 8. Section thirty-six hundred and forty of said Code is hereby amended so as to read as follows:

3640. Each person, firm, or corporation owning or having

Holders of
stock in
firms or cor-
porations.

in his or its possession any of the shares of the capital stock of any corporation, association, or joint stock company, shall be assessed therefor. If the corporation, association, or joint stock company has its principal place of business in this State, the assessable value of each share of its stock shall be ascertained by taking from the market value of its entire capital stock the value of all property assessed to it, and dividing the remainder by the entire number of shares into which its capital stock is divided. The owner or holder of capital stock in corporations, associations, and joint stock companies whose principal place of business is not within the State, must be individually assessed for such stock. Shareholders, in the statement required by section three thousand six hundred and twenty-nine of this Code, shall specify the number of shares of stock held by them, and the name of the corporation. The owner of shares of stock, to be entitled to the deduction provided for in this section, must produce to the Assessor a certificate of the assessment of the property of the corporation, association, or joint stock company.

SEC. 9. Section thirty-six hundred and forty-three of said Code is hereby amended so as to read as follows:

Ferries,
where tax
collected.

3643. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed and the taxes paid in the county where located. The value of the franchise and watercraft, and of toll bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll bridges.

SEC. 10. Section three thousand six hundred and fifty of said Code is hereby amended so as to read as follows:

Property,
how listed.

3650. The Assessor must prepare an assessment book, with appropriate headings, alphabetically arranged, unless otherwise directed by the State Board of Equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres (not exceeding in each and every tract, six hundred and forty acres), locality, and the improvements thereon. When any tract of land is situate in two or more school, road, or other revenue districts of the county, the part in each township or district must be separately assessed, together with the improvements thereon.

3. City and town lots unimproved and similarly situated shall be assessed at the same value, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property—showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate other than city or town lots. Property,
how listed.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. The assessment of the franchise, roadway, roadbed, rails, and rolling stock of any railroad, as apportioned to his county by the State Board of Equalization; and, also, such other apportionments of such franchises, roadways, roadbeds, rails, and rolling stock as may be made by such Board, and furnished to him for the purpose of taxation in any district in his county. Taxable improvements, owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value shall, however, be assessed against the exempt land; nor, under any circumstances, shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, or any other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. When any property except that owned by a railroad or other quasi public corporation, is subject to or affected by a mortgage, deed of trust, contract, or other obligation by which a debt is secured, he must enter, in the proper column, the value of such security, and deduct the same. In entering assessments containing solvent credits subject to deductions, as provided in section three thousand six hundred and twenty-eight of this Code, he must enter in the proper column, the value of the debts entitled to exemption, and deduct the same. In making the deductions from the total value of property assessed, as above directed, he must enter the remainder in the column provided for the total value of all property for taxation. Where the capital stock of any corporation, association, or joint stock company is assessed, as provided in section three thousand six hundred and forty of this Code, the value of all property for deduction must be entered in the proper column, and he must deduct the same from the market value of said capital stock, and place the remainder in the column provided for the total value of all property for taxation. Each franchise must be entered on the assessment roll without combining the same with other property, or the valuation thereof.

16. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

17. Such other things as the State Board of Equalization may require.

The State Board of Equalization may direct the book to

be otherwise than alphabetically arranged in any county, or city and county, of this State.

SEC. 11. Section three thousand six hundred and fifty-one of said Code is hereby amended so as to read as follows:

Form of
assessment
book.

3651. The form of the assessment book shall be as directed by the State Board of Equalization, and in those counties, or cities and counties, for which said Board does not prescribe a different form, it must be substantially as follows:

Assessment Book of the Property of _____ County, for the year 18—, assessed to the owner when known, and if not known, to unknown owners.

Remarks.....			
Poll tax.....			
Total tax			¢
Total value of all property after equalizations by the State Board of Equalization.....			¢
Total value of all property for taxation			¢
Deductions to corporations or individual stockholders..			¢
Deductions on account of debts due bona fide residents..			¢
Deductions on account of mortgages, deeds of trust, etc.			¢
Total value of all property.....			¢
Amount of money.....			¢
Value of personal property.....			¢
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon			¢
Value of city and town lots.....			¢
Value of improvements thereon.....			¢
Value of real estate other than city and town lots....			¢
School, road, or other district in which located.....			
Number of acres.....			
DESCRIPTION OF PROPERTY.	City or town lots.	Block.....	
		Lot.....	
		Fraction	
	Real estate other than city and town lots.	Range, E. or W.....	
		Township, N. or S.....	
		Section	
		Subdivision of section.....	
Residence			
Taxpayers' names.....			
When tax paid			

Personal property. (Here items may be enumerated in the space to column for number of acres.)

SEC. 12. Section thirty-six hundred and fifty-two of said Code is hereby amended so as to read as follows:

3652. On or before the first Monday of July, in each year, the Assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, —, Assessor of (or Deputy Assessor, as the case may be) — county, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and —, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof, assessed by me, as the case may be), subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the Assessor under the revenue laws; and that I have not imposed any unjust assessment through malice or ill-will, nor allowed any one to escape a just and equal assessment through favor or reward." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment.

Assessment book, when completed.

SEC. 13. Section three thousand six hundred and sixty-three of said Code is hereby amended so as to read as follows:

3663. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll-roads, or telegraph lines, with their franchises and all improvements attached to such properties, must be listed by the Assessor as real estate, and as a whole, without separating the land and franchise and improvements, either in the description or valuation of the same.

What must be listed as real estate.

SEC. 14. There is hereby added to the Political Code a new section, to be known as section three thousand six hundred and sixty-four, to read as follows:

3664. On or before the first Monday in May, in each year, the State Board of Equalization shall assess the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county. The President, Secretary, Cashier, or Managing Agent, or such other officer as the State Board of Equalization may designate, of any corporation operating any railway in more than one county in this State, shall furnish said Board, on or before the first Monday of April, in each year, a statement, signed and sworn to by one of such officers, showing in detail, for the year ending on the first Monday in March in such year:

State Board of Equalization to assess railroads, etc.

(a) The whole number of miles owned, operated, or leased in the State by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind located in the State.

(b) Also a detailed statement of the number and value thereof, of engines, passenger, mail, express, baggage, freight, and other cars or property used in operating or repairing such railway in this State; and on railways which are part of lines extending beyond the limits of this State, the return

shall show the actual amount of rolling stock in use on the corporation's line in the State during the year for which the return is made. The return shall show the amount of rolling stock, the annual gross earnings of the entire railway, and the proportionate annual gross earnings of the same in this State, as nearly as practicable, and all property designated hereafter in this section, and such other facts as the State Board of Equalization may, in writing, require.

If such officers fail to make such statement, said Board of Equalization shall proceed to assess the property of the corporations so failing; the valuation fixed by them shall be final and conclusive. The said property shall be assessed at its actual cash value. The assessment shall be made upon the entire railway within the State, and shall include the right of way, roadbed, track, bridges, culverts, and rolling stock. The depots, station grounds, shops, buildings, and gravel beds, shall be assessed by the Assessor of the county where situated, as other property. On or before the fifteenth day of May, in each year, said Board shall transmit to the County Assessor of each county through which any railway, operated in more than one county, may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole property named in this section. Said statement shall be entered on the assessment roll of the county. At the first meeting of the Board of Supervisors after such statement is received by the County Assessor, they shall make, and cause to be entered in the proper record book, an order stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, school district, or lesser taxing district, in their county, through which such railway runs, as fixed by the State Board of Equalization, which shall constitute the taxable value of said property for taxable purposes in such city, town, township, school, road, or other district; and the Clerk of the Board of Supervisors shall transmit a copy of each order or equalization to the City Council, or Trustees of incorporated cities or towns, the Trustees of each school district, and the authorized authorities of other taxing districts through which such railway runs. The taxes on said property for State and county purposes, after collection by the County Collector, shall be paid over to the County Treasurer, as other taxes. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such counties, cities, towns, townships, school districts, and lesser taxing districts.

SEC. 15. There shall be a new section of said Code, to be known as section thirty-six hundred and sixty-five, to read as follows:

3665. The assessment made by the County Assessor shall be the only basis of taxation for the county or any subdivision thereof (except in incorporated cities and towns; and may also be taken as such basis in incorporated cities and

Assessment
of Assessors
to be basis of
taxation.

towns, when the proper authorities may so elect). All taxes upon townships, road, school, or other local districts, shall be collected in the same manner as county taxes.

SEC. 16. Section thirty-six hundred and seventy-three of said Code is hereby amended so as to read as follows:

3673. The Board has power, after giving notice in such manner as it may, by rule, prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money.

Supervisors
to equalize
assessments.

SEC. 17. Section thirty-six hundred and seventy-eight of said Code is hereby amended so as to read as follows:

3678. To assist the Assessor in the performance of his duties, the Recorder must annually transmit to the Assessor, on or before the first Monday in April, a complete abstract of all mortgages, deeds of trust, contracts, and other obligations by which any debt is secured, remaining unsatisfied on the records of his office, not barred by the statute of limitation, at twelve o'clock meridian, on the first Monday in March of said year. Such abstract shall be written under appropriate headings to embrace all information requisite for the Assessor, in a book or books to be furnished by the Board of Supervisors upon the requisition of the Assessor. Should any such list be found to contain any instrument relating to lands situated in more than one county, it shall be the duty of the Assessor to transmit to the State Board of Equalization all information relating thereto; and it shall be the duty of the said Board to attach an apportionment of valuation of such instrument to be assessed in each county, and the Board shall transmit to the Assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in each county. The valuation so set by said Board shall be final, and the Assessor shall accept said valuation and charge said assessment upon said instrument accordingly. Should the said list contain any instrument mortgaging or pledging two or more subdivisions of land, or land assessed in two or more subdivisions, in the same county, township, district, or city, the Assessor shall apportion the amount of assessment to be deducted from each subdivision on account of assessment against said instrument. Any assessment on a mortgage or deed of trust, which has been erroneously taxed to the mortgagee or party loaning the money, when the same has been paid or satisfied prior to the first Monday in March, shall be valid only as against the real estate from the assessment on which a deduction had been previously made. When partial payments have been made on a debt, secured by mortgage or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March. When necessary, the Board of Supervisors of each county must provide for the payment of such additional clerical force as may be required to enable the County Recorder to comply with this section.

County
Recorder
to assist
Assessor.

Abstract,
how written.

Valuation of
Board final.

Additional
clerical force
to be al-
lowed.

SEC. 18. Section three thousand six hundred and seventy-nine of said Code is hereby amended so as to read as follows:

Supervisors
to use rec-
ords in
equalizing
assessments.

3679. The Board must use the abstract and all other information it may gain from the records of the County Recorder or elsewhere, in equalizing the assessment of the property of the county, and may require the Assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the Assessor before the delivery of the assessment book to the Clerk of the Board.

SEC. 19. Section three thousand seven hundred and fourteen of said Code is hereby amended so as to read as follows:

Supervisors
to fix county
taxes.

3714. The Board of Supervisors of each county must, on the first Monday of October, fix the rate of county taxes, designating the number of cents on each hundred dollars of property levied for each fund, and must levy the State and county taxes upon the taxable property of the county; *provided*, that it shall not be lawful for any Board of Supervisors of any county in the State to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied or collected in any one year to pay the bonded indebtedness or judgment arising therefrom of this State, or of any county or municipality in this State.

SEC. 20. Section thirty-seven hundred and seventeen of said Code is hereby amended so as to read as follows:

Tax on
personal
property a
lien on real.

3717. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock M. of the first Monday in March in each year.

SEC. 21. Section thirty-seven hundred and thirty of said Code is hereby amended so as to read as follows:

Auditor to
follow direc-
tions of
State Board
of Equaliza-
tion.

3730. As soon as the Auditor receives from the State Board of Equalization a statement of the changes made by the Board in the assessment roll of the county, or in any assessment contained therein, he must make the corresponding changes in the assessment roll, by entering the same in a column provided with a proper heading in the assessment book, counting any fractional sum, when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fraction of a dollar; but he shall, in all cases, disregard any action of the Board of Supervisors which is prohibited by section three thousand six hundred and thirty-three of this Code.

SEC. 22. Section thirty-seven hundred and fifty-two of said Code is hereby amended so as to read as follows:

Taxes of
decedents,
how paid.

3752. The Superior Court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

SEC. 23. Section three thousand seven hundred and fifty-six of said Code is hereby amended so as to read as follows:

Taxes, when
delinquent.

3756. On the last Monday in December of each year, at

six o'clock p. m., all unpaid taxes are delinquent, and thereafter the Tax Collector must collect for the use of the county an addition of five per cent.

SEC. 24. Section thirty-eight hundred and thirty-nine of said Code is hereby amended so as to read as follows:

3839. Every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, insane persons, and Indians not taxed, must annually pay a poll tax of two dollars; *provided*, the same be paid between the first Monday in March and the first Monday in July; but if not paid prior to the first Monday in July, then it shall be three dollars; *provided further*, that nothing herein shall affect any laws imposing a greater poll tax upon inhabitants ineligible to citizenship. Poll tax, who liable.

SEC. 25. Section three thousand eight hundred and sixty-one of said Code is hereby amended so as to read as follows:

3861. The proceeds of the poll-tax must be paid to the County Treasurer, as provided by law, for the exclusive use of the State School Fund, and shall, by such Treasurer, be paid to the State as other moneys belonging to the State. Proceeds of poll tax, to what fund paid.

SEC. 26. Sections thirty-six hundred and eighty and thirty-eight hundred and eighty-seven of said Code are hereby repealed. Repealed.

SEC. 27. This Act takes effect immediately.

CHAPTER XXXVI.

An Act to add a new section to the Political Code, to be known as section one thousand six hundred and eighteen, relating to salaries of school teachers in cities having one hundred thousand inhabitants or more.

[Approved April 2d, 1880.]

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

SECTION 1. A new section is hereby added to said Political Code, to be known as and numbered sixteen hundred and eighteen, and to read as follows:

1618. *First*—In all consolidated cities and counties containing more than one hundred thousand inhabitants, the following salaries shall be paid to teachers in the schools: To principals of grammar schools, two thousand four hundred dollars per annum; to vice-principals of grammar schools, one thousand six hundred dollars per annum; to assistants of grammar schools, first and second grades, of ten years' experience, one thousand and eighty dollars per annum; to assistants of grammar schools, first and second grades, of five years' experience, nine hundred and sixty dollars per annum; to assistants of grammar schools, third and fourth

Salaries of school teachers.

grades, of ten years' experience, nine hundred and ninety-six dollars per annum; of five years' experience, nine hundred and forty-eight dollars; to principals of primary schools, eight or more, one thousand eight hundred dollars per annum; five classes and less than eight, one thousand five hundred dollars per annum; four classes and less, one thousand two hundred dollars per annum; to assistants of primary schools, ten years' experience, nine hundred and sixty dollars per annum; five years' experience, nine hundred dollars per annum; assistants of grammar and primary schools, fourth year, eight hundred and forty dollars per annum; third year, seven hundred and eighty dollars per annum; second year, seven hundred and twenty dollars per annum; first year, six hundred dollars per annum.

Second—When the Board of Education make their annual estimate of the amount of money required for purposes of salaries for teachers, they shall estimate the said amount upon the basis fixed by this section; and when the Board of Supervisors make their annual levy of the taxes required for purposes of salaries for teachers, they shall levy said amount also upon the basis fixed by this section, and the money so appropriated for teachers' salaries shall not be used for other purposes.

SEC. 2. This Act shall take effect immediately.

CHAPTER XXXVIII.

An Act to amend Sections 474, 601, 799, 909, 950, 1015, 1108, 1109, 1284, 1310, 2240, 2392, 2393, 2407, 2408, 2410, 2413, 2415, 2800, 2852, 3285, 3490, 4047, 4078, 4134, 4165, 4192, and 4221, of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, conferring upon the Superior Courts, their Judges or officers, the jurisdiction and authority heretofore exercised in certain cases by the Courts abolished by the Constitution, their Judges or officers.

[Approved April 3d, 1880.]

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

SECTION 1. Section four hundred and seventy-four of said Code is hereby amended so as to read as follows:

474. It shall be the duty of the Attorney-General to institute investigation for the discovery of all real and personal property which may have or should escheat to the State, and for that purpose shall have full power and authority to cite any and all persons before any of the Superior Courts of this State to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property shall be discovered, which should escheat

Attorney-General to ascertain and bring action for recovery of property that should escheat to the State.

to the State, the Attorney-General must institute suit in the Superior Court of the county where said property shall be situated, for the recovery, to escheat the same to the State. The proceedings in all such actions shall be those provided for in title eight, part three, Code of Civil Procedure. The Attorney-General may, for the purposes and objects of this section, employ counsel to act in his place and stead for the discovery and recovery of both personal and real property, and in such proceedings, both in investigation for discovery or proceedings for recovery, such counsel so employed shall have the power and authority of the Attorney-General. The compensation for services of such counsel shall be determined by the Board of Examiners, and paid out of the sums so found to be escheated and recovered to the State, and not otherwise; *provided*, that the State of California shall in no case be responsible for any charges for attorney fees for suits prosecuted under this Act, but the Attorney-General is hereby authorized to pay to the person or persons discovering the same the costs and charges of prosecuting any suit or suits under this Act, a sum not in any case exceeding ten per cent. of the sums actually received as provided in this Act.

SEC. 2. Section six hundred and one of said Code is hereby amended so as to read as follows:

601. In case any person, upon the requisition of the Commissioner, fails to make up the deficiency of the capital in accordance with the requirements of this chapter, or to comply in all respects with the laws of this State, the Commissioner must communicate the fact to the Attorney-General, who must commence an action in the name of the people of this State, in the Superior Court of the county where the person in question is located, or has his principal office, against such person, and apply for an order requiring cause to be shown why the business should not be closed; and the Court must thereupon hear the allegations and proofs of the respective parties, as in other cases. If it appears to the satisfaction of the Court that such person is insolvent, or that the interests of the public so require, the Court must decree a dissolution of such corporation, and a winding up of its affairs, and a distribution of the effects of such person; but otherwise, the Court must enter a decree annulling the act of the Commissioner in the premises, and authorizing such person to resume business. But the Commissioner must not be held liable for damages, if he has acted in good faith. In the event of any additional losses occurring upon new risks taken after the expiration of the period limited by the Commissioner in the requisition, and before the deficiency has been filled up, the Directors of any company, corporation, or association are individually liable to the extent thereof.

Proceedings of Insurance Commissioner on failure to make up capital stock.

SEC. 3. Section seven hundred and ninety-nine of said Code is hereby amended so as to read as follows:

799. Each Notary must execute an official bond in the sum of five thousand dollars, which bond must be approved by the Judge of the Superior Court of his county, and filed and recorded as other official bonds of county officers.

Official bond of Notary.

SEC. 4. Section nine hundred and nine of said Code is hereby amended so as to read as follows:

Oath of
office,
where filed.

909. Every oath of office certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

First—The oath of all officers, whose authority is not limited to any particular county, in the office of the Secretary of State.

Second—The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the offices of the Clerks of their respective counties.

Third—Each Judge of a Superior Court and County Clerk must, so soon as he has taken and subscribed his official oath, file a copy thereof, signed with his own proper signature, in the office of the Secretary of State.

SEC. 5. Section nine hundred and fifty of said Code is hereby amended so as to read as follows:

Bonds of
county and
township
officers;
approving,
filing, and
recording.

950. Unless otherwise prescribed by statute, the official bonds of county and township officers must be approved by the Judge of the Superior Court, recorded in the office of the County Recorder, and then filed in the County Clerk's office.

SEC. 6. Section ten hundred and fifteen of said Code is hereby amended so as to read as follows:

Proceeding
to compel
delivery of
books or
papers of
officers.

1015. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by petition, to any Court of record sitting in the county where the person so refusing or neglecting resides, or to any Judge of the Superior Court residing therein, and the Court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and to order any such books or papers to be delivered to the petitioners.

SEC. 7. Section eleven hundred and eight of said Code is hereby amended so as to read as follows:

Persons
refused
registration,
how to
proceed.

1108. If the Clerk refuses to enter the name of any qualified elector of the county upon the Great Register, such elector may proceed by action in the Superior Court to compel such entry.

SEC. 8. Section eleven hundred and nine of said Code is hereby amended so as to read as follows:

May proceed
by action
to have
registration
canceled.

1109. Any person may proceed by action in the Superior Court to compel the Clerk to cancel any entry made on the Great Register illegally, or that ought to be canceled by reason of facts that have occurred subsequent to the time of such entry, but if the person whose name is sought to be canceled be not a party to the action, the Court may order him to be made a party defendant.

SEC. 9. Section twelve hundred and eighty-four of said Code is hereby amended so as to read as follows:

Certificates
of election
issued by
County
Clerk.

1284. The County Clerk must immediately make out and deliver to such person (except to the person elected Judge of

the Superior Court), a certificate of election, signed by him, and authenticated with the seal of the Superior Court.

SEC. 10. Section thirteen hundred and ten of said Code is hereby amended so as to read as follows:

1310. If the County Clerk of any county has reason to believe that the abstract will not in due course of mail reach the Secretary of State before the time fixed by law for canvassing the returns of such election, he may, with the approval of the Judge of the Superior Court, employ a person to convey and deliver such abstract to the Secretary of State.

County Clerk to employ messenger to deliver abstract of election to Secretary of State.

SEC. 11. Section twenty-two hundred and forty of said Code is hereby amended so as to read as follows:

2240. If the parents or guardian of any pupil in the Asylum for the Deaf, Dumb, and Blind shall be unable to clothe such child, the parent or guardian may testify to such inability before the Judge of the Superior Court of the county wherein he or she is resident, and if said Judge is satisfied that the parent or guardian is not able to provide suitable clothing for the child, he shall issue a certificate to that effect; and, upon presentation of such certificate, it shall be the duty of the Directors of said Asylum to clothe the child, the expenses to be paid out of the appropriations made for the support of the Asylum. All pupils in the Asylum shall be maintained at the expense of the State.

Maintenance of pupils in Asylum for Deaf, Dumb, and Blind.

SEC. 12. Section twenty-three hundred and ninety-two of said Code is hereby amended so as to read as follows:

2392. When sold, the proceeds of the lumber must be applied, first, to the payment of the charges of sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the County Treasurer, to be by him paid over to the owner, or his representatives, or assigns, on the production of satisfactory proof of ownership to the Judge of the Superior Court of the county, and on his order therefor, made within one year after its receipt.

Application of proceeds of lumber when sold.

SEC. 13. Section twenty-three hundred and ninety-three of said Code is hereby amended so as to read as follows:

2393. The rejection by the Judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the County Treasurer, be placed in the Common School Fund of the county.

Subsequent proceeds of lumber, disposition of.

SEC. 14. Section twenty-four hundred and seven of said Code is hereby amended so as to read as follows:

2407. If it is in a perishable state, the Sheriff must apply to the Judge of the Superior Court, upon a verified petition, for an order authorizing him to sell it. If the Judge is satisfied that a sale of the property would be beneficial to the parties interested, he must make the order applied for, and the property must then be sold at public auction, at the time and in the manner specified in the order; and the proceeds, deducting the expenses of sale, as the same is settled and allowed by such Judge, must be paid to the Treasurer of the county.

Perishable property.

SEC. 15. Section twenty-four hundred and eight of said Code is amended so as to read as follows:

Order for
surrender of
perishable
property to
claimant.

2408. If, within a year after the finding, any person claims the property, or its proceeds, and establishes his claim by evidence satisfactory to the Judge of the Superior Court, such Judge must make an order directing the officer in whose possession the property or its proceeds may be, to deliver the same to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation.

SEC. 16. Section twenty-four hundred and ten of said Code is hereby amended so as to read as follows:

Action
on bond.

2410. If the bond becomes forfeited, the Judge of the Superior Court, upon the application, supported by proof of the person entitled to the benefit of it, must make an order for its prosecution for such person's benefit, and at his risk and expense.

SEC. 17. Section twenty-four hundred and thirteen of said Code is hereby amended so as to read as follows:

Proceedings
to settle
disputed
claims to
salvage.

2413. If, in any case, the amount of salvage and expenses are not settled by agreement, the Superior Court of the county, on the application of the owner or consignee of the property, or the master or supercargo having charge thereof at the time of the wreck, or of a claimant having an order therefor, or of a person claiming salvage or expenses, must determine the same in a summary way, either by itself hearing the allegations and proofs of the party, or by referring the questions to three disinterested freeholders of the county, who must have the same powers and must proceed in the same manner as referees in civil actions, and whose decisions as to the whole amount, and as to the sums to be paid to each person interested, must be entered as the judgment of the Court.

SEC. 18. Section twenty-four hundred and fifteen of said Code is hereby amended so as to read as follows:

Wrecked
property
not claimed,
to be sold.

2415. If, within a year after saving wrecked property, no claimant of the property or its proceeds appears, or, if within three months after a claim, the salvage and expenses have not been paid, or a suit for the recovery of the property or its proceeds has not been commenced, the officer in whose custody it may be must sell it at public auction, if not already sold, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this State for the benefit of the parties interested; but in no case must any deduction of salvage and expenses be made, unless the amount has been determined by the Superior Court of the county, a copy of whose order, and of the evidence in support thereof, must be transmitted by the Judge to the Controller. If any money paid to a County Treasurer, under section twenty-four hundred and seven, remains in his hands more than a year after it has been paid to him, the same must be paid into the State treasury.

SEC. 19. Section twenty-eight hundred of said Code is hereby amended so as to read as follows:

County may
purchase
roads, how.

2800. At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter, the county within which the road,

or any portion thereof, is located, may purchase the same at a fair cash valuation, to be fixed by seven Commissioners, all disinterested persons, three to be appointed by the Board of Supervisors of the county, three by the owner of the road, and the seventh by the Judge of the Superior Court of the county, who must estimate the fair cash value of the road, and make report thereof, under oath, to the Board of Supervisors. If, within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road, or his authorized managing agent, in gold coin, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county.

SEC. 20. Section twenty-eight hundred and fifty-two of said Code is hereby amended so as to read as follows:

2852. When a Supervisor is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, he shall not act in any of such matters. Interested Supervisor cannot act.

SEC. 21. Section thirty-two hundred and eighty-five of said Code is hereby amended so as to read as follows:

3285. The bond must be conditioned to be paid to the people of the State of California, with one or more sureties, in the sum of five thousand dollars, and approved by the Judge of the Superior Court of the county in which the auctioneer proposes to do business, and must be filed in the office of the County Clerk of the county. Bond of sureties of auctioneer, approval and filing of.

SEC. 22. Section thirty-four hundred and ninety of said Code is hereby amended so as to read as follows:

3490. Any person who shall cut, injure, or destroy any levee or other works of reclamation in any district, is responsible for all damages which may be occasioned thereby to such levee works; and an action therefor must be brought in the Superior Court of the county, or either of the counties in which such levee or works are situated, in the names of the Trustees of the district. If there be no Trustees, then the action may be brought in the name of any land owner in the district. The amount recovered in such action must be paid to the Treasurer of the county, who must place the same to the credit of the district. Injuries to levees.

SEC. 23. Section four thousand and forty-seven of said Code, adopted March eighteenth, eighteen hundred and seventy-four, is hereby amended so as to read as follows:

4047. The Board of Supervisors shall have power to direct the Sheriff to attend in person, or by deputy, all the meetings of the Board, to preserve order, serve the notices or citations, as directed by the Board. And the Board shall have the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to Superior Courts, to require obedience to their citations and decorum in their meetings.* Special powers of Supervisors.

SEC. 24. Section forty hundred and seventy-eight of said Code is hereby amended so as to read as follows:

4078. Whenever an application is made to the Board for an order, franchise, or license relating to any toll road, bridge, ferry, wharf, chute, pier, or other subject over which the Board has jurisdiction, in which a majority of the Board are Transfer of applications, in what cases made.

not disinterested, the application, by order of the Board, must be transferred to the Board of Supervisors of an adjoining county; the Clerk of the Board must thereupon certify the application and all orders and papers relating thereto to the Board to which the transfer is ordered; and thereafter the Board to which the same is certified has full jurisdiction to hear and determine the application.

SEC. 25. Section forty-one hundred and thirty-four of said Code is hereby amended so as to read as follows:

4134. Each Judge of the Superior Court must:

1. Perform the duties of a magistrate;
2. Hold Superior Courts;
3. Grant certificates to the official character of the County Clerk;
4. Certify to the ownership of wrecked property, or its proceeds;
5. Perform such other duties as are prescribed in any of the laws of this State.

SEC. 26. Section forty-one hundred and sixty-five of said Code is hereby amended so as to read as follows:

4165. The Treasurer must permit the Judge of the Superior Court and Auditor to examine his books and count the money in the treasury, whenever they may wish to make an examination or counting.

SEC. 27. Section forty-one hundred and ninety-two of said Code is hereby amended so as to read as follows:

4192. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the Court, or the Judge thereof, and denominated an Elisor, in the following cases:

1. When the Sheriff and Coroner are both parties;
2. When either of these officers is a party and the process is against the other; and,
3. When either of these officers is a party and there is a vacancy in the office of the other; or when it appears by affidavit to the satisfaction of the Court in which the proceeding is pending, or the Judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause would not act promptly or impartially.

When process is delivered to an Elisor, he must execute and return it in the same manner as the Sheriff is required to execute similar process.

SEC. 28. Section forty-two hundred and twenty-one of said Code is hereby amended so as to read as follows:

4221. The Judge of the Superior Court, and Auditor, must, at least once in each month, count the money in the county treasury, and make and verify, in duplicate, statements showing:

1. The amount of money that ought to be in the treasury;
2. The amount and kind of money actually therein.

SEC. 29. This Act shall take effect immediately.

Duty of
Superior
Judge.

Treasurer
must permit
Superior
Judge and
Auditor
to examine
books.

Elisor to
act in cases
designated.

Superior
Judge and
Auditor
to count
money in
treasury,
and make
statement.

CHAPTER XL.

An Act to amend sections three hundred and fifty-two (352), thirty-six hundred and ninety-two (3692), thirty-seven hundred and two (3702), thirty-seven hundred and thirty-one (3731), and thirty-seven hundred and thirty-two (3732), of the Political Code of California, and to add new sections thereto, to be numbered sections thirty-six hundred and ninety-three (3693), thirty-six hundred and ninety-five (3695), and thirty-seven hundred (3700), all relating to the State Board of Equalization.

[Approved April 3d, 1880.]

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

SECTION 1. Section three hundred and fifty-two of said Code is hereby amended so as to read as follows:

352. Members elected, one from each of the Congressional districts in this State, by the qualified electors thereof, with the Controller, constitute the State Board of Equalization. Their term of office shall be four years, commencing from the first Monday after the first day of January following their election; *provided*, that the terms of those members elected in the year eighteen hundred and seventy-nine shall be three years. They shall choose one of their members Chairman, who shall hold such office during the pleasure of the Board.

Members of
State Board
of Equaliza-
tion.

SEC. 2. Section thirty-six hundred and ninety-two of said Code is hereby amended so as to read as follows:

3692. The powers and duties of the State Board of Equalization are as follows:

Powers and
duties.

1. To prescribe rules for its own government and for the transaction of its business;

2. To prescribe rules and regulations, not in conflict with the Constitution and laws of the State, to govern Supervisors when equalizing, and Assessors when assessing;

3. To make out, prepare, and enforce the use of forms in relation to the assessment of property;

4. To hold regular meetings at the State Capitol on the second Monday in each month, and such special meetings as the Chairman may direct;

5. To annually assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, at their actual value, on the first Monday in March, at twelve o'clock M., and to apportion such assessment to the counties, and cities and counties, in which such railroads are located, in proportion to the number of miles of railway laid in such counties, and cities and counties, in the manner provided for in section three thousand six hundred and sixty-four of said Code;

6. To equalize the assessment of each mortgage, deed of trust, contract, or other obligation by which a debt is secured,

Powers and
duties.

and which affects property situate in two or more counties, and to apportion the assessment thereof to each of said counties;

7. To transmit to the Assessor of each county, or city and county, its apportionment of the assessments made by said Board upon the franchises, roadways, roadbeds, rails, and rolling stock of railroads; and also its apportionment of the assessments made by such Board upon mortgages, deeds of trust, contracts, and other obligations by which debts are secured, in the manner provided for in section three thousand six hundred and sixty-four of said Code;

8. To meet at the State Capitol on the third Monday in August, and remain in session from day to day (Sundays excepted), until the third Monday in September;

9. At such meeting to equalize the valuation of the taxable property of the several counties in this State for the purpose of taxation; and to that end, under such rules of notice to the Clerk of the Board of Supervisors of the county affected thereby as it may prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value in money of the property assessed, and to fix the rate of State taxation, and to do the things provided in section three thousand six hundred and ninety-three of said Code;

10. To visit as a Board, or by the individual members thereof, whenever deemed necessary, the several counties of the State, for the purpose of inspecting the property and learning the value thereof;

11. To call before it, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody;

12. To issue subpoenas for the attendance of witnesses or the production of books before the Board, or any member thereof; which subpoenas must be signed by a member of the Board, and may be served by any person;

14. To appoint a Clerk; prescribe and enforce his duties. The Clerk shall hold his office during the pleasure of the Board;

15. To report to the Governor, annually, a statement showing:

First—The acreage of each county in the State that is assessed.

Second—The amount assessed per acre.

Third—The aggregate value of all town and city lots.

Fourth—The aggregate value of all real estate in the State.

Fifth—The kinds of personal property in each county, and the value of each kind.

Sixth—The aggregate value of all personal property in the State.

Seventh—Any information relative to the assessment of property and the collection of revenue.

Eighth—Such further suggestions as it shall deem proper.

16. To keep a record of all its proceedings.

Sec. 3. A new section is hereby added to the Political

Code, to be numbered section three thousand six hundred and ninety-three, and to read as follows:

3693. When, after a general investigation by the Board, the property is found to be assessed above or below its full cash value, the Board may, without notice, so determine, and must add to or deduct from the valuation: Correction of assessments.

1. The real estate;
2. Improvements upon such real estate;
3. The personal property, except money, such per centum respectively as is sufficient to raise or reduce it to its full cash value.

SEC. 4. There shall be added to said Code a new section, to come next after section three thousand six hundred and ninety-four, to be known as section thirty-six hundred and ninety-five of said Code, to read as follows:

3695. When the equalization among the several counties is completed, the Clerk of the Board must transmit to each County Auditor a statement of the changes made by the Board in the assessment roll of the county, or in any assessment contained therein, and of the per centum to be added to or deducted from the valuation of such statement, which shall be prima facie evidence of the regularity of all proceedings of the Board, resulting in the action which is the subject matter of the statement. Clerk to transmit statements of changes to County Auditors.

SEC. 5. There shall be added to said Code a section to follow next after section thirty-six hundred and ninety-nine, and to be known as section thirty-seven hundred of said Code, and read as follows:

3700. The annual salary of each member of the Board, except the State Controller, is three thousand dollars, and the annual salary of the Clerk of the Board is eighteen hundred dollars, and each of said officers shall devote his entire time to the service of the State in performing the duties and acquiring the information required by this Act. Salary.

SEC. 6. Section three thousand seven hundred and two of said Code is hereby amended so as to read as follows:

3702. Each member of the Board is entitled to repayment of his actual expenses incurred by him while traveling in the discharge of his duties, not to exceed annually one thousand dollars each, the amount thereof to be audited and allowed by the Board of Examiners, and the State Controller is hereby authorized to draw his warrant for said amount, and the State Treasurer is authorized to pay the same. Upon requisition of the Board, the Secretary of State must assign a room in the State Capitol for the use of the same, where the Board must keep its office and transact all business, except as in its nature must be transacted elsewhere. The Secretary of State, upon requisition of the Board, must furnish the Board with furniture, fuel, lights, postage stamps, and stationery; and the Superintendent of Public Printing, upon like requisition, must execute all printing that may be required by the Board. Expenses of Board.

SEC. 7. Section three thousand seven hundred and thirty-one of said Code is amended to read as follows:

3731. The Auditor must then compute and enter in a Duties of Auditor.

separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the State Board of Equalization.

SEC. 8. Section three thousand seven hundred and thirty-two is amended to read as follows:

Duties of
Auditor.

3732. On or before the fourth Monday of October, he must deliver a copy of the corrected assessment book, to be styled "duplicate assessment book," to the Tax Collector, with an affidavit attached thereto and by him subscribed, as follows: "I, —, Auditor of the County of —, do swear that I received the assessment book of the taxable property of the county from the Clerk of the Board of Supervisors, with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the State Board of Equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes, and acreage, as required by law, and that the copy to which this affidavit is affixed is a full, true, and correct copy thereof, made in the manner prescribed by law."

SEC. 9. This Act takes effect immediately.

CHAPTER XLIV.

An Act to amend Sections 1517, 1521, 1532, 1543, 1545, 1546, 1548, 1550, 1551, 1564, 1577, 1593, 1597, 1598, 1600, 1611, 1616, 1617, 1619, 1620, 1621, 1622, 1624, 1662, 1663, 1665, 1666, 1696, 1701, 1712, 1715, 1768, 1769, 1770, 1771, 1772, 1774, 1775, 1787, 1788, 1790, 1791, 1817, 1818, 1830, 1833, 1834, 1835, 1836, 1837, 1857, 1858, 1859, 1861, 1869, 1871, 1874, and to repeal Sections 1551b, 1652, 1669, 1670, 1671, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1758, 1777, 1793, 1838, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, and 1872 of the Political Code, and to add five new sections thereto, to be known as Sections 1565, 1583, 1703, 1704, and 1879, relating to public schools.

[Approved April 7th, 1880.]

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

SECTION 1. Section one thousand five hundred and seventeen of said Code is amended to read as follows:

State Board
of Educa-
tion.

1517. The State Board of Education consists of the Governor, the Superintendent of Public Instruction, and the Principal of the State Normal School.

SEC. 2. Section one thousand five hundred and twenty-one of said Code is amended to read as follows:

1521. The powers and duties of the Board are as follows:

General powers and duties of.

First—To adopt rules and regulations, not inconsistent with the laws of this State, for its own government, and for the government of the public schools and district school libraries.

Second—To recommend rules for the examination of teachers.

Third—To recommend the course of study in the public schools.

Fourth—To recommend a list of books for district school libraries.

Fifth—To grant:

1. Educational diplomas, valid for six years; and,
2. Life diplomas.

Sixth—To revoke, for immoral conduct, or evident unfitness for teaching, life diplomas, educational diplomas, and State certificates heretofore issued.

Seventh—To have done by the State Printer, or other officer having the management of the State printing, any printing required by it.

Eighth—To adopt and use, in the authentication of its acts, an official seal.

Ninth—To keep a record of its proceedings.

Tenth—State educational diplomas must be issued to such persons only as have held a first grade State, city, or county, or city and county, certificate for at least one year, and shall furnish satisfactory evidence of having been successfully engaged in teaching for at least five years. Every application for an educational diploma must be accompanied by a certified copy of a resolution adopted by a local or County Board of Education, recommending that the same be granted.

Eleventh—Life diplomas must be issued upon all and the same conditions as educational diplomas, except that the applicant must furnish satisfactory evidence of having been successfully engaged in teaching for at least ten years.

Twelfth—To designate some educational monthly journal as the official organ of the Department of Public Instruction. One copy of journal so designated shall be furnished by the County Superintendent to the Clerk of each Board of District Trustees, to be by him placed in the district library. The County Superintendent of Schools shall draw his warrant semi-annually in favor of the publishers of such school journal, and charge the same to the Library Fund of the district; *provided*, that the sum so drawn shall in no case exceed one dollar and fifty cents per annum for each school district.

SEC. 3. Section fifteen hundred and thirty-two of said Code is amended to read as follows:

1532. It is the duty of the Superintendent of Public Instruction:

General duties of Superintendent of Public Instruction.

First—To superintend the public schools in this State.

Second—To report to the Governor, on or before the fifteenth of December preceding each regular session of the Legislature, a statement of the condition of the State Normal School, and other educational institutions supported by the State, and of the public schools.

General
duties of
Superin-
tendent of
Public
Instruction.

Third—To accompany his report with tabular statements showing the number of school children in this State; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending schools; the amount of State School Fund apportioned and sources from which derived; the amount raised by county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers and for building school houses.

Fourth—To apportion the State School Fund, and furnish the Controller, State Board of Examiners, and each County Treasurer and County Superintendent with an abstract of such apportionment.

Fifth—To draw his order on the Controller in favor of each County Treasurer for school moneys apportioned to the county.

Sixth—To prepare, have printed, and furnish all officers charged with the administration of the laws relating to public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties, including blank teachers' certificates to be used by County Boards of Education.

Seventh—To have the law relating to public schools printed in pamphlet form, and annex thereto forms for making reports and conducting school business, the course of study, rules and regulations, a list of library books, and such suggestions on school architecture as he may deem useful.

Eighth—To supply school officers and teachers, school libraries, and State libraries with one copy each of the pamphlets mentioned in the preceding subdivisions.

Ninth—To visit the several orphan asylums to which State appropriations are made, and examine into the course of instruction therein.

Tenth—To visit the schools in the different counties and inquire into their condition; and the actual traveling expenses thus incurred, provided they do not exceed fifteen hundred dollars per annum, shall be allowed, audited, and paid out of the General Fund in the same manner as other claims are audited and paid.

Eleventh—To authenticate with his official seal all drafts or orders drawn on him, and all papers and writings issued from his office.

Twelfth—To have bound, at an annual expense of not more than one hundred dollars, all valuable school reports, journal, and documents in his office, or hereafter received by him, payable out of the State School Fund.

Thirteenth—To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office.

Fourteenth—He shall have power to call biennially a convention of County Superintendents, to assemble at such time and place as he shall deem most convenient, for the discussion of questions pertaining to the supervision and adminis-

tration of the public schools, the laws relating thereto, and such other subjects affecting the welfare and interests of the public schools as shall properly be brought before it. It is hereby made the duty of all County Superintendents to attend and take part in the proceedings of such convention when it is called; and the actual traveling expenses of County Superintendents in going to and from the convention shall be allowed by the Board of Supervisors, and paid out of the same fund as the salary of the County Superintendent is paid.

SEC. 4. Section fifteen hundred and forty-three of said Code is amended to read as follows:

1543. It is the duty of the County Superintendent of each county:

General
duties of
County
Superin-
tendents.

First—To apportion the school moneys of each school district quarterly; and whenever, at the close of the school year, any money has accumulated to the credit of a school district, by reason of a large census roll and small attendance, in excess of a reasonable amount required to maintain the schools six months in such district, the Superintendent of Schools shall apportion the same as other county school funds are apportioned. If, in any school district, there shall be an average attendance for three months of only five pupils or less, such district shall lapse, and the moneys in the treasury of the county belonging thereto shall be apportioned by the County Superintendent among the other districts of his county in proportion to the number of census children in such district.

Second—On the order of the Board of Trustees, or Board of Education, to draw his requisition upon the County Auditor for all necessary warrants against the School Fund of any city, town, or district. The requisitions must be drawn in the order in which the orders therefor are filed in his office. The aggregate amount of the requisitions drawn against any fund, in any one year, shall not exceed ninety per centum of the estimated amount of the fund for the year, calculated upon the basis of the preceding year's apportionment of State and county moneys, added to the estimated product of any taxes levied by authority of the district, until the final apportionment of funds for the year has been made, and then must not exceed that apportionment and such district tax. Each requisition must state on its face the estimated amount of the fund upon which it is drawn for the year, and the aggregate amount of the requisitions previously drawn against it. Each requisition must specify the purpose for which it is drawn. Upon receipt of such requisition the County Auditor shall draw his warrant upon the County Treasurer, specifying in each warrant the estimated amount of the fund upon which it was drawn for the year, the aggregate amount of the warrants previously drawn against it, and the purpose for which the money is required.

Third—To keep, open to the inspection of the public, a register of requisitions, showing the fund upon which the requisitions have been drawn, the number thereof, in whose

General
duties of
County
Superin-
tendents.

favor, and for what service drawn, and also a receipt from the person to whom the requisition was delivered.

Fourth—To visit and examine each school in his county at least twice in each year, and for every school not so visited the Board of Supervisors must, on proof thereof, deduct ten dollars from the County Superintendent's salary.

Fifth—To preside over Teachers' Institutes held in his county, and to secure the attendance thereat of lecturers competent to instruct in the art of teaching; to enforce the course of study, the use of text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority.

Sixth—Upon the order of County Boards of Education, to issue temporary certificates, valid until the next regular meeting of the County Board of Education, to persons holding certificates of like grade granted in other counties, or upon any certificates or diplomas upon which County Boards are empowered to grant certificates without examination, as specified in section seventeen hundred and seventy-five; *provided*, that no person shall be entitled to receive such temporary certificate more than once.

Seventh—To distribute all laws, reports, circulars, instructions, and blanks which he may receive, for the use of school officers.

Eighth—To keep in his office the reports of the Superintendent of Public Instruction.

Ninth—To keep a record of his official acts, and of the proceedings of the County Board of Education, including a record of the standing in each study of all applicants examined.

Tenth—To (except in incorporated cities and towns) pass upon and approve or reject plans for school houses.

Eleventh—To appoint Trustees to fill all vacancies created by failure to elect, or otherwise, to hold till the next annual election.

Twelfth—To make reports, when directed by the Superintendent of Public Instruction, showing such matters relating to the public schools in his county as may be required of him.

Thirteenth—In all counties containing twenty thousand inhabitants or upwards, to devote his whole time to the supervision of the schools in his county.

Fourteenth—To carefully preserve all reports of school officers and teachers, and at the close of his official term, deliver to his successor all records, books, documents, and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the County Clerk.

Fifteenth—The County Superintendent shall, unless otherwise provided by law, in the month of July in each year, grade each school, which shall be made of record, in a book to be kept by the County Superintendent in his office for said purpose; and no teacher holding a certificate below the grade of said school shall be employed to teach the same. All schools shall be designated as primary and grammar.

SEC. 5. Section fifteen hundred and forty-five of said Code is amended to read as follows:

1545. He must, when there is sufficient money in the fund of any school district to maintain a free school therein for six months, if the Trustees fail to have such school kept, appoint a teacher, and open and keep such school, and may draw his requisition upon the County Auditor, who shall draw his warrant upon the fund of such district for the expense incurred.

May appoint teachers and open schools, when.

SEC. 6. Section fifteen hundred and forty-six of said Code is amended to read as follows:

1546. He may, in his discretion, require the Trustees of any district to repair the school buildings or property, or to abate any nuisance in or about the premises, if such repairs or abatement can be done for a sum not exceeding fifty dollars, and there is a sufficient amount of money in the treasury to the credit of the district. He may also, in all cases, require the Trustees to provide suitable outhouses, and, where practicable, to adorn the grounds with fruit and ornamental trees and shrubbery; and if the Trustees neglect to make such provision, he may cause it to be done, and pay for it on his requisition upon the County Auditor, who shall draw his warrant payable out of any money to the credit of the district.

May direct repairs, etc., when.

SEC. 7. Section fifteen hundred and forty-eight of said Code is amended to read as follows:

1548. He may draw his requisition upon the County Auditor, who shall draw his warrant on the unapportioned County School Fund in his own favor for the binding of school documents, not to exceed twenty dollars a year; for postage and expressage for his office not to exceed one dollar for each district in his county, and for such other incidental expenses as may be authorized by law; *provided*, that not more than one-half of such allowance shall be used during the first six months of any school year, except by unanimous consent of the Board of Supervisors.

Warrants drawn for expenses and claims.

SEC. 8. Section fifteen hundred and fifty of said Code is amended to read as follows:

1550. The Deputy School Superintendent of any city, or city and county, having over one hundred thousand inhabitants, may receive such compensation as the Board of Education thereof prescribes, payable in the same manner and out of the same fund as the School Superintendent thereof is paid.

Compensation of Deputy in certain cities.

SEC. 9. Section fifteen hundred and fifty-one of said Code is amended to read as follows:

1551. Each School Superintendent in this State must, on or before the first day of August in each year, report to the Superintendent of Public Instruction, and to the Board of Supervisors of their respective counties, the number of children in their counties between the ages of five and seventeen years, as appears by the latest returns of the Census Marshals on file in their office. It shall be the duty of every County Superintendent to inquire and ascertain whether the boundaries of the school districts in his county are definitely and plainly described in the records of the Board of Supervisors, and to keep in his office a full and correct transcript

Report to Superintendent of Public Instruction.

of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall, upon the order of the Board of Supervisors, change, harmonize, and describe them, and make a report of such action to the Supervisors, and, on being ratified by the Supervisors, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The County Superintendent, if he deem it necessary for the guidance of School Census Marshals, may order the description of the district boundaries printed in pamphlet form, and pay for the same out of the County School Fund.

SEC. 10. Section fifteen hundred and sixty-four is amended to read as follows:

Expenses of
Institute,
how kept
and paid.

1564. The County Superintendent must keep an accurate account of the actual expenses of said institute, with vouchers for the same, and draw his requisition upon the County Auditor, who shall draw his warrant on the unapportioned County School Fund to pay said amount; *provided*, that such amount must not exceed one hundred dollars for any one year.

SEC. 11. A new section is added to said Code, to be known as section fifteen hundred and sixty-five, to read as follows:

Teachers'
certificates,
fee for.

1565. Every applicant for a teacher's certificate, upon presenting himself for examination, or for a certificate upon the life diploma or Normal School diploma of any State other than California, shall pay to the County Superintendent a fee of one dollar, to be by him immediately deposited with the County Treasurer to the credit of a fund to be known as the Teachers' Institute Fund. All funds so credited shall be drawn out only upon the requisition of the County Superintendent of Schools upon the County Auditor, who shall draw his warrant in payment for the services of such instructors in the County Teachers' Institute as shall not be residents of that county.

SEC. 12. Section fifteen hundred and seventy-seven of said Code is amended to read as follows:

Formation
and chang-
ing of
boundaries
of districts.

1577. No new district can be formed unless the parents or guardians of at least fifteen census children, resident of such proposed new district, and residing at a greater distance than two miles from any school house, present a petition to the County Superintendent, setting forth the boundaries of the new district asked for. The boundaries of any district cannot be changed unless at least ten heads of families, residing in the districts affected by the proposed change, present a petition to the County Superintendent, setting forth the change of boundaries desired and the reasons for the same; *provided*, that two or more districts lying contiguous may, upon the petition of a majority of the heads of families residing in each of said districts, be united to constitute but one district.

SEC. 13. A new section is added to said Code, to be known as section fifteen hundred and eighty-three, to read as follows:

1583. Whenever a district lies partly in one county and partly in another, the County Superintendent must apportion

to such district such proportion of the school money to which such district is entitled, as the number of school census children residing in that portion of the district situate in his county bears to the whole number of school census children in the whole district. The text-books to be used, and the rules governing the school in such district, shall be those adopted by the Board of Education of the county in which a majority of the census children of such district reside. The Trustees and teachers of joint districts shall make to the Superintendents of each county in which the district is located, the reports which other Trustees and teachers are required to make, and also the number of pupils attending the school from each county.

Apportionment of money in divided districts.

Sec. 14. Section fifteen hundred and ninety-three of said Code is amended to read as follows:

1593. An election for School Trustees must be held in each district on the first Saturday of May of each year, at the district school house, if there is one, and if there is none, at a place to be designated by the Board of Trustees:

Election for Trustees, when and where held.

First—The number of School Trustees for any school district, except when City Boards are otherwise authorized by law, shall be three. No person shall be deemed ineligible to the office of Trustee on account of sex.

Second—In new school districts, or in case of a vacancy for any cause in an old one, the School Trustees shall be elected to hold office for one, two, and three years, respectively, from the first Saturday of July next succeeding their election.

Third—Except as provided in subdivision second of this section, one Trustee shall be elected annually, to hold office for three years, or until his successor shall be elected and qualified.

Sec. 15. Section fifteen hundred and ninety-seven of said Code is amended to read as follows:

1597. In districts in which the number of children between five and seventeen years of age exceed five hundred, the polls must be opened at eight o'clock A. M., and kept open until sundown. In other districts, the polls must not be opened before nine o'clock A. M., nor kept open less than four hours.

Opening and closing polls.

Sec. 16. Section fifteen hundred and ninety-eight of said Code is amended to read as follows:

1598. Every qualified elector of the county, who has resided in the district for thirty days next preceding the election, may vote thereat.

Who may vote.

Sec. 17. Section sixteen hundred of said Code is amended to read as follows:

1600. Any person offering to vote may be challenged by any elector of the district, and the Judges of Election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this State one year, in this county ninety days, and in this school district thirty days next preceding this election, and that your name is on the Great Register of this county, and that you have not before voted this

Challenges.

day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected.

SEC. 18. Section sixteen hundred and eleven of said Code is amended to read as follows:

School
District gov-
ernment.

1611. Except when otherwise authorized by law, every school district shall be under the control of a Board of School Trustees, consisting of three members.

SEC. 19. Section sixteen hundred and sixteen of said Code is amended to read as follows:

Boards of
Education
elected in
cities,
powers and
duties.

1616. Boards of Education are elected in cities under the provisions of the laws governing such cities, and their powers and duties are as prescribed in such laws, except as otherwise in this chapter provided.

SEC. 20. Section sixteen hundred and seventeen of said Code is amended to read as follows:

General
powers of
Boards of
Trustees and
of Educa-
tion.

1617. The powers of Boards of Trustees of school districts, and of Boards of Education in cities, are as follows:

First—To prescribe and enforce rules not inconsistent with law, or those prescribed by the State Board of Education, for their own government and the government of schools.

Second—To manage and control the school property within their districts.

Third—To purchase school furniture and apparatus, and such other things as may be necessary for the use of schools.

Fourth—To rent, furnish, repair, and insure the school property of their respective districts.

Fifth—When directed by a vote of their district, to build school houses, or to purchase or sell school lots.

Sixth—To make, in the name of the district, conveyances of all property belonging to the district and sold by them.

Seventh—To employ the teachers, janitors, and employés of schools; to fix and order paid their compensation, unless the same be otherwise prescribed by law; *provided*, that no Board of Trustees shall enter into any contract with such employés to extend beyond the thirtieth day of June next ensuing.

Eighth—To suspend or expel pupils for misconduct.

Ninth—To exclude from schools children under six years of age.

Tenth—To enforce in schools the course of study and the use of the text-books prescribed and adopted by the proper authority.

Eleventh—To appoint District Librarians, and enforce the rules prescribed for the government of district libraries.

Twelfth—To exclude from schools and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character.

Thirteenth—To furnish books for the children of parents unable to furnish them.

Fourteenth—To keep a register, open to the inspection of the public, of all children applying for and entitled to be admitted in the schools, and to notify the parent or guardian of such children when vacancies occur, and receive such children in the schools in the order in which they are registered.

Fifteenth—To make arrangements with the Trustees of any

adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school; and in case the Trustees fail to agree, the parents of such children may appeal to the County Superintendent, whose decision shall be final.

General powers of Boards of Trustees and of Education.

Sixteenth—On or before the first day of June in each year to appoint a School Census Marshal, and notify the School Superintendent thereof.

Seventeenth—To make an annual report, on or before the first day of July, to the School Superintendent, in the manner and form and on the blanks prescribed by the Superintendent of Public Instruction.

Eighteenth—To make a report, whenever required, directly to the Superintendent of Public Instruction, of the textbooks used in their schools.

Nineteenth—To visit every school in their district at least once in each term, and examine carefully into its management, condition, and wants. This clause to apply to each and every member of the Board of Trustees.

Twentieth—Boards of Trustees may call meetings of the qualified electors of the district for determining or changing the location of the school house, or for consultation in regard to any litigation in which the district may be engaged, or be likely to become engaged, or in regard to any other affairs of the district. Such meetings shall be called by posting notices in the usual places for not less than three weeks previous to the time for which the meeting shall be called; which notices shall specify the purposes for which said meeting shall be called, and no other business shall be transacted at such meeting. District meetings shall be organized by choosing a Chairman from the electors present, and the District Clerk shall be Clerk of the meeting, and shall enter the minutes thereof in the records of the district. A meeting so called shall be competent to instruct the Board of Trustees:

1. In regard to the location or change of location of the school house;

2. In regard to the purchase and sale of school sites;

3. In regard to prosecuting, settling, or compromising any litigation in which the district may be engaged, or be likely to become engaged, and may vote money, not exceeding one hundred dollars in any one year, for any of those purposes, in addition to any amount which may be raised by the sale of district school property. All funds raised by sale of school property may be disposed of by direction of a district meeting. District meetings may be adjourned from time to time as found necessary; and all votes instructing the Board of Trustees shall be taken by ballot, or by ayes and noes vote, as the meeting may determine. The Board of Trustees shall in all cases be bound by the instructions of the district meeting in regard to the subjects mentioned in this section.

SEC. 21. Section sixteen hundred and nineteen of said Code is amended to read as follows:

Schools must be maintained for equal length of time.

1619. The Boards of Trustees and City Boards of Education must maintain all the schools established by them for an equal length of time during the year, and as far as practicable, with equal rights and privileges.

SEC. 22. Section sixteen hundred and twenty of said Code is amended to read as follows:

Stationery, etc., to be furnished to pupils.

1620. Writing and drawing paper, pens, ink, blackboard rubbers, and lead and slate pencils for the use of the schools, must be furnished under the direction of the City Boards of Education and Boards of Trustees, and charges therefor must be audited and paid as other claims against the School Fund of their districts are audited and paid.

SEC. 23. Section sixteen hundred and twenty-one of said Code is amended to read as follows:

School moneys, how used.

1621. The Board of Trustees and City Board of Education must use the school moneys received from the State or county apportionments exclusively for the support of schools for that school year, until at least an eight months' school has been maintained; if, at the end of any year, there is an unexpended balance, it may be used for the payment of claims against the district outstanding, or it may be used for the year succeeding.

SEC. 24. Section sixteen hundred and twenty-two of said Code is amended to read as follows:

Same.

1622. Boards of Trustees may use the county school moneys for any of the purposes authorized by this chapter, but all State school moneys must, except the ten per cent. reserved for district school library purposes, be applied exclusively for the payment of teachers of primary and grammar schools.

SEC. 25. Section sixteen hundred and twenty-four of said Code is amended to read as follows:

Liabilities of Board for taxes, etc.

1624. If any Board of Trustees, or City Board of Education, fail to appoint a Census Marshal at the proper time, and through such failure the district is omitted in the apportionment of school moneys, the Trustees or members of the City Board of Education are jointly and severally personally liable to the district for the full amount which the district would have received but for such failure; and the amount may be recovered in an action brought by any citizen of such district or city in the name of and for the benefit of the district or city.

SEC. 26. Section sixteen hundred and sixty-two of said Code is amended to read as follows:

Who may be admitted to schools.

1662. Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age residing in the district; and the Board of Trustees, or City Board of Education, have power to admit adults and children not residing in the district, whenever good reasons exist therefor. Trustees shall have the power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases.

SEC. 27. Section sixteen hundred and sixty-three of said Code is amended to read as follows:

Grades.

1663. All schools, unless otherwise provided by law, must be divided into primary and grammar grades.

SEC. 28. Section sixteen hundred and sixty-five of said Code is amended to read as follows:

1665. Instruction must be given in the following branches, ^{What branches of study required.} in the several grades in which each may be required, viz.: Reading, writing, orthography, arithmetic, geography, grammar, history of the United States, elements of physiology, vocal music, elements of book-keeping, and industrial drawing.

SEC. 29. Section sixteen hundred and sixty-six of said Code is amended to read as follows:

1666. Other studies may be authorized by the State Board ^{other studies.} of Education, or Board of Education of any county, city, or city and county; but no such studies can be pursued to the neglect or exclusion of the studies in the preceding section specified.

SEC. 30. Section sixteen hundred and ninety-six of said Code is amended to read as follows:

1696. Every teacher in the public schools must:

First—Before assuming charge of a school, file his certificate with the County Superintendent. ^{General duties of teachers}

Second—On taking charge of a school, or in closing a term of school, immediately notify the County Superintendent of such fact.

Third—Enforce the course of study, the use of text-books, and the rules and regulations prescribed for schools.

Fourth—Hold pupils to a strict account for disorderly conduct on the way to and from school, on the play grounds, or during recess; suspend, for good cause, any pupil in the school, and report such suspension to the Board of Trustees, or City Board of Education, for review. If such action is not sustained by them, the teacher may appeal to the County Superintendent, whose decision shall be final.

Fifth—Keep a State School Register.

Sixth—Make an annual report to the County Superintendent at the time and in the manner and on the blanks prescribed by the Superintendent of Public Instruction. Any school teacher who shall end any school term before the close of the school year, shall make a report to the County Superintendent immediately after the close of such term; and any teacher who may be teaching any school at the end of the school year shall, in his or her annual report, include all statistics for the entire school year, notwithstanding any previous report for a part of the year.

Seventh—Make such other reports as may be required by the Superintendent of Public Instruction, County Superintendent, or Board of Trustees, or City Board of Education.

SEC. 31. Section seventeen hundred and one of said Code is amended to read as follows:

1701. No requisition for a warrant must be drawn in favor of any teacher, unless such teacher is the holder of a proper certificate, in force for the full time for which the requisition is drawn, nor unless he was employed by the Board of Trustees, or City Board of Education, or by the County Superintendent of Schools, as provided in section one thousand five hundred and forty-five. ^{No warrant to be drawn unless teacher has certificate.}

SEC. 32. A new section is hereby added to said Code, to be known as section seventeen hundred and four, to read as follows:

Eligibility.

1704. No person is eligible to teach in any public school in this State, or to receive a certificate to teach, who has not attained the age of eighteen years.

SEC. 33. Section seventeen hundred and twelve of said Code is amended to read as follows:

Library
Fund, how
expended.

1712. The Boards of Trustees and City Boards of Education must expend the Library Fund, together with such moneys as may be added thereto by donation, in the purchase of school apparatus and books for a school library; and no requisition for a warrant shall be drawn by the County Superintendent upon the order of any Board of Trustees against the Library Fund of any district, unless such order is accompanied by an itemized bill, showing the books and apparatus, and the price of each, in payment for which the order is drawn.

SEC. 34. Section seventeen hundred and fifteen of said Code is amended to read as follows:

Control and
location
of Library.

1715. Libraries are under the control of the Board of Trustees or City Board of Education, and must be kept, when practicable, in the school houses.

SEC. 35. Section seventeen hundred and sixty-eight of said Code is amended to read as follows:

Boards of
Education.

1768. In each county having a population of less than one hundred thousand inhabitants, there shall be a County Board of Education, which shall consist of the County Superintendent of Schools and four members, of whom at least two shall always be experienced teachers, and holding first grade certificates, in full force and effect, appointed by the Board of Supervisors, who shall hold their office for two years, until their successors are appointed and qualified; *provided*, that the first members of the County Board of Education shall, at their first meeting, and immediately after organizing, classify themselves by lot in such a manner that two of the appointed members shall go out of office on the first day of July, eighteen hundred and eighty-one, and the other two appointed members on the first day of July, eighteen hundred and eighty-two. The Board of Supervisors of each county, at its first meeting after the passage of this Act, shall appoint four members of the County Board of Education, who shall enter upon their duties immediately after appointment, and thereafter annually shall appoint two members, who shall hold their offices for two years from and after the first day of July next succeeding their appointment. A vacancy in the Board of Education may be filled at any time after its occurrence by the Board of Supervisors. For the transaction of business, three members shall constitute a quorum; but no certificate shall be issued or revoked, nor any text-books adopted, except by an affirmative vote of three members. On the call of any member, the "ayes" and "noes" shall be taken upon any proposition, and the vote recorded in the minutes. If the Board of Supervisors of any county shall refuse or neglect to appoint a Board of Edu-

cation as herein provided, then the County Superintendent shall appoint such Board of Education as hereinbefore provided, and the Board so appointed shall have all the rights, exercise all the powers, and be governed by all the regulations prescribed for County Boards, the same as if appointed by the Board of Supervisors.

SEC. 36. Section seventeen hundred and sixty-nine of said Code is amended to read as follows:

1769. The Superintendent of Schools shall be ex officio Secretary of the County Board of Education. The Board shall elect one of their members President. Chairman
of Board.

SEC. 37. Section seventeen hundred and seventy of said Code is amended to read as follows:

1770. The County Board of Education must meet and hold examinations for the granting of teachers' certificates semi-annually, at such times as the County Board of Education shall determine. All meetings of the Board of Education shall be public, and shall be held at the county seat, and the record of their proceedings shall be kept in the office of the Superintendent of Schools. The Board of Supervisors shall allow to the members of the Board of Education a reasonable compensation for their services, payable out of the same fund and in the same manner as the Superintendent is paid. Meetings.

SEC. 38. Section seventeen hundred and seventy-one of said Code is amended to read as follows:

1771. County Boards of Education have power:

First—To adopt rules and regulations, not inconsistent with the laws of this State, for their own government. Power of
County
Boards of
Education

Second—To prescribe and enforce rules for the examination of teachers.

Third—To examine applicants, and to prescribe a standard of proficiency which will entitle the person examined to a certificate, and to grant certificates of two grades: (1) County certificates, first grade, valid for four years, and authorizing the holder to teach a grammar school; (2) County certificates, second grade, valid for two years, and authorizing the holder to teach a primary school.

Fourth—To prescribe and enforce the use of a uniform series of text-books in the public schools.

Fifth—To revoke, for immoral or unprofessional conduct, or evident unfitness for teaching, the certificates granted by them.

Sixth—To keep a record of its proceedings.

Seventh—To issue diplomas of graduation from any of the public schools of the county, which diplomas shall be designed by the Superintendent of Public Instruction, and distributed as other blanks from his office.

Eighth—To adopt and use, in the authentication of its acts, an official seal.

Ninth—All examination papers shall be kept on file in the office of the Superintendent for at least one year, and shall be open for the inspection of school officers.

SEC. 39. Section seventeen hundred and seventy-two of said Code is amended to read as follows:

6 POL. CODE.

Certificates,
to whom to
be issued.

1772. Except as provided in section seventeen hundred and seventy-five, certificates must be granted only to those who have passed a satisfactory examination in all the studies prescribed by the County Board of Education; *provided*, that applicants for second grade county certificates shall be required to pass an examination only in arithmetic, grammar, geography, composition, history of the United States, orthography, defining, penmanship, reading, and method of teaching. All certificates must bear the seal, and be signed by the Superintendent and a majority of the Board of Education by which they were granted.

SEC. 40. Section seventeen hundred and seventy-four of said Code is amended to read as follows:

Standing to
be indorsed
on cer-
tificate.

1774. The standing of each applicant in each study, and in the class, must be indorsed on the back of each certificate issued upon examination, otherwise it is not a valid certificate.

SEC. 41. Section seventeen hundred and seventy-five of said Code is amended to read as follows:

Granting
and renewal
of certi-
ficates.

1775. The Board may also, without examination, grant county certificates and fix the grade thereof, to the holders of life diplomas, State educational diplomas, Normal School diplomas, State University diplomas, and to the holders of such State and county certificates as were in full force and effect on the first day of January, eighteen hundred and eighty, and may, without examination, renew certificates previously issued by them, or previously granted in their county; such renewed certificates to remain valid for the same length of time for which the original certificates were granted. County Boards of Education must issue certificates upon the blank forms to be prepared and distributed by the Superintendent of Public Instruction.

SEC. 42. Section seventeen hundred and eighty-seven of said Code is amended to read as follows:

May be
a Board in
each city.

1787. In every city, or city and county, having a Board of Education, there may be a Board of Examination.

SEC. 43. Section seventeen hundred and eighty-eight of said Code is amended to read as follows:

How
constituted.

1788. Each Board of Examination consists of the City Superintendent of Schools and four other members, at least two of whom shall be experienced teachers, resident in such city, elected by the Board of Education, and holding office for two years.

SEC. 44. Section seventeen hundred and ninety of said Code is amended to read as follows:

Meetings.

1790. The Board must meet and hold examinations semi-annually, at such times as they may determine. The place of meeting shall be designated by the Chairman.

SEC. 45. Section seventeen hundred and ninety-one of said Code is amended to read as follows:

General
powers of
Boards of
Education.

1791. The Board of Education of any city, or city and county, having a Board of Education, has power:

First—In cities containing less than one hundred thousand inhabitants, to grant High School certificates, valid for six years.

Second—In cities containing more than one hundred thousand inhabitants, to grant certificates entitling the holders to teach in such city, or city and county, in the schools of the grade for which such certificates are granted, and continuing in force for the same period as a county certificate of like grade.

Third—To exercise, within their respective jurisdictions, the powers granted by sections seventeen hundred and seventy-one and seventeen hundred and seventy-five of this Code to County Boards of Education.

SEC. 46. Section eighteen hundred and seventeen of said Code is amended to read as follows:

1817. The County Superintendent of each county having a population of less than one hundred thousand inhabitants must, on or before the first regular meeting of the Board of Supervisors in September in each year, furnish the Board of Supervisors and the Auditor, respectively, an estimate in writing of the minimum amount of county school fund needed for the ensuing year. This amount he must compute as follows: Estimate of
County
School
Funds.

First—He must ascertain, in the manner provided for in subdivisions one and two of sections eighteen hundred and fifty-eight, the total number of teachers for the county.

Second—He must calculate the amount required to be raised at five hundred dollars per teacher. From this amount he must deduct the total amount of State apportionments, less ten per cent. received by the county for the next preceding school year, and the remainder shall be the minimum amount of county school fund needed for the ensuing year; *provided*, that if this amount is less than sufficient to raise a sum equal to three dollars for each census child in the county, then the minimum amount shall be such a sum as will be equal to three dollars for each census child in the county.

SEC. 47. Section eighteen hundred and eighteen of said Code is amended to read as follows:

1818. The Board of Supervisors of each county having less than one hundred thousand inhabitants must, annually, at the time of levying other county taxes, levy a tax to be known as the county school tax, the maximum rate of which must not exceed fifty cents on each one hundred dollars of taxable property in the county, nor the minimum rate be less than sufficient to raise a minimum amount reported by the County Superintendent, in accordance with the provisions of the preceding section. The Supervisors must determine the minimum rate of the county school tax as follows: they must deduct fifteen per cent. from the equalized value of the last general assessment roll, and the amount required to be raised, divided by the remainder of the assessment roll, is the rate to be levied; but if any fraction of a cent occur, it must be taken as a full cent on each one hundred dollars. Levy of
county tax.

SEC. 48. Section one thousand eight hundred and thirty of said Code is amended to read as follows:

1830. The Board of Trustees of any district may, when in their judgment it is advisable, call an election and submit to the electors of the district the question whether a tax Election to
determine.

shall be raised to furnish additional facilities for the district, or to maintain any school in such district, or for building one or more school houses (or for liquidating any indebtedness previously incurred in building school houses), or for any or all of these purposes.

SEC. 49. Section one thousand eight hundred and thirty-three of said Code is amended to read as follows:

Judges of
Election,
how
appointed.

1833. The Trustees must appoint three Judges to conduct the election, and it must be held in all respects, as nearly as practicable, in conformity with the general election law; *provided*, that no particular form of ballot shall be required, nor shall any informalities in conducting such election invalidate the same, if the election shall have been otherwise fairly conducted.

SEC. 50. Section eighteen hundred and thirty-four of said Code is amended to read as follows:

Ballots, what
to contain.

1834. At such elections the ballots must contain the words "Tax—Yes;" or, "Tax—No."

SEC. 51. Section eighteen hundred and thirty-five of said Code is amended to read as follows:

Returns.

1835. If a majority of the votes cast are "Tax—Yes," the officers of the election must certify the fact to the Board of Trustees.

SEC. 52. Section eighteen hundred and thirty-six of said Code is amended to read as follows:

Trustees to
report to
Supervisors.

1836. The Trustees, upon the receipt of a certificate of such fact, must report the same to the Board of Supervisors, stating the amount of money to be raised.

SEC. 53. Section eighteen hundred and thirty-seven of said Code is amended to read as follows:

Supervisors
to levy tax.

1837. The Board of Supervisors must, at the time of levying the county taxes, levy a tax upon all the taxable property in the district voting such tax sufficient to raise the amount voted. The rate of taxation shall be ascertained by deducting fifteen per cent. for anticipated delinquencies from the aggregate assessed value of the property in the district, as it appears on the assessment roll of the county, and then dividing the sum voted by the remainder of such aggregate assessed value. The taxes so levied shall be computed and entered on the assessment roll by the County Auditor, and collected at the same time and in the same manner as State and county taxes; and when collected, shall be paid into the county treasury for the use of the district in which the tax was voted.

SEC. 54. Section eighteen hundred and fifty-seven of said Code is amended to read as follows:

Compensa-
tion to
certain
officers not
allowed.

1857. No Assessor, Tax Collector, or County Treasurer must charge or receive any fees or compensation whatever for assessing, collecting, receiving, keeping, or disbursing any school moneys, but the whole moneys collected must be paid to the County Treasurer.

SEC. 55. Section eighteen hundred and fifty-eight of said Code is amended to read as follows:

Appoint-
ment.

1858. All State school moneys apportioned by the Superintendent of Public Instruction must be apportioned to the

several counties in proportion to the number of school census children between five and seventeen years of age, as shown by the returns of the School Census Marshals of the preceding school year; *provided*, that Indian children who are not living under the guardianship of white persons, and Mongolian children shall not be included in the apportionment list. The School Superintendent of each county must apportion all State and county school moneys as follows:

First—He must ascertain the number of teachers each district is entitled to, by calculating one teacher for every eighty census children, or fraction thereof not less than fifteen census children, as shown by the next preceding school census.

Second—He must ascertain the total number of teachers for the county by adding together the number of teachers assigned to the several districts.

Third—Five hundred dollars shall be apportioned to each district for every teacher assigned it; *provided*, that to districts having ten and less than fifteen census children shall be apportioned four hundred dollars.

Fourth—All school moneys remaining on hand, after apportioning five hundred dollars to each district having fifteen census children or more for every teacher assigned it, and, after apportioning four hundred dollars to districts having less than fifteen census children, must be apportioned to the several districts having not less than thirty census children, in proportion to the number of census children in each district.

SEC. 56. Section eighteen hundred and fifty-nine of said Code is amended to read as follows:

1859. No school district is entitled to receive any apportionment of State or county school moneys which has not maintained a public school for at least six months during the then next preceding school year; but any new district, formed by the division of an old one, is entitled to its apportionment when school has been maintained in the old district before division, and in the new district after division, at least eight months in all. A district which is prevented by fire, flood, or prevailing epidemic from maintaining a school for the length of time designated in this section, is nevertheless entitled to its apportionment of State and county school moneys. Same.

SEC. 57. Section eighteen hundred and sixty-one of said Code is amended to read as follows:

1861. The State School Fund, excepting as otherwise provided in this chapter, must be used for no other purpose than the payment of teachers of primary and grammar schools. State School Fund, how used

SEC. 58. Section eighteen hundred and sixty-nine of said Code is amended to read as follows:

1869. Any State, County, or City, or City and County Superintendent, or any State, County, or City, or City and County Board of Education, who shall issue a certificate or diploma, except as provided for in this title, shall be guilty of a misdemeanor. Issuing regular certificates.

SEC. 59. Section eighteen hundred and seventy-one of said Code is amended to read as follows:

Evidence of character.

1871. Certificates shall be issued to such persons only as shall have given evidence of good moral character.

SEC. 60. Section eighteen hundred and seventy-four of said Code is amended to read as follows:

Books adopted to continue in force four years.

1874. In the adoption of text-books, all County, City, and City and County Boards of Education shall be governed by the following rules:

First—Any books hereafter adopted as part of a uniform series of text-books must be continued in use for not less than four years.

Second—No change of text-books must be made at any other time than in the months of May or June of the year in which the change is made, and no changes shall be made to take effect until the beginning of the school term commencing after the thirtieth day of June of that year.

Third—At least sixty days' notice of any proposed change in text-books must be given by publication in a newspaper of general circulation published in the county, if there be one, in which such change is to be made. If there be no newspaper published in the county, then such publication shall be made in any newspaper having a general circulation in the county. A copy of the newspaper containing such publication, with such notice marked, must immediately after the first publication thereof be by the Secretary of the Board transmitted to the State Board of Education, and the same, when received, must be filed by the Secretary of said State Board. Said notice shall state what text-books it is proposed to change; that sealed bids or proposals will be received by the Board for furnishing books to replace them; the place where and the day and the hour when all bids or proposals will be opened, and that the Board reserves the right to reject any and all bids or proposals. Said notice shall be published in such newspaper as often as the same shall be issued after the first publication thereof; *provided*, that in the year eighteen hundred and eighty only fifteen days' notice need be given.

Fourth—At the time and place specified in said notice the Board shall meet and publicly open and read all of the bids or proposals which have been received by them, and shall make their award thereon within ten days thereafter.

Fifth—Said bids or proposals must be accompanied by sample copies of the books proposed to be furnished, together with a statement of the wholesale and retail price at which the publisher agrees to furnish each book within the county, or at San Francisco, during the full time for which said books are to be adopted.

Sixth—If no satisfactory bids or proposals are received, then the books already in use may continue in use until changed, as herein provided.

Seventh—The publisher or publishers whose proposals shall be excepted, must enter into a written contract with the Board of Education making the award, and shall give a good and sufficient bond in a reasonable sum, to be fixed by the

Board of Education, for the faithful performance thereof. Publishers of books already in use may bid under the provisions of this section as well as others, and such bids, if satisfactory, may be accepted by the Board.

SEC. 61. A new section is hereby added to said Code, to be known as section eighteen hundred and seventy-nine, to read as follows:

1879. The offering of any valuable thing to any member of a Board of Education, with the intent thereby to influence his action in regard to the granting of any teacher's certificate, the appointment of any teacher, Superintendent, or other officer or employé, the adoption of any text-book, or the making of any contract to which the Board of Education of which he is a member shall be a party, or the acceptance by any member of a Board of Education of any valuable thing, with corrupt intent, shall be a felony, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the Penitentiary not exceeding one year, or by both such fine and imprisonment; and the person so convicted shall be forever disqualified from holding any office of trust or profit in this State. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with any offense described in this section, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony. Any contract or appointment obtained from a Board of Education by corrupt means shall be void. Any County Board of Supervisors, or any City Council, or any duly authorized committee thereof, may investigate the conduct of any member of a County, or City, or City and County Board of Education, or school officer, or employé, who may be charged with malfeasance in office, and in such capacity shall be entitled to the process of the Courts to compel the attendance of witnesses, and the officer who shall preside at such investigation shall have power to administer all necessary oaths.

Influencing
members of
a Board
made felony.

SEC. 62. Sections one thousand five hundred and fifty-one **Repealing.** b, one thousand six hundred and fifty-two, one thousand six hundred and sixty-nine, one thousand six hundred and seventy, one thousand six hundred and seventy-one, one thousand seven hundred and forty-one, one thousand seven hundred and forty-two, one thousand seven hundred and forty-three, one thousand seven hundred and forty-four, one thousand seven hundred and forty-five, one thousand seven hundred and forty-six, one thousand seven hundred and forty-seven, one thousand seven hundred and forty-eight, one thousand seven hundred and forty-nine, one thousand seven hundred and fifty, one thousand seven hundred and fifty-one, one thousand seven hundred and fifty-two, one thousand seven hundred and fifty-three, one thousand seven hundred and fifty-four, one thousand seven hundred and fifty-five, one thousand seven hundred and fifty-eight, one thousand seven hundred and seventy-seven, one thousand seven hun-

dred and ninety-three, one thousand eight hundred and thirty-eight, one thousand eight hundred and forty, one thousand eight hundred and forty-one, one thousand eight hundred and forty-two, one thousand eight hundred and forty-three, one thousand eight hundred and forty-four, one thousand eight hundred and forty-five, one thousand eight hundred and forty-six, one thousand eight hundred and forty-seven, one thousand eight hundred and forty-eight, one thousand eight hundred and forty-nine, one thousand eight hundred and fifty, one thousand eight hundred and fifty-one, one thousand eight hundred and fifty-two, and one thousand eight hundred and seventy-two of said Code are hereby repealed.

SEC. 63. This Act shall take effect immediately.

CHAPTER XLY.

An Act to amend sections two hundred and thirty-five and two hundred and sixty-six of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to the meeting of the Legislature and the compensation of its members.

[Approved April 9th, 1880.]

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

SECTION 1 Section two hundred and thirty-five of said Code is hereby amended so as to read as follows:

Time and
place of
meeting of
Legislature.

235. The Legislature shall assemble at the seat of government at twelve o'clock M., on the first Monday after the first day of January, eighteen hundred and eighty-one, and on the first Monday after the first day of January every two years thereafter.

SEC. 2. Section two hundred and sixty-six of said Code is hereby amended so as to read as follows:

Per diem and
mileage of
members of
Legislature.

266. Members of the Legislature shall receive eight dollars per day, payable weekly, during the session of the Legislature, and ten cents per mile for each mile of travel to and from their residences and the place of holding the session.

CHAPTER LII.

An Act to amend section ten (10) of the Political Code, defining legal holidays.

[Approved April 9th, 1880.]

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

SECTION 1. Section ten (10) of the Political Code is hereby amended so as to read as follows:

10. Holidays, within the meaning of this Code, are: Holidays.
Every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday.

SEC. 2. This Act shall take effect immediately.

CHAPTER LIII.

An Act to amend section two thousand two hundred and twenty-one of the Political Code, relating to transportation of insane persons to asylums.

[Approved April 12th, 1880.]

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

SECTION 1. Section twenty-two hundred and twenty-one of the Political Code is hereby amended to read as follows:

2221. Persons delivering insane persons at the asylums must receive all expenses necessarily incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the Board of Examiners, and paid out of any moneys in the State treasury appropriated for that purpose. The necessary expenses of an assistant, when more than one person is required to convey such insane person, shall also be allowed; *provided, however,* that the person in charge of such insane person shall certify, under oath, the urgent necessity of such assistance. No compensation, except as herein provided,

Compensation for delivery of insane to asylums.

shall be received or allowed for delivering insane persons at the asylums.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are repealed.

SEC. 3. This Act shall take effect immediately.

CHAPTER LIV.

An Act to amend section thirty-seven hundred and fourteen of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to revenue.

[Approved April 12th, 1880.]

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

SECTION 1. Section thirty-seven hundred and fourteen of the Political Code is hereby amended so as to read as follows:

Supervisors
to regulate
county rate
of taxation.

3714. The Board of Supervisors of each county must, on the first Monday of October, fix the rate of county taxes, designating the number of cents on each hundred dollars of property levied, for each fund, and must levy the State and county taxes upon the taxable property of the county; *provided*, that it shall not be lawful for any Board of Supervisors of any county in the State to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this State, or of any county or municipality in this State.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXIII.

An Act to amend Sections 1917, 1934, 1939, 1941, 1955, 1960, 1973, 1974, 1975, 1982, 1986, 1990, 1992, 2022, 2028, 2039, 2059, 2095, 2099, 2077, 1940, 1970, 1962, 1965, 2094, and 2114 of the Political Code of California, to repeal Section 1975 of said Code, approved March thirtieth, eighteen hundred and seventy-eight, and Section 1991 of said Code, and to add a new section to said Code, to be known and numbered as Section 1977, relating to the State militia.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand nine hundred and thirty-four of the Political Code is amended to read as follows:

1934. Regimental, battalion, and company rules of government and by-laws regularly adopted by a majority of the elected officers of such regiments and battalions, or members of companies, and approved by the Commander-in-Chief, may be adopted and enforced in such regiments, battalions, and companies, if they are not in conflict with the laws and regulations of this State. By-laws.

SEC. 2. Section one thousand nine hundred and thirty-nine of said Code is amended to read as follows:

1939. The rules and regulations of the army of the United States, so far as the same may be applicable and not inconsistent with the laws of this State, and the rules and regulations prescribed by the Commander-in-Chief, constitute the rules and regulations for the government of the National Guard. Rules and regulations of United States army, how far applicable.

SEC. 3. Section one thousand nine hundred and forty-one of said Code is amended to read as follows:

1941. The Commander-in-Chief is authorized and has power to establish and prescribe such rules, regulations, forms, and precedents as he may deem proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of the Codes relative thereto. Such rules, regulations, forms, and precedents shall, from time to time, be revised as may be deemed necessary, and shall be promulgated in orders, and compiled in such form as may be deemed advisable for the information of the National Guard. Power of Commander-in-Chief.

SEC. 4. Section one thousand nine hundred and fifty-five of said Code is amended to read as follows:

1955. 1. If such company has been organized and the officers elected in accordance with the provisions of law, orders, and regulations, the company must be listed in the office of the Adjutant-General as a company of the National Guard, and the officers elected, if commissioned, hold office for the term of two years. Company to be listed and officers commissioned.

2. All commissioned officers of the National Guard shall be commissioned by the Governor, but he may refuse to issue a commission to any officer elected or appointed, if, in his opinion, the person elected or appointed is in any way unqualified or unworthy to be an officer in the National Guard.

SEC. 5. Section one thousand nine hundred and sixty of said Code is amended to read as follows:

1960. No person can be a member of two companies at the same time; and any member of a company who removes beyond the limits of the county may be discharged from such company; and such discharge, as in all other cases, must be announced in orders from proper authority, and copies of all orders announcing discharges must be forwarded to brigade and general headquarters. Not to be a member of two companies at the same time.

SEC. 6. Section one thousand nine hundred and seventy-three of said Code is amended to read as follows:

1973. 1. Any commissioned officer who has become disabled, and incapable of longer performing the active duties Retired list.

of his office, may, upon his own application, be placed upon the retired list.

2. If an officer for either of the above reasons desires to be placed upon the retired list, he shall make application to his brigade commander to appoint a Board of Surgeons, who shall examine him as to his disability, and if such disability has not been incurred by reason of any dereliction, they shall, if they deem proper, recommend that his application be granted; and upon the approval of such application by the brigade commander and Commander-in-Chief, the Adjutant-General shall issue orders retiring such officer.

3. Any commissioned officer who shall have served as such in the National Guard of this State for the continuous period of eight years, may, upon his own application, be placed upon the retired list, and withdrawn from active service and command, with the rank held by him at the time such application is made. Upon being officially notified by the brigade commander, attested by the Adjutant-General of the State, the Commander-in-Chief shall cause orders to be issued retiring the officer who makes application therefor, in accordance with the provisions of this section.

4. The officers on the retired list shall only be subject to detail for duty by orders from the Commander-in-Chief; and he shall cause to be issued such orders as he may deem necessary, detailing them for duty upon Boards of officers for military purposes, Courts-martial, and Courts of Inquiry, and for such other military duties as in his judgment may be advisable; and for this purpose a roster of all officers on the retired list shall be kept in the Adjutant-General's office.

5. Officers on the retired list shall, on all occasions of duty, and on all occasions of ceremony, take rank next to officers of like rank upon the active list.

SEC. 7. Section one thousand nine hundred and seventy-four of said Code is amended to read as follows:

Elected
officers to
appear
before
Examining
Board.

1974. 1. Every elected officer of the National Guard must, upon his election to any office in the National Guard, appear before an Examining Board for examination as to his qualifications for the office to which he has been elected.

2. Such Board of officers shall consist of three commissioned officers for each brigade, to be designated by the Commander-in-Chief, and who may be removed at his pleasure.

3. The officer duly appointed to preside at any election shall, immediately after declaring the result of such election, notify the officer or officers elected that they must appear before the Examining Board for examination, when notified by that Board.

4. If the officer elected and duly notified does not appear before the said Examining Board when summoned by them, he shall be deemed to have declined his commission, and there shall be another election ordered by the brigade commander. The filing of a proper certificate of said Board with the brigade commander that the officer has failed to pass an examination, or declined to appear before the Board

when notified, shall be deemed sufficient for ordering a new election.

SEC. 8. Section one thousand nine hundred and seventy-five of said Code is amended to read as follows:

1975. The Board shall thoroughly examine the candidate for commission as to his military and general qualifications, and if, in the opinion of the majority of the Board, he is duly qualified, the fact shall be duly certified to the Commander-in-Chief. The Board shall examine the candidate for a commission as to his knowledge in the following:

Candidates to be thoroughly examined.

1. The prescribed tactics.
2. The rules and regulations governing the United States army and the National Guard of California.
3. The revised articles of war.
4. The revisions of the Codes of California relative to the National Guard.
5. Forms of military orders, correspondence, records, and also as to general qualifications.

SEC. 9. Section one thousand nine hundred and eighty-two of said Code is amended to read as follows:

1982. A regiment of the National Guard consists of not less than six nor more than ten companies. Any less number of companies than six constitute a battalion.

Regiments and battalions.

SEC. 10. Section one thousand nine hundred and seventy-five of said Code, approved March thirtieth, eighteen hundred and seventy-eight, is hereby repealed.

Repealed.

SEC. 11. A new section is hereby added to said Code, to be known and numbered as section one thousand nine hundred and seventy-seven, to read as follows:

1977. 1. No soldier shall wear or use, except when on military duty, or by special permission of his commanding officer, any uniform or other article of military property belonging to the State, or to the company of which he is a member.

Not to use uniform, when.

2. No officer in charge of public property for military use shall transfer any portion thereof, either as a loan or permanently, without the authority of the next superior commander.

Not to loan property without authority.

3. Although an officer who has receipted for public property is personally and officially accountable therefor, yet all commanding officers are also responsible that the best arrangements are made for the security and safety of all public property within their commands, and for the strict observance of the regulations in regard to its care, removal, use, or issue. It is, therefore, their duty to see that none but faithful and reliable persons are employed for its care, or allowed control over or access to it.

Responsibility of officers.

4. No parade or voluntary service shall be performed by any regiment, battalion, or company, under arms, or in uniform, without the approval of the next superior authority.

No parade without permission.

SEC. 12. Section one thousand nine hundred and eighty-six of said Code is amended to read as follows:

1986. Such presiding officer must make return of the election held, through the proper military channels, for approval to the Adjutant-General, who, upon finding the

Returns of election.

same in accordance with the provisions of law, orders, and regulations, must notify the Commander-in-Chief thereof for his consideration, who, if he approve, shall issue the commission. In all elections for commissioned officers, a majority of the votes of those present shall be necessary to a choice.

SEC. 13. Section one thousand nine hundred and ninety of said Code is amended to read as follows:

Staff of
Colonel,
Lieutenant-
Colonel, and
Major.

1990. The staff of a Colonel of a regiment, and of a Lieutenant-Colonel, or Major commanding a battalion, consists of one Adjutant, one Quartermaster, one Commissary, one Paymaster, one Ordnance Officer, one Inspector of Rifle Practice, each with the rank of First Lieutenant; one Surgeon, with the rank of Major; one Chaplain, with rank of Captain; and one Sergeant-Major, one Quartermaster-Sergeant, one Commissary-Sergeant, one Ordnance Sergeant, one Hospital Steward, one Drum-Major, two Principal Musicians, four Regimental Markers, two General Guides, two Sergeants and Standard Bearers, and six color Corporals, to be appointed by such commanding officer, and holding office at his pleasure, and until their successors are appointed and qualified.

SEC. 14. Section two thousand and twenty-two of said Code is amended to read as follows:

Drills.

2022. Commanders of regiments and battalions must assemble their commands for battalion drills at least once in each year, exclusive of the legal brigade, regimental, or battalion parade. Every such command, of not less than six companies, that annually assembles and encamps for discipline and drill for not less than eight days, shall receive from the State, to defray the expenses of such encampment, the sum of two thousand dollars. If the companies of such command are not located at the same place, then each company shall, in addition to the above allowance, receive the sum of two dollars and fifty cents for every mile necessarily traveled to and from the place of assembly. Said sum shall be audited, allowed, and paid as other allowances to the National Guard are allowed and paid. Each Colonel commanding a regiment may muster into and attach to it a company of cadets, and may prescribe the ages and term of enlistment and the discipline thereof. Each member of such company must, between the age of eighteen and twenty-one, join some company of the National Guard, and serve therein not less than one term of enlistment. It shall be the duty of the Colonel to give his personal attention to the instruction of such cadet company, and he must, by rule, prohibit the use of intoxicating drinks by any member of such company during the term of membership, and must punish a second violation of such rule, by any one person, by dishonorable dismissal from the service. Every such company shall be trained in the arm of the service to which the regiment is attached, and shall receive from the State a monthly and annual allowance equal to one-third of the allowance made to a company of such regiment.

Appropriation.

How paid.

Cadets.

Duty of
Colonel.

SEC. 15. Section two thousand and ninety-five of said Code is amended to read as follows:

2095. No claim must be allowed under the provisions of the preceding section, unless an account of the expenditures for the preceding year, and ending June thirtieth, is made upon the annual muster roll, certified to by the commanding officer as correct. The demands must be made quarterly in duplicate, signed and sworn to by the officer claiming the same, before any field officer of the National Guard or Notary Public, and transmitted through the regular military channels, with the approval of each commanding officer through whose headquarters they are required to pass. One copy of such demands shall be filed in the office of the Adjutant-General, and one copy sent to the Board of Military Auditors.

Allowance and payment of company's expenses.

SEC. 16. Section two thousand and ninety-nine of said Code is amended to read as follows:

2099. The annual sum of two hundred and fifty dollars must be audited by the Board, and paid out of the appropriation for military purposes, to each company of the National Guard of sixty members or over, and an amount in proportion to every company of less than sixty members. The amount so audited and allowed must be paid to the commanding officers of such companies, for the use thereof. An itemized statement of the manner in which sums have been expended must be made by such officers to the Adjutant-General on the thirtieth day of June in each year, together with a verified statement of the manner in which all moneys received by him from the State have been expended.

Annual allowance of companies.

SEC. 17. Section two thousand and seventy-seven of said Code is amended to read as follows:

2077. Courts-martial appointed under the provisions of this chapter are organized in like manner, and subject to the rules and regulations governing Courts-martial in the United States army, so far as the same may be applicable and not inconsistent with the laws of this State, and the rules and regulations and forms established by the Commander-in-Chief. They have the same power to compel the attendance of witnesses when summoned by them, to preserve order in and about the Court-room during sessions, and to punish for contempt, as the Judges of the Superior Court have under the laws of this State.

Courts-martial, organization and rules of.

SEC. 18. Section one thousand nine hundred and ninety-one of said Code is hereby repealed.

Repealed.

SEC. 19. Section one thousand nine hundred and seventeen of said Code is amended to read as follows:

1917. His staff consists of one Adjutant-General, with the rank of Major-General; one Chief Engineer, one Paymaster-General, one Judge Advocate-General, one Inspector-General of Rifle Practice, one Surgeon-General, each with the rank of Colonel, and eight Aids-de-Camp, with the rank of Lieutenant-Colonel, appointed by and holding office at the pleasure of the Commander-in-Chief, or until their successors are appointed and qualified.

Staff of Commander-in-Chief.

SEC. 20. Section one thousand nine hundred and forty-two of said Code is amended to read as follows:

1942. The colors carried by organizations of the National Guard shall be such as are borne by similar organizations in

What colors to carry.

the United States army; and no military organization provided for by the Constitution and laws of the State, and receiving State support, shall, while under arms, either for ceremony or duty, carry any device, banner, or flag of any State or nation, except that of the United States, or the State of California.

SEC. 21. Section one thousand nine hundred and seventy of said Code is amended to read as follows:

Annual
inspection
and muster.

Muster rolls.

1970. There must be an annual inspection and muster of all the troops of the National Guard in the month of July, each year, by brigade, regiment, battalion, or company, as may be deemed advisable by the brigade commander; and the commanding officer of each company must make out and certify triplicate muster rolls, showing the names and number of the members of the company, the officers in the order of their rank, and the privates in alphabetical order; and he must also attach to each roll a list of the ordnance, ordnance stores, accouterments, clothing, and other property of the State in possession of the company; a statement in which all moneys received from the State for the previous year have been expended, together with such other information as the Adjutant-General or brigade commander may require. He must transmit, through the proper military channels, one copy of the roll and list attached to the Major-General, one copy to the Brigadier-General of his brigade, and one copy to the Adjutant-General.

Drum and
trumpet
corps.

SEC. 22. Section one thousand nine hundred and ninety-two of said Code is amended to read as follows:

1992. Commanders of regiments and battalions may concentrate the music of their different commands and organize the same under a Drum-Major or Chief Trumpeter, as a drum or trumpet corps.

Number of
officers and
privates.

SEC. 23. Section one thousand nine hundred and sixty-two of said Code is amended to read as follows:

1962. The companies of the National Guard are composed of the following officers and privates, viz.:

1. Each company of cavalry, of one Captain, one First Lieutenant, one Senior and one Junior Second Lieutenant, one First Sergeant, one Quartermaster Sergeant, four Sergeants, eight Corporals, two Trumpeters, one Farrier, and not less than forty nor more than one hundred privates.

2. Each company of infantry, of one Captain, one First Lieutenant, and one Second Lieutenant, one First Sergeant, three Sergeants, eight Corporals, one Marker, two Drummers, one Fifer, and not less than forty nor more than one hundred and twenty privates.

3. Light batteries, of one Captain, two First Lieutenants, two Second Lieutenants, one First Sergeant, one Quartermaster Sergeant, six Sergeants, twelve Corporals, two Musicians, one Wagoner, and not less than forty nor more than one hundred privates.

4. A Gatling battery of four guns attached to a company of infantry will entitle that company to a Junior First Lieutenant and a Junior Second Lieutenant, two Sergeants, and

four Corporals, in addition to those already provided in paragraph two.

SEC. 24. Section one thousand nine hundred and sixty-five of said Code is amended to read as follows:

1965. Thereupon such officer must give such bonds and security as may be required by the Adjutant-General to secure the State and the company from loss on account of use or misapplication of any State property, or company funds and property. Said bond must be with two or more good and sufficient sureties, conditioned upon his faithful performance of all duties, and accounting for all property and moneys, both State and company funds, of which the company commander, as ex officio treasurer, shall be the custodian.

Bond to secure State against loss of property or company funds, etc.

SEC. 25. Section two thousand and ninety-four of said Code is amended to read as follows:

2094. There must be audited and allowed by the Board of Military Auditors, and paid out of the appropriations for military purposes, upon the warrant of the State Controller, to the commanding officer of each infantry or cavalry company of the National Guard, the sum of one hundred dollars per month; and to the commanding officer of each artillery company, or Gatling battery company, the sum of one hundred and twenty-five dollars per month, and the additional sum of twenty-five dollars per month for each gun over one; the sums so paid to be used for armory rent, care of arms, and proper incidental expenses of the company. There must also be audited, allowed, and paid out of the same appropriation, to the commanding officer of each regiment or battalion, the sum of five dollars per month for each company in his command, for clerical expenses; and if the regiment or battalion has more than four companies, and has attached to it an organized and uniformed band of not less than twelve pieces, the additional sum of twenty-five dollars per month for such band; to each Brigadier-General, five dollars per month for each company in his command; and to the Major-General, six hundred dollars per annum; and to each company, a sum necessary for uniforms and to keep the same in repair, not to exceed one hundred and fifty dollars per annum; and to each company the amount necessarily expended for ammunition.

Armory rents, expenses, etc.

SEC. 26. The Secretary of State shall make no charge for issuing a military commission.

No charge for military commission.

SEC. 27. This Act shall be in force from and after its passage.

CHAPTER LXIX.

An Act to amend sections three thousand four hundred and forty and three thousand four hundred and ninety-four of the Political Code, relative to interest on deferred payments for State land.

[Approved April 15th, 1880.]

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

SECTION 1. Section thirty-four hundred and forty of the Political Code is hereby amended so as to read as follows:

Swamp
lands, etc.,
price and
manner of
payment.

3440. The swamp and overflowed, salt marsh, and tide lands belonging to the State must be sold at the rate of one dollar (\$1 00) per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the approval of the survey by the Surveyor-General; and the balance, bearing interest at the rate of seven per cent. per annum, payable in advance, is due and payable one year after the passage of any Act of the Legislature requiring such payment, or before, if desired by the purchasers. Bonds or warrants of districts having an outstanding indebtedness are receivable in payment for lands in such districts at par.

SEC. 2. Section thirty-four hundred and ninety-four of the Political Code is hereby amended so as to read as follows:

School lands.
price;
payment,
when to be
made.

3494. The unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and lands selected in lieu thereof, must be sold at the rate of one dollar and twenty-five cents (\$1 25) per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the certificate of location issued to the purchaser; the balance, bearing interest at the rate of seven per cent. per annum, in advance, is due and payable within one year after the passage of any Act by the Legislature requiring such payment, or before, if desired by the purchaser.

SEC. 3. This Act shall take effect on and be in force from and after the first day of January, A. D. eighteen hundred and eighty-one.

CHAPTER LXXIII.

An Act to amend section three thousand six hundred and sixty-three of the Political Code, relating to revenue.

[Approved April 15th, 1880.]

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

SECTION 1. Section three thousand six hundred and sixty-three of said Code is hereby amended so as to read as follows:

3663. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll roads, or telegraph lines, must be assessed the same as real estate by the Assessor of the county, at a rate per mile for that portion of such property as lies within his county.

Water
ditches, toll
roads, and
telegraph
lines, how
assessed.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXVIII.

An Act to amend section seven hundred and ninety-one of the Political Code, approved March eighteenth, eighteen hundred and seventy-eight, relating to Notaries Public.

[Approved April 15th, 1880.]

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

SECTION 1. Section seven hundred and ninety-one of the Political Code is amended so as to read as follows:

791. The Governor may appoint and commission Notaries Public as follows: Fifteen for each of the Counties of Alpine, Del Norte, Lake, Lassen, Marin, Mariposa, Modoc, Plumas, San Benito, San Mateo, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Ventura. Twenty for each of the Counties of Mono, San Diego, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Humboldt, Inyo, Kern, Mendocino, Merced, Monterey, Napa, Placer, San Bernardino, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Stanislaus, Tuolumne, Yolo, and Yuba. Twenty-five for each of the Counties of Sonoma, Tulare, Fresno, and Nevada. Thirty-five for each of the Counties of Alameda, Los Angeles, Sacramento, Santa Clara, San Joaquin, and for the City and County of San Francisco. Fifteen for each of the counties created subsequent to the creation of this Act.

Governor to
appoint and
commission
Notaries
Public.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect immediately.

CHAPTER LXXIX.

An Act to add a new section to the Political Code, to be numbered thirty-four hundred and ninety-one, relative to the election of Trustees of reclamation districts, and their term of office.

[Approved April 15th, 1880.]

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

SECTION 1. The following new section is hereby added to the Political Code, to be numbered thirty-four hundred and ninety-one:

Election of
Trustees of
reclamation
district.

3491. In each reclamation district in this State, formed under this Code or any statute, there shall be an election every two years, held at such time and place, in or near the district, and after such notice as the Board of Supervisors shall direct; *provided*, that the notice shall be not less than one month, and at such election each bona fide owner of lands in the district shall be entitled to vote in person or by proxy, and shall have right to cast one vote for each one dollar's worth of real estate owned by him or her in the district, the value thereof to be determined from the next preceding assessment roll of the county, and a majority of the votes cast at such election shall elect. In all elections for Trustees every owner of real estate shall have the right to cumulate his or her votes, and give one candidate as many votes as the number of Trustees to be elected multiplied by the number of dollar's worth of real estate owned by him or her shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The Board of Supervisors to which the petition for the formation of the district was presented shall, upon the application of any land holder in the district, appoint a time and place for holding such election, which election shall be held within sixty days from the time of such application; the place shall in all cases be in or near the district. Notice of such election shall be given by publication for not less than one month in a newspaper in each county in which any portion of the lands of the district are situate, if any newspaper is published therein, and if not, then in a newspaper having general circulation in such county. The Trustees elected under the provisions of section three thousand four hundred and fifty-two shall hold office until their successors are elected under the provisions of this section. For the purposes of such election the Board of Supervisors of the county in which the whole or the larger part of the lands of any district are situate, must appoint from the land holders of the district one Inspector and two Judges of election, who shall constitute a Board of Election for such district; but in case the Board of Supervisors fail to appoint, or the persons appointed fail to attend at the time and place appointed for the election, the voters present at the time and place of opening the polls may

Supervisors
to appoint
time and
place for
election.

Terms.

appoint the Board, or supply the place of an absent member thereof. Each member of the Board must, upon entering upon his duties, be sworn to a faithful performance thereof by some officer authorized to administer oaths. The Board of Election must canvass the votes cast and issue certificates of election to the persons elected, and must place the ballots, when canvassed, in an envelope and forward the same, sealed, to the Clerk of the Board of Supervisors. Any legally qualified voter may challenge any vote, and the Board of Election shall determine, by the oath of the parties or otherwise, as they may think proper, whether or not the person challenged is entitled to vote, and in case of challenge, either one of the Board of Election is hereby authorized to administer oaths. The polls shall be open from ten A. M. until four P. M. In case of vacancy in the Board of Trustees, the Board of Supervisors shall, by appointment, fill such vacancy.

SEC. 2. This Act shall take effect and be in force from and after its passage, and all Acts and parts of Acts in conflict therewith are hereby repealed.

CHAPTER LXXX.

An Act to amend section three thousand four hundred and eighty-one of the Political Code.

[Approved April 15th, 1880.]

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

SECTION 1. Section three thousand four hundred and eighty-one of the Political Code is hereby amended so as to read as follows:

3481. If the owners of lands representing more than two-thirds of any body of lands within any reclamation or swamp land district, and in which the lands have not been reclaimed, desire to have the said body of lands set off from such district, they must, in addition to the petition required by section three thousand four hundred and forty-six, show to the Board of Supervisors that the said body of lands is capable of an independent reclamation.

Owner of unreclaimed lands may have lands set off in separate districts.

SEC. 2. All Acts or parts of Acts inconsistent herewith are hereby repealed, and this Act shall take effect from and after its passage.

CHAPTER LXXXIX.

An Act to add five new sections to the Political Code, providing for funding and refunding county indebtedness.

[Approved April 16th, 1880.]

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

SECTION 1. A new section is hereby added to the Political Code, to be known as section four thousand and forty-eight, to read as follows:

Funding
outstanding
indebtedness
of counties.

4048. The Board of Supervisors of any county having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest to fund or refund the same and issue bonds of the county therefor, in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form: No. ——. The County of —, in the State of California, for value received, promises to pay —, or order, at the office of the Treasurer of said county in —, on the first day of —, 18—, or at any time before that date, at the pleasure of the county, the sum of — dollars, with interest at the rate of — per cent. per annum, payable at the office of said Treasurer semi-annually, on the first days of — and — in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the Board of Supervisors under the provisions of chapter — of the Political Code of California, and in conformity with a resolution of said Board, dated — day of —, 18—. [Seal.] In testimony whereof, the said county, by its Board of Supervisors, has caused this bond to be signed by the Chairman of the Board, and attested by the Auditor, with the county seal attached, this — day of —, 18—. —, Chairman of Board of Supervisors. Attest: —, Auditor. And the interest coupon shall be in the following form: \$—. The Treasurer of — County, California, will pay the holder hereof, on the — day of —, 18—, at his office in —, — dollars for interest on County Bond No. —, issued under provisions of chapter — of the Political Code of California. —, County Auditor.

SEC. 2. A new section is hereby added to the Political Code, to be known as section four thousand and forty-nine, to read as follows:

Bonds.

4049. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively and sealed, they shall be delivered to the County Treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him, and the proceeds thereof, and he shall sell the same or exchange them under

the direction of the Board of Supervisors on the best available terms for any legal indebtedness of the county outstanding on the first day of January, eighteen hundred and eighty, but in neither case for a less sum than the face value of the bonds, and all interest accrued on them at the date of such sale or exchange. And if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of county indebtedness, the Treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness, by indorsing on the face thereof the amount for which they were received, the word "canceled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, the name and post-office address of purchasers; and if exchanged, what evidences of indebtedness were received therefor; which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the Treasurer of such purchase, giving at the same time the number of the bond transferred and his post-office address; and every transfer shall be noted on the record. The Treasurer shall also report, under oath, to the Board at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on Bond Fund, and so entered by him on his books; but such bonds shall not be sold or exchanged for any indebtedness of the county, except by the approval of the Board of Supervisors of said county. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks in at least one newspaper published in the county; the right being reserved in such advertisement to reject any or all such bids.

Notice to
Treasurer of
transfer of
bonds.

Report of
Treasurer.

Sale
of bonds

SEC. 3. A new section is hereby added to the Political Code, to be known as section four thousand and fifty, to read as follows:

4050. The Board of Supervisors shall cause to be assessed and levied each year upon the taxable property of the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of nine years, at least forty per cent. of the amount; and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest; and the money arising from

Assessment.

such levies shall be known as the Bond Fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the Treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said Bond Fund.

SEC. 4. A new section is hereby added to the Political Code, to be known as section four thousand and fifty-one, to read as follows:

Redemption. **4051.** Whenever the amount in the hands of the Treasurer belonging to the Bond Fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week for three successive weeks, and in some newspaper of general circulation published in the City of San Francisco, not less than once a week for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon, and that if not presented for payment or redemption within forty days after the date of the publication of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. If said bonds are not so presented interest shall cease, and the amount due be set aside as specified in said advertisement. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the post-office address of the owner, as shown by the record kept in the Treasurer's office.

SEC. 5. A new section is hereby added to the Political Code, to be known as section four thousand and fifty-two, to read as follows:

Failure to levy tax, owner may file bond with State Controller. **4052.** If the Board of Supervisors of any county which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds, or interest coupons, at maturity, and the same shall have been presented to the County Treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the State Controller, taking his receipt therefor, and the same shall be registered in the State Controller's office; and the State Board of Equalization shall, at their next session, and at each annual equalization thereafter, add to the State tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due, and to become due, prior to next levy, and the same shall be levied and collected as a part of the State tax, and paid into the State treasury, and passed to the special credit of such county as bond tax, and shall be paid by warrants, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the State Controller, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county.

State Board of Equalization to assume control.

SEC. 6. This Act shall take effect from and after its passage.

CHAPTER XCI.

An Act to amend section three thousand seven hundred and thirteen of the Political Code.

[Approved April 16th, 1880.]

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

SECTION 1. Section three thousand seven hundred and thirteen of the Political Code is hereby amended so as to read as follows:

3713. The State Board of Equalization must, for State purposes for the thirty-second fiscal year, fix such an ad valorem rate of taxation upon each one hundred dollars of taxable property of this State as will raise, for the thirty-second fiscal year: Rate of taxation.

First—For the General Fund, one million seven hundred and fifty thousand dollars.

Second—For the School Fund, one million four hundred thousand dollars.

Third—For the Interest and Sinking Fund, three hundred and fifteen thousand dollars.

SEC. 2. This Act shall take effect immediately.

CHAPTER XCII.

An Act to amend section three thousand seven hundred and forty-six of the Political Code.

[Approved April 16th, 1880.]

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

SECTION 1. Section three thousand seven hundred and forty-six of the Political Code is hereby amended so as to read as follows:

3746. Within ten days after the receipt of the "duplicate assessment book," the Tax Collector must publish a notice, specifying: Tax Collector to publish notice, specifying what.

1. That taxes will be delinquent on the last Monday in December next thereafter at six o'clock P. M., and that unless paid prior thereto five per cent. will be added to the amount thereof.

2. The time and place at which payment of taxes may be made.

SEC. 2. This Act shall take effect immediately.

CHAPTER XCIII.

An Act to amend section two thousand nine hundred and fourteen of an Act entitled an Act to establish a Political Code, approved March twelfth, eighteen hundred and seventy-two, relating to wharves.

[Approved April 16th, 1880.]

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

SECTION 1. Section two thousand nine hundred and fourteen of said Code is amended so as to read as follows:

Construction
of wharves,
chutes, or
piers.

2914. The wharf, chute, or pier must not be of a greater width than seventy-five (75) feet, and may extend to navigable water; *provided*, that a wharf constructed upon any of the navigable rivers, straits, sloughs, and inlets in this State may extend along the shores for a distance not exceeding one thousand feet, but in no case shall any wharf, chute, or pier extend into the water so far as to obstruct the free navigation of the water on which the same is situated; *provided*, this Act shall not apply to the water fronts of incorporated cities and towns.

SEC. 2. This Act shall take effect immediately.

CHAPTER XCVII.

An Act to amend section four thousand two hundred and twenty-one of the Political Code, relating to the counting of money in the county treasury.

[Approved April 16th, 1880.]

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

SECTION 1. Section four thousand two hundred and twenty-one of the Political Code is hereby amended so as to read as follows:

District
Attorney
and Auditor
to count
money in
treasury.

4221. The District Attorney and Auditor must, at least once in each month, count the money in the county treasury, and make and verify in duplicate statement showing:

1. The amount of money that ought to be in the treasury.
2. The amount and kind of money actually therein.

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

CHAPTER CI.

An Act to amend sections twenty-six hundred and forty-five (2645), twenty-six hundred and forty-six (2646), twenty-six hundred and forty-seven (2647), twenty-six hundred and forty-nine (2649), twenty-six hundred and fifty (2650), twenty-six hundred and fifty-three (2653), twenty-six hundred and fifty-seven (2657), twenty-six hundred and fifty-nine (2659), twenty-six hundred and sixty (2660), twenty-six hundred and sixty-one (2661), twenty-six hundred and sixty-two (2662), twenty-six hundred and sixty-three (2663), twenty-six hundred and sixty-four (2664), twenty-six hundred and eighty-one (2681), twenty-six hundred and eighty-five (2685), twenty-six hundred and eighty-seven (2687), twenty-six hundred and eighty-eight (2688), twenty-six hundred and ninety-eight (2698), twenty-seven hundred and three (2703), twenty-seven hundred and six (2706), twenty-seven hundred and seven (2707), twenty-seven hundred and eight (2708), twenty-seven hundred and ten (2710), twenty-seven hundred and eleven (2711), twenty-seven hundred and fourteen (2714), twenty-seven hundred and twenty-four (2724), twenty-seven hundred and twenty-five (2725), twenty-seven hundred and twenty-six (2726), twenty-seven hundred and twenty-nine (2729), twenty-seven hundred and thirty-one (2731), twenty-seven hundred and thirty-two (2732), twenty-seven hundred and forty-three (2743), twenty-seven hundred and forty-six (2746), twenty-seven hundred and forty-seven (2747), twenty-seven hundred and fifty-four (2754), twenty-seven hundred and fifty-five (2755), twenty-seven hundred and fifty-six (2756), and to repeal sections twenty-six hundred and forty-eight (2648), twenty-six hundred and fifty-one (2651), twenty-six hundred and fifty-two (2652), twenty-six hundred and fifty-four (2654), twenty-six hundred and fifty-eight (2658), twenty-six hundred and eighty-six (2686), twenty-seven hundred and four (2704), and twenty-seven hundred and fifty-seven (2757), of the Political Code.

[Approved April 16th, 1880.]

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

SECTION 1. Section twenty-six hundred and forty-five of the Political Code is hereby amended so as to read as follows:

2645. For highway purposes the counties of this State are divided into two classes: Counties classified for highway purposes.

First—The Counties of Alameda, Colusa, Fresno, Lake, Los Angeles, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Yolo, Yuba, constitute the first class.

Second—The Counties of Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Inyo, Kern, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Plumas, San Bernardino, San Diego, San Luis Obispo, Shasta, Santa Barbara, Santa Cruz, Sierra, Siskiyou, Sonoma, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, constitute the second class.

Third—In all counties of the second class each township shall constitute, and is hereby made and declared, one road district; *provided*, that the Board of Supervisors may, on petition of fifty taxpayers of any township, divide such township into two or more districts, as they may deem necessary, for road purposes.

SEC. 2. Section twenty-six hundred and forty-six of said Code is hereby amended so as to read as follows:

Road
Overseers.

2646. There must be elected in all the counties of the second class, at the general election in the year eighteen hundred and eighty, and every two years thereafter, one elector of each and every road district in the county to act as Road Overseers in their respective districts, to hold office for two years, commencing on the first Monday of January next succeeding their election, or until their successors are elected and qualified. They must give an official bond in such sum as the Board of Supervisors may determine, and take the usual oath of office. All Road Overseers now in office must hold office and exercise the duties thereof until their successors are elected and qualified under the provisions of this Act.

SEC. 3. Section twenty-six hundred and forty-seven of said Code is hereby amended so as to read as follows:

Supervisors
to have
general
supervision.

2647. The Boards of Supervisors of the several counties of this State shall have general supervision over the roads within their respective counties. They must, by proper ordinance:

1. Cause to be surveyed, viewed, laid out, recorded, opened, and worked, such highways as are necessary for public convenience, as in this chapter provided.

2. Cause to be recorded as highways such roads as have become such by usage or abandonment to the public.

3. Abolish or abandon such as are necessary.

4. Contract, agree for, purchase, or otherwise acquire the right of way over private property for the use of public highways, and for that purpose institute, or require the District Attorney to institute, proceedings under title seven, part three, of the Code of Civil Procedure, and to pay therefor from the District Road Fund of the particular district.

5. Let out by contract the improvement of the highways and the construction and repair of bridges, or other adjuncts of highways, when the amount of work to be done by contract exceeds two hundred dollars.

6. Levy a property road tax.

7. Order and direct Overseers specially in regard to work to be done on particular roads in their districts.

8. Cause to be erected and maintained on the highways they may designate, mile-stones, or posts, and guide-posts, properly inscribed.

9. Cause the road tax collected each year to be apportioned to the several road districts entitled thereto, and kept by the Treasurer in separate funds.

10. Audit and draw warrants on the funds of the respective road districts when required to pay for right of way, or work, or improvements thereon.

SEC. 4. Section twenty-six hundred and forty-nine of said Code is hereby amended so as to read as follows:

2649. When Overseers of road districts receive notice of their election or appointment from the Board of Supervisors, they must, within ten days thereafter, give the official bond required by said Board, and take the usual oath of office. The notice and certificate that the bond has been approved and filed, and the oath taken and indorsed thereon, or a certified copy thereof, constitute a commission, and authorizes the person named therein and holding the same to discharge the duties of Overseer until superseded.

Overseers notified to give bond, take oath, etc.

SEC. 5. Section twenty-six hundred and fifty of said Code is hereby amended so as to read as follows:

2650. Road Overseers, under the direction and supervision and pursuant to orders of the Board of Supervisors, must:

Duties of Road Overseers.

1. Take charge of the highways within their respective districts.

2. Keep them clear from obstructions, and in good repair.

3. Cause banks to be graded, bridges and causeways to be made, where necessary, keep the same in good repair, and renew them when destroyed.

4. Give two days notice to the inhabitants of his road district liable to do work on roads, when, where, and with what implements, and under whose direction to work, and superintend the same.

5. Collect from each inhabitant notified to work and who fails to work, or prefers to pay it, the commutation fee.

6. Make quarterly reports of all labor performed in his district, and how all road taxes and commutation moneys were expended, to the Board of Supervisors, under oath.

7. Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out.

8. Collect all road taxes in the mode provided for the collection of other road poll taxes, and faithfully account for and pay over all moneys unexpended by him to the County Treasurer, to be placed to the credit of the proper road district.

9. Receive for his services, from money in the treasury belonging to his road district, the sum of three dollars per day for each day's service performed by him, to be audited and ordered paid by the Board of Supervisors.

SEC. 6. Section twenty-six hundred and fifty-three of said Code is hereby amended so as to read as follows:

2653. The Board of Supervisors may annually set apart from the property road tax collected from all sources, a sum not exceeding twenty per cent. of the aggregate for general county road purposes, from which sum so set apart they may direct such amounts to be paid as may be found necessary for such general county road purposes in which the inhabitants of all the districts within the county are more or less interested, or to assist weak or impoverished districts in keeping their roads in repair, to be applied as the said Board may order or direct; *provided*, that the Boards of Supervisors in the several counties, or any Road Overseer, shall have no power to create a debt on any road district in excess of ten

General Road Fund.

per cent. of the estimated amount of receipts from said district for the next ensuing year.

SEC. 7. Section twenty-six hundred and fifty-seven of said Code is hereby amended so as to read as follows:

Road poll
tax, who
to pay.

2657. Every male inhabitant of a road district, over twenty-one and under fifty-five years of age, must perform two days labor annually, to be known as the annual road tax, upon the roads and highways of the district, under the demand and direction of the Road Overseer thereof, or pay to such Overseer a commutation fee of three dollars, or such smaller amount as may be fixed by the Board of Supervisors; *provided, however,* that the Board of Supervisors may and they have the power to order that every inhabitant of the county liable for the foregoing road tax shall, in lieu thereof, for any one year pay to the Road Overseers of his district a road tax of two dollars, which road tax shall be subject to enforced collection in the same manner and by the same process as is provided for the collection of State poll tax.

SEC. 8. Section twenty-six hundred and fifty-nine of said Code is hereby amended so as to read as follows:

Levy
thereof.

2659. The Board of Supervisors must, each year, prior to the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year, over and above the road tax, and must regulate and fix the amount of property highway tax, and levy the same thereby.

SEC. 9. Section twenty-six hundred and sixty of said Code is hereby amended so as to read as follows:

Receipts
therefor.

2660. The Board of Supervisors must provide proper blank road tax receipts, to be signed by the Clerk of the Board, and must deliver to each Road Overseer a number equal to the number of inhabitants of their respective districts liable for road tax, take receipts therefor, and charge the Road Overseer receiving the same therewith; but credit must be given to each Road Overseer for all unsold blank road tax receipts returned to the Clerk of the Board of Supervisors.

SEC. 10. Section twenty-six hundred and sixty-one of said Code is hereby amended so as to read as follows:

Collection
and
application.

2661. Road Overseers must make out lists of the inhabitants of the road districts liable for road tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the Board of Supervisors, and apply such labor and commutation money in the opening, maintaining, and repairing the highways and adjuncts in their respective districts.

SEC. 11. Section twenty-six hundred and sixty-two of said Code is hereby amended so as to read as follows:

Additions
to lists.

2662. The Road Overseer must, from time to time, add to the lists the names of persons liable for road tax who were omitted, or who have become inhabitants of his district since the original list was made, and enforce the road tax, or collect the commutation fee therefor, and apply the same as hereinbefore provided.

SEC. 12. Section twenty-six hundred and sixty-three of said Code is hereby amended so as to read as follows:

2663. The annual property tax for road purposes must be levied by the Board of Supervisors at their session when the tax is by them levied for county purposes, and must not exceed forty cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other State and county taxes are levied, assessed, and collected, and turned over to the County Treasurer for the use of the road districts from which it is respectively collected.

Annual property tax, how levied, collected, etc.

SEC. 13. Section twenty-six hundred and sixty-four of said Code is hereby amended so as to read as follows:

2664. The road tax and property tax herein provided for must not be levied or collected from the inhabitants or property of incorporated towns and cities which, by municipal authority, levy such taxes for the streets and alleys thereof. Bridges crossing the line between cities or towns and road districts must be constructed by the cities or towns, and the road fund of the road districts into which such bridges reach, proportionally.

Cities and towns not to pay tax.

Line bridges.

SEC. 14. Section twenty-six hundred and eighty-one of said Code is hereby amended so as to read as follows:

2681. Corporations or other employers of residents in any road district are responsible for the road tax assessed against their employes, and a notice to the employer or managing agent, requiring the payment of the road tax of the employe, charges such employer or corporation with such road tax.

Employers responsible for tax assessed to employes.

SEC. 15. Section twenty-six hundred and eighty-five of said Code is hereby amended so as to read as follows:

2685. Every Overseer must make to the Board of Supervisors quarterly a written account, under oath, containing:

Overseer's report.

1. The names of all persons assessed to work in his district.

2. The names of all who have actually worked, and the number of days.

3. The names of all who have commuted, and the amount received from them.

4. The names of all delinquents, and the amount collected from them.

5. A full return by items of the amount of labor and money expended at each separate point, and the manner in which and the time when the same was done.

6. The number of road tax receipts sold, and of those returned unsold.

7. An accurate account of every day he, himself, was employed, and the nature and items of the service rendered.

SEC. 16. Section twenty-six hundred and eighty-seven of said Code is hereby amended so as to read as follows:

2687. Road Overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of the report.

Unexpended moneys.

SEC. 17. Section twenty-six hundred and eighty-eight of said Code is hereby amended so as to read as follows:

Penalty for
failure to
make report,
etc.

2688. A failure to make a report as required, or to pay over on the order of the Board of Supervisors any moneys in his hands, subjects the Overseer to a penalty of twenty-five dollars (\$25), to be recovered in an action on his bond, together with any balance due from him. Suit therefor may be instituted by the District Attorney, under order of the Board of Supervisors.

Changing
roads.

SEC. 18. Section twenty-six hundred and ninety-eight of said Code is hereby amended so as to read as follows:

2698. Any ten inhabitants of a road district, taxable therein for road purposes, may petition, in writing, the Board of Supervisors to alter or discontinue any road, or to lay out a new road therein.

Report of
Viewers.

SEC. 19. Section twenty-seven hundred and three of said Code is hereby amended so as to read as follows:

2703. When the view and survey of the proposed alteration or new road is completed, the Viewers must report to the Board of Supervisors:

1. The course, termini, length, and cost of construction of the proposed road.

2. The estimate of damage to the owner of any land over which it is proposed to run the road.

3. The names of land owners who consent to give the right of way, and their written consent thereto.

4. The names of land owners who do not consent, and the amount of damage claimed by each.

5. Such other facts bearing upon the subject of importance to be known by the Board of Supervisors.

6. They may also, in their discretion, or by order of the Board of Supervisors, report upon the feasibility and cost of any other route than the one petitioned for which would subserve the same purposes; and also report as to the necessity of a greater or the practicability of a less width of road than petitioned for.

Hearing of
report.

SEC. 20. Section twenty-seven hundred and six of said Code is hereby amended so as to read as follows:

2706. The Board of Supervisors, on the coming in of the report, must fix a day for hearing the same; must notify the owners of land not consenting to give the right of way of the hearing, by having written notice served on them personally, or on the occupant or agent of the owner; or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed for the hearing, or to which it may be postponed or adjourned, hear the evidence and proof from all parties interested for and against the proposed alteration or new road; ascertain, and by order declare, the amount of damage awarded to each non-consenting land owner, and declare the report of the Viewers to be approved or rejected.

Approval,
damages, etc.

SEC. 21. Section twenty-seven hundred and seven of said Code is hereby amended so as to read as follows:

2707. If the Board approve the report, and there are no non-consenting land owners, the road must, by order, be declared a public highway, and the Road Overseer ordered

to open the same to the public. If there are non-consenting land owners, the Board must appropriate from the Road Fund of the district, and cause the Road Overseer to tender to such non-consenting land owners the award for damages made by the Board. If the awards are all accepted, the road must be declared a public highway, and be opened as before provided.

SEC. 22. Section twenty-seven hundred and eight of said Code is hereby amended to read as follows:

2708. If any award of damages is rejected by the land owners, the Board must, by order, direct proceedings to procure the right of way to be instituted by the District Attorney of the county, under and as provided in title seven, part three, of the Code of Civil Procedure, against all non-accepting land owners, and when thereunder the right of way is procured, the road must be declared a public highway, and opened as hereinbefore provided. But if any non-consenting land owner does not recover a greater amount of damages than shall have been allowed him by the Board of Supervisors, then he shall pay all costs and expenses incurred by reason of any suit or other proceedings instituted in the matter.

Proceedings to procure right of way.

SEC. 23. Section twenty-seven hundred and ten of said Code is hereby amended so as to read as follows:

2710. All highways must be at least forty feet wide, except those now existing of a less width.

Width of highways.

SEC. 24. Section twenty-seven hundred and eleven of said Code is hereby amended so as to read as follows:

2711. Any person or persons desiring to obtain a road for private convenience, and not intending the same for the use of the traveling public generally, shall present a petition to the Board of Supervisors, having a specific description of said proposed road, giving the length, width, and description thereof, the names of all parties owning the land to be affected thereby, and also the conditions to be observed in respect to gates, fences, and other matters agreed upon. If said petition be accompanied by the written consent of all the parties interested in the land so to be crossed by the said road, the Board shall, by its order, declare such road a private or by-road, and said order, with the description, and also the consent of parties to said road, shall be recorded in the road record of the county. In case all parties owning lands on the line of said road do not agree as to the location of said road, and their consent cannot be obtained, the same measures shall be taken, and the same laws shall apply, as provided in this Code for the location and establishment of public highways, except that it shall be necessary only for the person or persons desiring such private or by-road to petition the Board of Supervisors, as in section two thousand six hundred and ninety-nine of this Code provided. If there be no reasonable way in which the petitioner or petitioners can gain access to the public highway, or to the public schools of his district, other than by passage across the land of said non-consenting owners, and the said petitioner or petitioners execute and file with the County Clerk a sufficient bond, with

Private roads, how opened.

two sureties, to be approved by the Supervisors of the district in which said road is sought to be established, conditioned for the faithful payment to said non-consenting owner, owners, or occupant under lease of the land over which said road is to pass if the petition be granted, of all damages that may be sustained from the temporary use thereof by said petitioner or petitioners, pending the final determination of the petition and proceedings had thereunder, the Road Overseer of said district shall thereupon order the said road temporarily opened. If the owner or owners, or persons in possession of said land, shall refuse to open temporarily said private road, in accordance with the Overseer's order, he or they shall be responsible in damages to the party or parties injured thereby, the amount to be determined by a proceeding in a Court of competent jurisdiction. In all cases where private roads are established or located, it shall be one of the conditions of the same that the erection of gates, repairs of roads, building of bridges, and all costs of the maintenance of the same, together with the costs of location and damages allowed, if any, shall be paid by and become a charge against the parties seeking or desiring to have the said road so located, and that the road district shall be put to no expense on account thereof.

SEC. 25. Section twenty-seven hundred and fourteen of said Code is hereby amended so as to read as follows:

Removal of
fences.

2714. When the alteration of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned by order of a Court for road or highway purposes, notice to remove the fences must be given by the Road Overseer to the owner, his occupant, or agent, or by posting the same on the fence; and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the Road Overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

SEC. 26. Section twenty-seven hundred and twenty-four of said Code is hereby amended so as to read as follows:

Bridges
maintained.

2724. All public bridges, not otherwise specially provided for, are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the Road Overseer and the Board of Supervisors, the expense of constructing, maintaining, and repairing the same being primarily payable out of the Road Fund of the district in the hands of the Road Overseer or County Treasurer, and from road taxes.

SEC. 27. Section twenty-seven hundred and twenty-five of said Code is hereby amended so as to read as follows:

When
county may
help build
bridge.

2725. Whenever it appears to the Board of Supervisors that any road district is or would be unreasonably burdened by the expense of constructing, or of the maintenance and repair of any bridge, they may, in their discretion, cause a portion of the aggregate cost or expense to be paid out of the General Road Fund of the county, or out of the General

County Fund, or both ; or they may levy a special bridge tax therefor, not exceeding one-fourth of one per cent. on the taxable property of the county, annually, till the amount appropriated in aid is raised and paid.

SEC. 28. Section twenty-seven hundred and twenty-six of said Code is hereby amended so as to read as follows:

2726. No bridge, the cost of the construction or repair of which will exceed the sum of two hundred dollars, must be constructed or repaired, except on order of the Board of Supervisors. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the Board of Supervisors, through the Road Overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices: one at the Court-house, one at the point to be bridged, and one at some other neighboring public place in the county. The bids to be sealed, and opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the Board of Supervisors.

Construction and repairs.

SEC. 29. Section twenty-seven hundred and twenty-nine of said Code is hereby amended so as to read as follows:

2729. When a bridge, the cost of which will exceed two hundred dollars, is necessary, any five or more freeholders of the road district interested therein, may petition the Board of Supervisors for the erection of such needed bridge. The Board must thereupon advertise such application, giving the location and other facts, for two weeks, in a newspaper printed in the county; if none, then by posters: one at the proposed location, one at the Court-house, and one at some other public place in the county, and notify the Overseer to attend at a certain time and place to hear the application.

Application, etc., to construct.

SEC. 30. Section twenty-seven hundred and thirty-one of said Code is hereby amended so as to read as follows:

2731. Road Overseers must, in their official reports, give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof.

Overseer's report as to bridges.

SEC. 31. Section twenty-seven hundred and thirty-two of said Code is hereby amended so as to read as follows:

2732. The county is responsible for providing and keeping passable and in good repair bridges on all public highways, and the Supervisors may appoint, semi-annually, a special meeting, at which the Road Overseers, on days set apart for their respective districts, must be present; and at such special meetings, so appointed, the Supervisors must hear highway and bridge reports and complaints from officers and citizens; after which such orders must be made and such action had regarding the same as the public welfare demands.

Semi-annual meetings.

SEC. 32. Section twenty-seven hundred and forty-three of said Code is hereby amended so as to read as follows:

Highway
encroach-
ments.

2743. If any highway duly laid out or erected, is encroached upon by fences, buildings, or otherwise, the Road Overseer of the district may, orally or in writing, require the encroachment to be removed from the highway.

SEC. 33. Section twenty-seven hundred and forty-six of said Code is hereby amended so as to read as follows:

Action as
to when
brought.

2746. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses either to remove or permit the removal thereof, the Road Overseer must commence in the proper Court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, and also his costs in such action.

SEC. 34. Section twenty-seven hundred and forty-seven of said Code is hereby amended so as to read as follows:

Removal of
encroach-
ment.

2747. If the encroachment is not denied, but is not removed for five days after the notice is complete, the Road Overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as, also for each day the same remained after notice was complete the sum of ten dollars, in an action for that purpose.

SEC. 35. Section twenty-seven hundred and fifty-four of said Code is hereby amended so as to read as follows:

Notices, etc.,
on bridges.

2754. Road Overseers may put up on bridges under their charge notices that there is "five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars for each offense.

SEC. 36. Section twenty-seven hundred and fifty-five of said Code is hereby amended so as to read as follows:

Destroying
trees.

2755. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree, planted or standing on any highway, unless the same is deemed an obstruction by the Road Overseer, and removed under his direction, forfeits twenty-five dollars for each such tree.

SEC. 37. Section twenty-seven hundred and fifty-six of said Code is hereby amended so as to read as follows:

Application
of penalties.

2756. All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by the Road Overseer of the respective road districts and be applied on the highways in which they are collected.

Sections
repealed.

SEC. 38. Sections twenty-six hundred and forty-eight (2648), twenty-six hundred and fifty-one (2651), twenty-six hundred and fifty-two (2652), twenty-six hundred and fifty-four (2654), twenty-six hundred and fifty-eight (2658), twenty-six hundred and eighty-six (2686), and twenty-seven hundred and four (2704), and section twenty-seven hundred and fifty-seven of said Code, are hereby repealed.

SEC. 39. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed in all counties of the second class.

SEC. 40. This Act shall be in force from and after its passage.

CHAPTER CII.

An Act to amend Sections 1041, 1053, 1055, 1083, 1084, 1097, 1106, 1108, 1109, 1113, 1130, 1147, 1228, 1230, 1232, 1233, 1235, 1237, 1284, 1285, 1288, 1290, 1310, 1311, and 1343 of the Political Code, relating to elections, and to repeal section ten hundred and forty-two (1042) of said Code.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand and forty-one of said Code is hereby amended so as to read as follows:

1041. There must be held throughout the State, on the first Tuesday after the first Monday of November, in the year eighteen hundred and eighty, and in every second year thereafter, an election, to be known as the general election. General election, when held.

SEC. 2. Section one thousand and forty-two (1042) of said Code is hereby repealed.

SEC. 3. Section one thousand and fifty-three (1053) of said Code is hereby amended so as to read as follows:

1053. At least thirty days before a general election, and whenever he orders a special election to fill a vacancy in the office of State Senator or member of Assembly, at least ten days before such special election the Governor must issue an election proclamation, under his hand and the Great Seal of the State, and transmit copies thereof to the Boards of Supervisors of the counties in which such elections are to be held. Election proclamation by the Governor for general and special elections.

SEC. 4. Section one thousand and fifty-five of said Code is hereby amended so as to read as follows:

1055. The Board of Supervisors, upon the receipt of such proclamation may, in case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election, and in case of special elections to fill a vacancy in the office of State Senator or member of Assembly, the Board of Supervisors, upon receipt of such proclamation, may, in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election. Publication of election proclamations.

SEC. 5. Section one thousand and eighty-three (1083) of said Code is hereby amended so as to read as follows:

1083. Every native male citizen of the United States, every male person who shall have acquired the right of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct Qualifications of voters.

thirty days, and whose name shall be enrolled on the Great Register of such county, shall be a qualified elector thereof.

SEC. 6. Section one thousand and eighty-four of said Code is hereby amended so as to read as follows:

Who not
entitled to
vote.

1084. No native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privilege of an elector.

SEC. 7. Section one thousand and ninety-seven of said Code is hereby amended so as to read as follows:

Rules for
registration.

1097. No person's name must be entered by the Clerk unless:

1. Upon a certificate of registration in another county showing that such registration has been canceled, and upon proof by the affidavit of the party that he is an elector of the county in which he seeks to be registered.

2. Upon the returns of the Assessor of the county.

3. If a naturalized citizen, upon the production of his certificate of naturalization, which certificate must be issued ninety days prior to the succeeding election, or upon his own affidavit that it is lost or out of his possession, which affidavit must state the place of his nativity, and the time, and place, and Court of his naturalization, together with his affidavit that he has resided in the United States for five years, and in this State for one year next preceding the time of application, and that he would be an elector of the county at the next succeeding election.

4. If born in a foreign country, upon his affidavit that he became a citizen of the United States by virtue of the naturalization of his father while he was residing in the United States, and under the age of twenty-one years, and that he is or would be an elector of the county at the next succeeding election.

5. Upon the production and filing of a certified copy of the judgment of a Superior Court directing such entry to be made.

6. In other cases, upon the affidavit of the party that he is or would be an elector of the county at the next succeeding election.

7. In every case the affidavit of the party must show all the facts required to be stated in the entry on the register, except the date and number of the entry.

SEC. 8. Section one thousand one hundred and six of said Code is hereby amended so as to read as follows:

Rules for
cancellation.

1106. The Clerk must cancel the entry in the following cases:

1. At the request of the party registered.

2. When he knows of the death or removal of the person registered.

3. When the insanity of the person registered is legally established.

4. Upon the production of a certified copy of a judgment of the conviction of any elector of any infamous crime, or of the embezzlement or misappropriation of any public money in full force against the person registered, or upon information of such conviction obtained as hereinafter provided.

5. Upon the production of a certified copy of a judgment directing the cancellation to be made.

6. Upon a certificate of the Board of Election of any precinct, sent up with the election returns, stating the death or removal, within their own knowledge, of the person registered.

7. When it appears by the returns made by the Board and Clerks of Election that the respective party did not vote during the next preceding two years at any general or special election.

8. The Clerk shall cancel upon the Great Register every name found thereon which is found upon the register of deaths provided for in section three thousand and seventy-nine of this Code.

9. Every Judge before whom proceedings were had which result in any male person being declared incapable of taking care of himself and managing his property, and for whom a guardian of his person and estate is accordingly appointed, or which result in such person being committed to a State Insane Asylum as an insane person, shall file with the County Clerk a certificate of that fact, and thereupon the Clerk shall cancel the name of such person upon the Great Register, if found thereon.

10. The County Clerk shall also, in the first week of September, in each year, examine the records of the Courts having jurisdiction in cases of infamous crimes, and the embezzlement or misappropriation of public money within his county, and cancel upon the Great Register the names of all persons appearing thereon who shall have been convicted of an infamous crime, or of the embezzlement or misappropriation of public money in such Court, and which conviction shall have been carried into effect.

SEC. 9. Section eleven hundred and eight (1108) of said Code is hereby amended so as to read as follows:

1108. If the Clerk refuses to enter the name of any qualified elector of the county upon the Great Register, such elector may proceed by action in the Superior Court to compel such entry.

Persons refused registration may proceed by action.

SEC. 10. Section eleven hundred and nine of said Code is hereby amended so as to read as follows:

1109. Any person may proceed by action in the Superior Court to compel the Clerk to cancel any entry made on the Great Register illegally, or that ought to be canceled by reason of facts that have occurred subsequent to the time of such entry, but if the person whose name is sought to be canceled be not a party to the action, the Court may order him to be made a party defendant.

Cancellation by action.

SEC. 11. Section eleven hundred and thirteen of said Code is hereby amended so as to read as follows:

1113. On the first Monday of October, in each year, in which there shall be a general or Presidential election, and on the thirtieth day prior to each general election held every two years thereafter, each County Clerk must make a copy of the uncanceled entries existing on the Great Register of their respective counties. The Board of Supervisors of any county

Copy of Great Register.

may, by order, provide for the preparation and distribution of township or precinct registers for each township, instead of copies of the Great Register. For the purpose of registration, and preparation of a new Great Register, or of township or precinct registers, and copies thereof, if ordered by the Board of Supervisors, the County Clerk must employ such assistants, and for such times, and at such compensation as shall, from time to time, be authorized by said Board, which shall be paid out of the county treasury; such order may be repealed and re-enacted as often as the Board of Supervisors may deem expedient; *provided*, that nothing in this section shall be held to repeal any election or registration law applicable to or in force in the City and County of San Francisco.

SEC. 12. Section eleven hundred and thirty of said Code is hereby amended so as to read as follows:

Limitation
of powers.

1130. The following limitations are imposed upon the powers given the Supervisors in this chapter:

1. No precinct must be established so as to embrace more than one township, nor in such manner that its exterior limits cross the exterior boundaries of any township, incorporated town or city, or any ward district, or other territorial subdivision for which local officers are to be elected, except a school or road district.

2. No precinct must be established, nor must the boundaries of one already established, be altered within thirty days next preceding a general or special election.

SEC. 13. Section eleven hundred and forty-seven of said Code is hereby amended so as to read as follows:

Clerks.

1147. The Board of Election for each precinct must, before opening the polls, appoint two electors to act as Clerks of Election.

SEC. 14. Section twelve hundred and twenty-eight of said Code is hereby amended so as to read as follows:

Record of
person voted,
how kept.

1228. When the ballot has been placed in the box one of the Judges must write the word "Voted" opposite the number of the person on the printed copy of the register.

SEC. 15. Section twelve hundred and thirty of said Code is hereby amended so as to read as follows:

Grounds of
challenge.

1230. A person offering to vote may be orally challenged by any elector of the county upon either or all of the following grounds:

1. That he is not the person whose name appears on the register.

2. That he has not resided within the State one year next preceding the election.

3. That he has not been a naturalized citizen of the United States for ninety days prior to the election.

4. That he has not resided within the county for ninety days preceding the election.

5. That he has not resided within the precinct for thirty days next preceding the election.

6. That he has before voted that day.

7. That he has been convicted of an infamous crime.

8. That he has been convicted of the embezzlement or misappropriation of public money.

Sec. 16. Section twelve hundred and thirty-two of said Code is hereby amended so as to read as follows :

1232. If the challenge is on the ground that he has not resided in the State for one year next preceding the election, the person challenged must be sworn to answer questions, and after he is sworn, the following questions must be propounded to him by the Inspector :

Same, on challenge for non-residence in State.

1. Have you resided in this State for one year immediately preceding this election ?

2. Have you been absent from this State within one year immediately preceding this election ? If yes, then,

3. When you left did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away ?

4. Did you, while absent, regard this State as your home ?

5. Did you, while absent, vote in any other State ?

And such other questions as may be necessary to a determination of the challenge.

Sec. 17. Section twelve hundred and thirty-three of said Code is hereby amended so as to read as follows :

1233. If the challenge is on the ground that he has not resided in the county for ninety days, or precinct for thirty days next preceding the election, the person challenged must be sworn to answer questions, and after he is sworn, the following questions must be propounded to him by the Inspector :

Same, on challenge for non-residence in precinct.

1. When did you last come into this county or election precinct ?

2. When you came into this county or precinct, did you come for a temporary purpose merely, or for the purpose of making it your home ?

3. Did you come into this county or precinct for the purpose of voting here ?

And such other questions as may be necessary to a determination of the challenge.

Sec. 18. Section twelve hundred and thirty-five of said Code is hereby amended so as to read as follows :

1235. If the challenge is on the ground that the person challenged has been convicted of an infamous crime, or that he has been convicted of the embezzlement or misappropriation of public money, he must not be questioned, but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses.

Same, on ground of conviction of crime.

Sec. 19. Section twelve hundred and thirty-seven of said Code is hereby amended so as to read as follows :

1237. If the challenge is on the ground that the person challenged is not the person whose name appears on the Great Register, he must take the oath tendered by the Board. Challenges for causes other than those specified in the preceding section must be tried and determined by the Board of Election at the time of the challenge.

Same, on ground that he is not the person whose name is on Great Register.

Sec. 20. Section twelve hundred and eighty-four of said Code is hereby amended so as to read as follows :

Certificates
issued by
Clerk.

1284. The County Clerk must immediately make out and deliver to such person (except to the person elected Superior Judge) a certificate of election signed by him, and authenticated with the seal of the Superior Court.

SEC. 21. Section twelve hundred and eighty-five of said Code is hereby amended so as to read as follows:

District
returns, how
made up.

1285. When there are officers, other than Representatives in Congress, members of the State Board of Equalization, and Railroad Commissioners, voted for, who are chosen by the electors of a district composed of two or more counties, each of the County Clerks of the counties composing such district, immediately after making out the statement specified in section twelve hundred and eighty-two, must make a certified abstract of so much thereof as relates to the election of such officers.

SEC. 22. Section twelve hundred and eighty-eight (1288) of said Code is hereby amended so as to read as follows:

State
returns, how
made.

1288. When there has been a general or special election for officers chosen by the electors of the State at large, or for judicial officers (except Justices of the Peace), or for members of the State Board of Equalization, or for Railroad Commissioners, each County Clerk, so soon as the statement of the vote of his county is made out and entered upon the records of the Board of Supervisors, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election.

SEC. 23. Section twelve hundred and ninety of said Code is hereby amended so as to read as follows:

Duty of
Secretary of
State
relative to.

1290. On the fortieth day after the day of election, or so soon as the returns have been received from all the counties of the State, if received within that time, the Secretary of State must compare and estimate the vote, and make out and file in his office a statement thereof, and transmit a copy of such statement to the Governor.

SEC. 24. Section thirteen hundred and ten of said Code is hereby amended so as to read as follows:

When Clerk
may employ
a messenger.

1310. If the County Clerk of any county has reason to believe that the abstract will not, in the due course of mail, reach the Secretary of State before the time fixed by law for canvassing the returns of such election, he may, with the approval of the Superior Judge, employ a person to convey and deliver such abstract to the Secretary of State.

SEC. 25. Section thirteen hundred and eleven of said Code is hereby amended so as to read as follows:

Proof of
necessity for
appointment
of messenger.

1311. In the event provided for in the preceding section, the Clerk must make an affidavit, setting forth the reasons for his belief, and the name of the person employed by him, which affidavit, with the approval of the Superior Judge indorsed thereon, must be given to the person appointed, and by him, with the abstract, must be delivered to the Secretary of State.

SEC. 26. Section thirteen hundred and forty-three of said Code is hereby amended so as to read as follows:

Repre-
sentatives
in Congress;
election,
when held.

1343. At the general election to be held in the year eighteen hundred and eighty, and at the general election

every two years thereafter, there must be elected, for each Congressional District, one Representative to the Congress of the United States.

SEC. 27. This Act shall be in force from and after its passage.

CHAPTER CXIV.

An Act to amend Sections 332, 343, 384, 385, 386, 408, 417, 419, 420, 422, 438, 440, 441, 455, 456, 471, 472, 484, 486; 500, 516, 267, 396, 397, 628, 629, 755, 737, 738, 739, to add a new section, to be known as Section 515, and to repeal Sections 499, 685, and 421 of the Political Code, relating to salaries of State officers, deputies, and clerks.

[Approved April 23d, 1880.]

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

SECTION 1. Section three hundred and thirty-two of the Political Code is hereby amended so as to read as follows:

332. All officers, Boards of officers, Commissioners, Trustees, Regents, and Directors, required by law to make reports to the Governor or Legislature, except the Controller of State, must send such reports to the Governor before the first day of October in the year eighteen hundred and eighty, and in every second year thereafter. The Railroad Commissioners must send their report to the Governor annually on or before the first day of October.

When State officers, etc., are to report.

SEC. 2. Section three hundred and forty-three of said Code is amended to read as follows:

343. The number and designation of the civil executive officers are as follows: A Governor; a Private Secretary for the Governor, who is ex officio Clerk of the Board of Examiners; an Executive Secretary for the Governor; a Lieutenant-Governor; a Secretary of State; a Deputy Secretary of State; a Book-keeper for the Secretary of State; two Recording Clerks for the Secretary of State; a Controller; a Deputy Controller; a Book-keeper for the Controller; three Clerks for the Controller; a Treasurer; a Deputy Treasurer; a Clerk for the Treasurer; an Attorney-General; a Deputy Attorney-General; a Surveyor-General, who shall be ex officio Register of the State Land Office; a Deputy Surveyor-General; one Clerk for the Surveyor-General; two Clerks for the Register; a Superintendent of Public Instruction; a Deputy for the Superintendent of Public Instruction; one Clerk for the Superintendent of Public Instruction; a Superintendent of State Printing; an Inspector of Gas Meters; a Vaccine Agent; a Commissioner of Immigration; an Insurance Commissioner; a Deputy for the Insurance Commissioner; three State Capitol Commissioners; four Port Wardens for the Port of San Francisco; a Port Warden for each port of entry except San Francisco;

Designation and number of civil executive officers.

three State Harbor Commissioners; three Harbor Commissioners for the Port of Eureka; six Pilots for each harbor where there is no Board of Pilot Commissioners; three members of the Board of Pilot Commissioners for the Ports of San Francisco, Mare Island, and Benicia; three members of the Board of Pilot Commissioners for Humboldt Bay and Bar; three Fish Commissioners; a President and twelve Directors of the State Board of Agriculture; four members of the State Board of Equalization; a Clerk of the Board of Equalization; three members of the State Board of Railroad Commissioners; a Secretary of the State Board of Railroad Commissioners; a Bailiff of the State Board of Railroad Commissioners; seven members of the State Board of Health; five members of the San Francisco Board of Health; five members of the Sacramento Board of Health; twenty-two Regents of the University of California; three members of the State Board of Education; seven Trustees of the State Normal School; five Trustees of the State Library; a State Librarian; two Deputies for the State Librarian; a Librarian for the Supreme Court Library; five Directors of the State Prisons; two Wardens of the State Prisons; two Clerks of the State Prisons; five Directors for the Insane Asylum at Stockton; five Directors for the Insane Asylum at Napa; a Medical Superintendent of the Insane Asylum at Stockton; two Assistant Physicians of the Insane Asylum at Stockton; a Resident Physician of the Insane Asylum at Napa; one First Assistant Physician of the Insane Asylum at Napa; *provided*, when the number of patients shall increase to six hundred, the Trustees may elect one additional Second Assistant Physician, with the same pay and emoluments as the First Assistant Physician; a Treasurer of the Insane Asylum at Stockton; a Treasurer of the Insane Asylum at Napa; five Trustees of the Asylum for the Deaf and Dumb and the Blind; three Trustees of the State Burying Grounds; nine Commissioners of the Yosemite Valley and Mariposa Big Tree Grove; such other officers as fill offices created by or under the authority of general laws for the government of counties, cities, and towns, or of the charters or special laws affecting the same, or of the health, school, election, road, or revenue laws.

SEC. 3. Section three hundred and eighty-four of said Code is amended to read as follows:

Salary of
Governor.

384. The annual salary of the Governor, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, six thousand dollars.

SEC. 4. Section three hundred and eighty-five of said Code is amended to read as follows:

Salary of
Private
Secretary.

385. The annual salary of the Private Secretary of the Governor, and ex officio as Clerk of the Board of Examiners, is three thousand dollars.

SEC. 5. Section three hundred and eighty-six of said Code is amended to read as follows:

Salary of
Executive
Secretary.

386. The annual salary of the Executive Secretary of the Governor is two thousand dollars.

SEC. 6. Section four hundred and eight of said Code is hereby amended so as to read as follows :

408. In addition to the duties prescribed by the Constitution, it is the duty of the Secretary of State :

*Duties of
Secretary of
State.*

First—To attend at every session of the Legislature, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two Houses, or either of them.

Second—To keep a register of and attest the official acts of the Governor.

Third—To affix the Great Seal, with his attestation, to commissions, pardons, and other public instruments, to which the official signature of the Governor is required.

Fourth—To record in proper books all conveyances made to the State, and all articles of incorporation filed in his office.

Fifth—To receive and record in proper books the official bonds of all the officers whose bonds are fixed by part three of this Code, and then to deliver the originals to the State Treasurer.

Sixth—To record in a proper book all changes of names certified to him by the County Clerks, in the manner in which such record is now made.

Seventh—To take and file in his office receipts for all books distributed by him, and to direct the County Clerk of each county to do the same.

Eighth—To certify to the Governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the Governor.

Ninth—To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law record, or other instrument filed, deposited, or recorded in his office.

Tenth—To deliver to the State Printer, at the earliest day practicable after the final adjournment of each session of the Legislature, an index of all laws, resolutions (with marginal notes), and Journals, kept, passed, or adopted at such session.

Eleventh—To notify, in writing, the District Attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

Twelfth—To present to the Legislature at the commencement of each session thereof a full account of all purchases made and expenses incurred by him in furnishing fuel, lights, and stationery.

Thirteenth—To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payor, paid or not paid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

Fourteenth—To file in his office descriptions of seals in

use by the different State officers, and furnish such officers with new seals whenever required.

Fifteenth—To discharge the duties of member of the State Board of Examiners, State Capitol Commissioner, State Sealer of Weights and Measures, and all other duties required of him by law.

Sixteenth—To report to the Governor, at the time prescribed in section three hundred and thirty-two of this Code, a detailed account of all his official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended.

Seventeenth—He must distribute of the bound volumes of the decisions of the Supreme Court as soon as he receives them:

First—To each State, one copy.

Second—To the Library of Congress, the State Library, and the Supreme Court Library, two copies each.

Third—To each department of this State, and to each of the United States District Judges for this State, Justices of the Supreme Court, and Judges of the Superior Courts, one copy.

Fourth—To each District Attorney and County Clerk, one copy.

Fifth—To the Reporter of the Decisions, ten copies.

SEC. 7. Section four hundred and seventeen of said Code is amended to read as follows:

Salary of
Secretary of
State.

417. The annual salary of the Secretary of State, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars.

SEC. 8. Section four hundred and nineteen of said Code is amended to read as follows:

Salary of
Book-
keeper.

The annual salary of the Book-keeper shall be two thousand dollars.

SEC. 9. Section four hundred and twenty of said Code is amended to read as follows:

Salary of
Recording
Clerks.

420. The annual salary of each Recording Clerk for the Secretary of State is sixteen hundred dollars.

SEC. 10. Section four hundred and twenty-two of said Code is amended to read as follows:

Salary of
special
Clerks.

422. The Secretary of State, during each legislative year, from January until April, inclusive, may employ two special Clerks, at a monthly salary not exceeding one hundred and twenty-five dollars each.

SEC. 11. Section four hundred and thirty-eight of said Code is amended to read as follows:

Salary of
Controller.

438. The annual salary of the Controller, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars.

SEC. 12. Section four hundred and forty of said Code is amended to read as follows:

Salary of
Book-
keeper.

440. The annual salary of the Book-keeper for the Controller is two thousand dollars.

SEC. 13. Section four hundred and forty-one of said Code is amended to read as follows:

441. The annual salary of each Clerk in the Controller's office is sixteen hundred dollars. Salary of Clerks.

SEC. 14. Section four hundred and fifty five of said Code is amended to read as follows:

455. The annual salary of the State Treasurer, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be hereafter by law devolved upon him, is three thousand dollars. Salary of Treasurer.

SEC. 15. Section four hundred and fifty-six of said Code is amended to read as follows:

456. The annual salary of the Deputy State Treasurer is twenty-four hundred dollars; the annual salary of the Clerk of the Treasurer shall be sixteen hundred dollars. Salary of Deputy and Clerk.

SEC. 16. Section four hundred and seventy-one of said Code is amended to read as follows:

471. The annual salary of the Attorney-General, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be hereafter devolved upon him by law, is three thousand dollars. Salary of Attorney-General.

SEC. 17. Section four hundred and seventy-two of said Code is amended to read as follows:

472. The annual salary of the Deputy Attorney-General is twenty-four hundred dollars. Salary of Deputy.

SEC. 18. Section four hundred and eighty-four of said Code is amended to read as follows:

484. The annual salary of the Surveyor-General, for all services rendered in any capacity whatsoever, is three thousand dollars. Salary of Surveyor-General.

SEC. 19. Section four hundred and eighty-six of said Code is amended to read as follows:

486. The annual salary of each Clerk in the office of the Surveyor-General is sixteen hundred dollars. Salary of Clerks.

SEC. 20. Section five hundred of said Code is amended to read as follows:

500. The annual salary of each Clerk in the Register's office is sixteen hundred dollars. Same.

SEC. 21. A new section is hereby added to said Code, to be known as section five hundred and fifteen, to read as follows:

515. The annual salary of the Clerk for the Superintendent of Public Instruction is sixteen hundred dollars. Salary of Clerks of Superintendent Public Instruction.

SEC. 22. Section five hundred and sixteen of said Code is amended to read as follows:

516. The actual traveling expenses of the Superintendent, not exceeding ten hundred dollars annually, must be audited by the Board of Examiners, and paid out of the General Fund in the State treasury. Traveling expenses Superintendent Public Instruction.

SEC. 23. Section two hundred and sixty-seven of said Code is amended to read as follows:

267. The Speaker of the Assembly shall receive the sum of ten dollars per diem during the session of the Legislature, and the same mileage and sum for contingent expenses as members of the Legislature. Per diem, etc. of Speaker.

SEC. 24. Section three hundred and ninety-six of said Code is amended to read as follows:

396. The duties of the Lieutenant-Governor are prescribed by the Constitution.

SEC. 25. Section three hundred and ninety-seven of said Code is amended to read as follows:

Per diem,
etc., of
Lieutenant-
Governor.

397. The Lieutenant-Governor shall receive the same per diem and mileage, and sum for contingent expenses as the Speaker of the Assembly, and only during the session of the Legislature.

SEC. 26. Section six hundred and twenty-eight of said Code is amended to read as follows:

Salary of
Insurance
Commis-
sioner.

628. The annual salary of the Insurance Commissioner is three thousand dollars.

SEC. 27. Section six hundred and twenty-nine of said Code is amended to read as follows:

Salary of
Clerk.

629. The annual salary of the Clerk of the Insurance Commissioner is sixteen hundred dollars.

SEC. 28. Section seven hundred and fifty-five of said Code is amended to read as follows:

Salary of
Clerk of
Supreme
Court

755. The annual salary of the Clerk of the Supreme Court is three thousand dollars.

SEC. 29. Section seven hundred and thirty-seven of said Code is amended to read as follows:

Salaries of
Judges of
Superior
Court.

737. The annual salaries of the Judges of the Superior Courts of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, are four thousand dollars each, one-half of which shall be paid by the State, and the other half thereof by the county for which the Judge is elected, except that in the Counties of Yuba and Sutter, one-fourth of the salary of the Superior Judge shall be paid by each county.

SEC. 30. Section seven hundred and thirty-eight of said Code is amended to read as follows:

Same.

738. The annual salaries of the Judges of the other Superior Courts are three thousand dollars each, one-half thereof payable by the State, and the other half thereof payable by the county for which the Judge is elected.

SEC. 31. Section seven hundred and thirty-nine of said Code is amended to read as follows:

Salaries of
officers of
Supreme
Court.

739. The annual salaries of the officers connected with the Supreme Court are as follows:

The Reporter of the Decisions, twenty-five hundred dollars.

The Phonographic Reporter, three thousand dollars.

Each Secretary, sixteen hundred dollars.

Each Bailiff, twelve hundred dollars.

Repealed.

SEC. 32. Sections four hundred and ninety-nine, six hundred and eighty-five, and four hundred and twenty-one of said Code are hereby repealed.

SEC. 33. This Act shall take effect from and after the first day of July, A. D. one thousand eight hundred and eighty.

CHAPTER CXVII.

An Act to amend sections five hundred and ninety-six and six hundred and thirty-three of the Political Code, and to amend section four hundred and fifty, and to repeal sections four hundred and fifty-one and four hundred and fifty-two of the Civil Code, relating to life insurance.

[Approved April 26th, 1880.]

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

SECTION 1. Section five hundred and ninety-six of the Political Code is hereby amended so as to read as follows :

596. No person or company must transact insurance business in this State without first procuring from the Insurance Commissioner a certificate of authority, as in this chapter provided; and all policies issued or renewed and all insurances taken before obtaining such certificate of authority, are null and void; and any person who as agent or pretended agent of any insurance company, or other person, shall, without the possession of such certificate of authority, solicit, issue, or procure to be issued in this State any policy of insurance, shall forfeit to the people of this State the sum of two hundred dollars for each and every policy so issued, or procured to be issued. But any company or corporation belonging to any other State or country, having policies of life insurance outstanding in this State, and that were issued in accordance with the laws of this State, shall have the right to maintain a special agent in this State for the collection of renewal premiums on such policies, and the Commissioner is hereby authorized to issue to the duly appointed special agent of such company or corporation, a certificate authorizing him to collect such renewal premium; such certificate to be issued on the production to the Commissioner of satisfactory evidence that such company or corporation is authorized to transact life insurance business in the State or country to which it belongs. And any person, who, as agent of either the insured or insurer, shall collect such renewal premiums, must, on or before the tenth day of January, annually, file with the Commissioner a statement under oath showing the gross amount of such annual premiums collected by him during the year ending on the thirty-first day of December next preceding, and pay into the office of the Commissioner the sum of twenty dollars, gold coin of the United States. Failing to make such statement and payment within the time named, such person shall forfeit to the people of the State of California the sum of one hundred dollars for each and every policy so renewed by the payment to him of such renewal premium. All penalties and forfeitures under this section must be collected by the Insurance Commissioner, and for the purposes of such collections suits may be instituted by him,

in the name of the people of the State of California, in any Court of competent jurisdiction.

SEC. 2. Section six hundred and thirty-three of the Political Code is hereby amended to read as follows:

Licensing
insurance
agents.

633. No person shall in this State act as the agent or solicitor of any life insurance company doing business in this State until he has produced to the Commissioner, and filed with him, a duplicate power of attorney from the company, or its authorized agent, authorizing him to act as such agent or solicitor: Upon filing such power, the Commissioner shall issue a license to him to act as such agent or solicitor for such company, if such company has received a certificate of authority from such Commissioner to do business in this State; *provided*, that if such agent or solicitor shall, within the twelve months next preceding have been in the employ of any other company, or its authorized agent, as such agent or solicitor, he must produce to the Commissioner written evidence from such employer that all moneys he may have collected for such company or agent have been paid over to said company or agent. Such license shall continue in force twelve months from the date thereof, but may be, and shall be sooner revoked upon application of the company or its authorized agent. Such license may be renewed from time to time, for an additional period of twelve months, on production by the holder to the Commissioner of a certificate from the company that such person's authority as such agent or solicitor continues. For each such license, or renewal thereof, the Commissioner shall receive the sum of one dollar. The Commissioner shall keep an alphabetical list of the names of persons to whom such licenses shall be issued, with the date of the license and renewal, and the name of the company for whom such person is working. If any person shall, under a false or fictitious name, procure or attempt to procure, a license to act as agent or solicitor of any life insurance company, he shall be guilty of a misdemeanor. Every person who, in this State, procures, or agrees to procure, any insurance for a resident of this State from any insurance company not incorporated under the laws of this State, unless such company, or its agent, has filed the bond required by the laws of this State relating to insurance and obtained from the Commissioner a certificate of authority to do business, and every person who solicits or procures any life insurance, without having been duly licensed so to do by the Commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly. The Insurance Commissioner must require, as a condition precedent to the transaction of life insurance business in this State, that every life insurance corporation or company created by the laws of any other State, or of any foreign country, must file in his office the name of an agent, and his place of residence in this State, on whom summons and other process may be served in all actions, or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the person of such corporation or company; the agent so appointed must be the principal agent of such corporation

or company in this State; any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this State, and in consideration of the privilege to transact such insurance business in this State, make and file with the Insurance Commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: The (giving name of corporation or company), does hereby stipulate and agree that, in consideration of the permission granted by the State of California to it to transact insurance business in this State, that if at any time such corporation or company shall, under the existing provisions of law of this State in relation to insurance companies, be without an agent in this State on whom summons or other legal process may be served, service of such summons or other legal process may be made upon the Insurance Commissioner, such service upon the Commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the Insurance Commissioner, he must, within ten days thereafter, transmit by mail, by registered letter, a copy of such summons or other legal process to the corporation, addressed to the President or Secretary thereof, at its home or principal office; such copy must be certified by the Commissioner, under his hand and official seal, and the sending of such copy by the said Commissioner shall be a necessary part of the service of summons or other legal process.

SEC. 3. Section four hundred and fifty of the Civil Code is hereby amended to read as follows:

450. Every contract or policy of insurance hereafter made by any person or corporation organized under the laws of this State, or under those of any other State or country, with and upon the life of a resident of this State, and delivered within this State, shall contain, unless specifically contracted between the insurer and the insured for tontine insurance, or for other term or paid up insurance, a stipulation that when, after three full annual premiums shall have been paid on such policy, it shall cease or become void solely by the non-payment of any premium when due, its entire net reserve, by the American Experience Mortality, and interest at four and one-half per cent. yearly, less any indebtedness to the company on such policy, shall be applied by such company as a single premium, at such company's published rates in force at the date of original policy, but at the age of the insured at time of lapse, either to the purchase of non-participating term insurance for the full amount insured by such policy, or upon the written application by the owner of such policy, and the surrender thereof to such company within three months from such non-payment of premium, to the purchase of a non-participating paid up policy, payable at the time the original policy would be payable if continued in force; both kinds of insurance to be subject to the same conditions, except as to payment of premiums, as those of the original policy. It may be provided,

Policies
issued within
State.

however, in such stipulation, that no part of such term insurance shall be due or payable, unless satisfactory proofs of death be furnished to the insuring company within one year after death, and that, if death shall occur within three years after such non-payment of premium, and during such term of insurance, there shall be deducted from the amount payable the sum of all the premiums that would have become due on the original policy if it had continued in force. If the reserve on endowment policies be more than enough to purchase temporary insurance, as aforesaid, to the end of the endowment term, the excess shall be applied to the purchase of pure endowment insurance, payable at the end of the term, if the insured be then living. If any life insurance corporation or company shall deliver to any person in this State a policy of insurance upon the life of any person residing in this State, not in conformity with the provisions of this section, the right of such corporation or company to transact business in this State shall thereupon and thereby cease and terminate, and the Insurance Commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this State, and publish such revocation, daily, for the period of two weeks, in two daily newspapers, one published in the City of San Francisco, and the other in the City of Sacramento.

Repealed.

SEC. 4. Sections four hundred and fifty-one and four hundred and fifty-two of said Civil Code are hereby repealed.

SEC. 5. All Acts or parts of Acts so far as the same are in conflict with this Act are hereby repealed.

CHAPTER CXIX.

An Act to amend sections four thousand (4000), four thousand and three (4003), four thousand and four (4004), four thousand and six (4006), four thousand and twenty-two (4022), four thousand and twenty-three (4023), four thousand and twenty-four, (4024), four thousand and twenty-five (4025), four thousand and twenty-six (4026), four thousand and twenty-eight (4028), four thousand and twenty-nine (4029), four thousand and forty-six (4046), four thousand and eighty-seven (4087), four thousand one hundred and three (4103), forty-one hundred and four (4104), forty-one hundred and nine (4109) forty-one hundred and fifteen (4115), forty-one hundred and sixteen (4116), forty-one hundred and nineteen (4119), forty-one hundred and sixty-five (4165), forty-one hundred and ninety-two (4192), forty-two hundred and four (4204), forty-two hundred and twenty-one (4221), forty-two hundred and fifty-six (4256), forty-three hundred and fourteen (4314), forty-three hundred and twenty-eight (4328), forty-three hundred and twenty-nine (4329), forty-three hundred and forty-four (4344), and add two new sections, to be known as Sections (4292) and (4348), and repeal sections forty hundred and five (4005), (4105), (4106), (4027), forty hundred and eighty (4080), forty-one hundred and ten (4110), forty-one hundred and eleven (4111), forty-one hundred and thirty-four (4134), forty-three hundred and four (4304), to establish a system of county governments.

[Approved April 27th, 1880.]

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

SECTION 1. Section four thousand of the Political Code of this State is amended so as to read as follows:

4000. Every county is a body politic and corporate, and as such has the powers specified in this Code, and such powers as are necessarily implied from those expressed.

Every county a body corporate.

SEC. 2. Section four thousand and three is amended to read as follows:

4003. It has power:

Enumeration of powers.

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property or the interests of its inhabitants require.

5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

SEC. 3. Section four thousand and four is amended to read as follows:

4004. No county shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, with-

Limitation on indebtedness or liabilities.

out the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

1. It shall not be lawful hereafter for the Board of Supervisors of any county, or any committee, officer, or Board, having power to authorize or contract liabilities against the treasury of said county, to authorize, allow, contract for, pay, or render payable, in the present or future, in any one month, any demand or demands against said treasury, or any of the funds thereof, which shall, in the aggregate, exceed one-twelfth part of the amount allowed by laws existing at the time of such contract, authorization, allowance, payment, or liability to be expended within the fiscal year of which said month is a part. If, at the beginning of any month, any money remains unexpended in any of the funds set apart for maintaining the government of any county, and which might lawfully have been expended the preceding month, such unexpended sum or sums may be carried forward and expended by order of the Board of Supervisors in any succeeding month. Nothing in this subdivision shall apply to the Road Fund nor to the School Fund.

2. All contracts, authorizations, allowances, payments, and liabilities to pay, made or attempted to be made, in violation of this Act, shall be absolutely void, and shall never be the foundation or basis of a claim against the treasury of such county. And all officers of said county are charged with notice of the condition of the treasury of said county and the extent of the claims against the same.

3. All Supervisors, and any other officer authorizing or aiding to authorize, or auditing or allowing any claim or demand upon or against said treasury, or any fund thereof, in violation of any of the provisions of this Act, shall be liable in person and upon their several official bonds to the person or persons damaged by such illegal authorization to the extent of his loss by reason of the non-payment of his claim.

4. The Treasurer paying any claim authorized, allowed, or audited in violation of this provision shall be liable on his official bond to refund the same to the county treasury.

Repealed.

SEC. 4. Section four thousand and five is repealed.

SEC. 5. Section four thousand and six is amended to read as follows:

Classification of counties.

4006. For the purposes of taxation the counties of this State are hereby classified into ten classes, as follows:

1. The Counties of Alameda, Los Angeles, Sacramento, San Joaquin, Santa Clara, and Sonoma, shall constitute the first class.

2. The Counties of Butte, Nevada, and Solano, shall constitute the second class.

3. The Counties of Colusa, Contra Costa, Mendocino, Santa

Barbara, Yolo, Yuba, Monterey, and Napa, shall constitute the third class.

4. The Counties of San Luis Obispo and Stanislaus shall constitute the fourth class.

5. The Counties of Fresno, Humboldt, Kern, San Bernardino, San Diego, Santa Cruz, Siskiyou, Tehama, and Tulare, shall constitute the fifth class.

6. The Counties of Amador, Calaveras, El Dorado, Lake, Merced, Placer, Shasta, Plumas, Sierra, Sutter, Tuolumne, and Ventura, shall constitute the sixth class.

7. The Counties of Marin and San Mateo shall constitute the seventh class.

8. The Counties of Modoc and San Benito shall constitute the eighth class.

9. The Counties of Inyo, Mariposa, Lassen, and Trinity, shall constitute the ninth class.

10. The Counties of Alpine, Del Norte, and Mono, shall constitute the tenth class.

SEC. 6. Section four thousand and twenty-two of the Political Code is hereby amended so as to read as follows:

4022. Each county must have a Board of Supervisors, Boards of Supervisors, how composed. consisting:

1. In counties of the first class of seven members.
2. In counties of the second class of five members.
3. In counties of the third class of five members.
4. In counties of the fourth class of five members.
5. In counties of the fifth class of five members.
6. In counties of the sixth class of three members.
7. In counties of the seventh class of five members.
8. In counties of the eighth class of three members.
9. In counties of the ninth class of three members.
10. In counties of the tenth class of three members.

The class of the county for the purposes of this section shall be determined in accordance with the classification for purposes of taxation.

SEC. 7. Section four thousand and twenty-three is amended to read as follows:

4023. Each member of the Board of Supervisors must be an elector of the district which he represents, and must have been such for at least one year immediately preceding his election, and shall be elected by such districts, and not at large. Qualifications

SEC. 8. Section four thousand and twenty-four is amended to read as follows:

4024. Supervisors shall be elected at the general election held in November, eighteen hundred and eighty, and their terms of office shall begin on the first Monday after the first day of January, eighteen hundred and eighty-one, and shall be for four years. Those from the odd numbered districts shall go out of office in two years, and their successors be elected at the general election in eighteen hundred and eighty-two. Term of office.

SEC. 9. Section four thousand and twenty-five is amended to read as follows:

To be
elected by
districts.

4025. In the counties of this State, Supervisors shall be elected by districts, and the present Board of Supervisors of such counties shall, on or before the first Monday of September, eighteen hundred and eighty, redistrict their respective counties into Supervisor districts, as nearly equal in population as may be, to correspond with the number of Supervisors allowed by law.

SEC. 10. Section four thousand and twenty-six is amended to read as follows:

Vacancy in
Board, how
filled.

4026. Whenever a vacancy occurs in the Board of Supervisors, by reason of a repeal of a special law, the Superior Judges shall fill the vacancy, by appointment, for the unexpired term.

Repealed.

SEC. 11. Section four thousand and twenty-seven is repealed.

SEC. 12. Section four thousand and twenty-eight is amended to read as follows:

Chairman,
permanent
and
temporary.

4028. The Supervisors shall elect a Chairman, who must preside at all meetings of the Board, and in case of his absence or inability to act, the members present must, by an order entered on their records, select one of their number to act as Chairman temporarily. Any member of the Board may administer oaths to any person when necessary in the performance of their official duties.

SEC. 13. Section four thousand and twenty-nine is amended to read as follows:

Clerk of
Board,
who is.

4029. The County Clerk is ex officio Clerk of the Board of Supervisors. The records and minutes of the Board must be signed by the Chairman and the Clerk.

SEC. 14. Section four thousand and forty-six of said Code is hereby amended so as to read as follows:

General
permanent
powers.

4046. The Boards of Supervisors, in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law:

To supervise
official
conduct of
county
officers.

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public revenues, see that they faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

To district
county.

2. To divide the counties into townships, school, road, and other districts required by law, change the same and create others, as convenience requires.

To create
election
precincts.

3. To establish, abolish, and change election precincts, and to appoint Inspectors and Judges of Elections, canvass all election returns, declare the result, and issue certificates thereof.

Roads,
bridges, etc.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law.

Indigent
sick.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county;

erect, officer, and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor.

6. To provide a farm in connection with the County Hospital, and make regulations for working the same. To provide county farm.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes. To provide rooms for county purposes.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county. appointed by them for that purpose, and no more than the appraised value must be paid therefor. To acquire property for the county.

9. To cause to be erected and furnished a Court-house, Jail, Hospital, and such other public buildings as may be necessary; *providing*, that none of the aforesaid buildings shall be constructed until plans and specifications therefor shall have been made. Provide county buildings.

10. To sell at public auction, at the Court-house door, after thirty days previous notice, given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property belonging to the county no longer required for public use, paying the proceeds into the county treasury for the use of the county. May sell county property.

11. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit. Audit accounts of officers.

12. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the County Treasurer therefor, and provide for the issuing of the same. Allow accounts.

13. They are authorized, and it is hereby made their duty, to levy such tax annually on the taxable property of their respective counties as may be necessary to pay the annual interest on, and to provide a sinking fund for, the extinguishment of the principal of the indebtedness of the same within the period of twenty years. In counties of the first and seventh classes, the Supervisors shall also be allowed to levy upon the taxable property of their respective counties for all county purposes whatsoever, except such as are provided for in this section, such sum as may be necessary, not exceeding seventy cents on each one hundred dollars of valuation; in counties of the second, third, fourth, and eighth classes, such sum as may be necessary, not exceeding one dollar on each one hundred dollars of valuation; in counties of the fifth class, such sum as may be necessary, not exceeding one dollar and fifty cents on each one hundred dollars of valuation; in counties of the sixth class, such sum as may be necessary, not exceeding one dollar and forty cents on each one hundred dollars of valuation; in all counties of the ninth class, such sum as may be necessary, not exceeding one dollar and

eighty cents on each one hundred dollars of valuation; and in all counties of the tenth class, such sum as may be necessary, not exceeding two dollars and fifty cents on each one hundred dollars; *provided*, that in the counties of the first class the Board of Supervisors, when necessary, may establish a special building fund for the purpose of erecting a Court-house and Jail, or Hall of Records, or either, and for that fund may levy a special tax in addition to the amount herein provided, not exceeding thirty-five cents on each one hundred dollars of the taxable property in the county, in each year, for not exceeding two years, and into which fund may also be paid the proceeds of the sale of any real estate of the county sold under this Act.

Funding
indebted-
ness.

14. To fund or refund the outstanding indebtedness of the county, and to issue bonds for that purpose; to give such bonds, or any part thereof, in exchange, at par, for outstanding warrants, or bonds not exceeding the par value of such warrants or bonds, or to sell said bonds, or any part thereof, and with the proceeds of such sale redeem the outstanding indebtedness, or any part thereof; such sale to be made at public auction, after not less than four weeks notice by publication in a newspaper published within said county, and also in a daily newspaper published within the City and County of San Francisco; said publication to be made at least once a week. To prescribe, by order, the form of said bonds and coupons, fix the time of payment (not to exceed twenty years), the manner of payment, and provide for an interest and redemption fund. The bonds and coupons must be signed by the Chairman of the Board, and be countersigned and registered by the County Treasurer. The rate of interest on said bonds must not exceed the rate borne by the old indebtedness, nor in any event be greater than seven per cent. per annum. The bonds shall not be sold for less than their par value, nor issued in larger sums than one hundred dollars.

Redemp-
tion of
outstanding
indebted-
ness.

15. To, whenever bonds theretofore issued by the county are within one year of maturity, and it appears that at the maturity thereof there will not be sufficient money in the fund provided for the redemption thereof to redeem the same at maturity, issue and give in exchange for the same bonds in excess of the amount which it is estimated there will be in such fund at the maturity of the bonds to be redeemed, or may issue new bonds to the amount of such excess, sell the same at public auction, after at least four weeks notice, and apply the proceeds of the sale to the payment of the outstanding bonds. All the provisions of subdivision fourteen hereof relative to the form of bonds and coupons, the time and manner of payment, the Interest and Redemption Fund, the signature, issuance, and registration, and the interest on and sale of bonds under that subdivision, shall be applicable to bonds issued under this subdivision.

Prevent
trespassing
of animals.

16. To prescribe by ordinance, not in conflict with the laws of the State, for the prevention of the trespassing of animals upon unfenced lands in the county, or in any particular part of the county, to be specifically defined and

described in such ordinance. Such ordinance, however, shall not take effect until sixty days after its passage, nor until the same shall have been published for not less than four weeks in some newspaper printed and published in such county, or if none be so published, then in some newspaper of general circulation in such county, to be designated by such Board.

17. To equalize the assessments. Equalize assessments.
 18. To direct and control the prosecution and defense of all suits to which the county is a party. Defend suits.

19. To insure the county buildings in the name of and for the benefit of the county. Insure property.

20. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes, and piers. Grant licenses.

21. To fix the compensation of all county and township officers not otherwise paid, including or excluding the payment of all clerks or deputies, and if excluded, shall fix the compensation of such deputies or clerks in proportion to the duties of such officers, and shall provide for the payment of the same by establishing a Salary Fund for that purpose; and also to establish such other county funds as they may deem necessary for the proper transaction of the business of the county. Fix compensation of officers.

22. To fill, by appointment, all vacancies that may occur in county or township offices, except those of Superior Judge and Supervisor. Fill vacancies.

23. To adopt such provisions for the preservation of the health of their respective counties as they may deem necessary, and to provide for the expenses thereof. Health regulations.

24. To contract for the county printing, and advertising in a paper of general circulation, wholly printed and published within the county, if there be any such, and provide books and stationery for county officers; *provided*, that contracts for the same shall only be made with the lowest bidder, after due advertisement once a week for four consecutive weeks, in a newspaper printed and published in the county; or if none be published therein, then in a newspaper having the largest circulation in an adjoining county; *provided further*, that in any county having more than one newspaper printed and published therein, the contract shall not be let to the managers or proprietors of a printing establishment which has not maintained a daily or weekly paper therein for at least one year before the date of such contract. Contract for printing.

25. The Board shall cause to be published in the newspaper to which has been awarded the contract for county printing, a semi-annual statement of the financial condition of the county, and after each session of the Board, a fair statement of all the proceedings thereat. Publish financial condition of county

26. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business as may be necessary. Make rules, etc.

27. To adopt a seal for their Board, a description and impression whereof must be filed by their Clerk in the office of the County Clerk and Secretary of State. Adopt seal.

May do all
other acts
required or
necessary.

28. To do and perform all other acts and things which may be necessary to the full discharge of the duties of the chief legislative authority of the county government; but it shall not be lawful for any Supervisor to vote upon the consideration of any measure in which he, or any member of his family, or partner, may be pecuniarily interested.

Local,
police, etc.,
regulations.
Repealed.

29. To make and enforce all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 15. Section four thousand and eighty is repealed.

SEC. 16. Section four thousand and eighty-seven is amended so as to read as follows:

Not
applicable.

4087. This chapter does not apply to any consolidated government of a "city and county."

SEC. 17. Section forty-one hundred and three is amended so as to read as follows:

County
officers
enumerated.

4103. The officers of a county are:

A Superior Judge; *provided*, that the Counties of Alameda, Los Angeles, Sonoma, Sacramento, Santa Clara, and San Joaquin, shall each elect two Superior Judges, and the Counties of Sutter and Yuba combined, one;

A Treasurer;

A County Clerk;

An Auditor;

A Sheriff;

A Tax Collector;

A District Attorney;

A Recorder;

An Assessor,

A Surveyor;

A School Superintendent;

A Coroner;

The members of a Board of Supervisors; *provided*, that the Board of Supervisors may, by proper ordinance, consolidate or unite the duties of two or more offices in one.

SEC. 18. Section forty-one hundred and four of said Code is amended so as to read as follows:

Township
officers.

4104. The officers of a township are at least one Justice and one Constable; *provided*, that in any county, when, in the opinion of the Board of Supervisors, the public convenience requires it, the said Board may provide that two Justices and two Constables shall be elected for any township, designating the township. The Board of Supervisors of each county, on or before the first Monday of September, eighteen hundred and eighty, and thereafter as public convenience shall require, shall divide their respective counties into townships, for the purpose of electing Justices of the Peace and Constables; and such townships shall be known as judicial townships.

Repealed.

SEC. 19. Sections four thousand and five and four thousand and six of said Code are hereby repealed.

SEC. 20. Section forty-one hundred and nine is amended so as to read as follows:

County
officers,
when
elected, and
term of.

4109. The successors of all county officers (except judicial officers and School Superintendent) who were elected in the year eighteen hundred and seventy-nine, under general

or special laws for two years, shall be elected at the general election to be held in the year eighteen hundred and eighty, and shall take office on the first Monday in March, eighteen hundred and eighty-one; and all county officers (except judicial officers) who were elected in the year eighteen hundred and seventy-nine for four years, shall hold office until the first Monday of March, eighteen hundred and eighty-three. At the general election to be held in eighteen hundred and eighty-two, and at the general election to be held every four years thereafter, all county officers (except judicial officers), shall be elected and hold office four years from and after the first Monday of March next succeeding their election. Superior Judges shall be elected at the general election in eighteen hundred and eighty-four, and at the general election to be held every six years thereafter. Township officers shall be elected at the general election in eighteen hundred and eighty, and every two years thereafter.

SEC. 21. Sections forty-one hundred and ten and forty-one hundred and eleven are repealed. Repealed.

SEC. 22. Section forty-one hundred and fifteen is amended to read as follows:

4115. A vacancy in the office of Superior Judge is filled by an appointee of the Governor. All other vacancies in county and township offices are filled by appointments made by the Board of Supervisors. Appointees hold until the vacancies are filled by election. Vacancies, how filled.

SEC. 23. Section forty-one hundred and sixteen of said Code is amended to read as follows:

4116. Sheriffs, Clerks, Recorders, Treasurers, Tax Collectors, District Attorneys, and Auditors must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M., non-judicial days excepted. The Superior Judge must establish such rules and hours for official business as may be necessary for the dispatch thereof. What offices to be kept at county seat.

SEC. 24. Section forty-one hundred and nineteen of said Code is amended so as to read as follows:

4119. The following officers must reside at the county seat of their respective counties: The County Clerk, Auditor, Sheriff, Tax Collector, and District Attorney. Certain officers must reside at county seat.

SEC. 25. Section four thousand one hundred and thirty-four is repealed. Repealed.

SEC. 26. Section four thousand one hundred and sixty-five is amended so as to read as follows:

4165. The Treasurer must permit the Chairman of the Board of Supervisors, District Attorney, and Auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting. Treasurer must permit books to be examined.

SEC. 27. Section four thousand one hundred and ninety-two is amended so as to read as follows:

4192. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the Court or the Judge thereof, and denominated an Elisor, in the following cases: Elisors to act in cases designated.

1. When the Sheriff and Coroner are, both parties:

2. When either of these officers is a party, and the process is against the other; and,

3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the Court in which the proceeding is pending, or the Judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When process is delivered to an Elisor, he must execute and return it in the same manner as the Sheriff is required to execute similar process.

SEC. 28. Section four thousand two hundred and four is amended so as to read as follows:

Duties of
County
Clerk.

4204. The County Clerk must:

1. Take charge of, and safely keep or dispose of, according to law, all books, papers, and records which may be filed or deposited in his office.

2. Act as Clerk of the Board of Supervisors, and as Clerk of the Superior Court, and attend each session thereof, and upon the Judge at chambers, when required.

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in the Superior Court a docket, in which must be entered the title of each cause, with the date of its commencement; a memorandum of every subsequent proceeding therein, with the date thereof, and a list of all the fees charged.

4. Keep for the Superior Court an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads alphabetically arranged, as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of Judgment," "Number of Judgment," "Page of entry of Judgment in Judgment Book," "Page of Minute Book;" also, an index labeled "General Index—Defendants," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged, as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in Judgment Book," "Page in Order Book." Keep an index of the names of persons naturalized.

SEC. 29. Section four thousand two hundred and twenty-one is amended so as to read as follows:

What
officers to
count money
in treasury.

4221. The Chairman of the Board of Supervisors, District Attorney, and Auditor must, at least once in each month, count the money in the county treasury, and make and verify in duplicate, statements showing:

1. The amount of money that ought to be in the treasury.

2. The amount and kind of money actually therein.

SEC. 30. Section four thousand two hundred and fifty-six is amended so as to read as follows:

Duties of
District
Attorney.

4256. The District Attorney is the public prosecutor, and must:

1. Attend the Superior Court, and conduct, on behalf of the people, all prosecutions for public offenses.

2. Institute proceedings before the magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the Superior Court, must attend upon the magistrates in cases of arrest, when required by them, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration.

3. Draw all indictments and informations, defend all suits brought against the State or his county, prosecute all recognizances forfeited in the Courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the State or his county.

4. Deliver receipts for money or property received in his official capacity, file duplicates thereof with the County Treasurer.

5. On the first Mondays of each month, in each year, file with the Auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding month, and at the same time pay it over to the County Treasurer.

6. Give, when required, and without fee, his opinion (in writing) to county, district, and township officers on matters relating to the duties of their respective offices. And,

7. Keep a register of official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein.

8. Perform such other duties as are prescribed by law.

Sec. 31. Another section is added to the Political Code, to read as follows:

4292. The Coroner, or other officer holding an inquest upon the body of a deceased person, may subpoena a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases of inquiry into the lunacy or insanity of any person, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the Board of Supervisors, upon the written certificate of the Court or officer requiring such services, as to the extent and value of the same; but such certificate shall not be conclusive as to the amount of compensation.

Coroner may subpoena physician or chemist, for what purpose.

SEC. 32. Section forty-three hundred and four of said Code is repealed.

SEC. 33. Section forty-three hundred and fourteen is amended to read as follows:

4314. Constables must attend the Court of the Justice of the Peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a Justice of the Peace of such county, or by any competent authority.

Constables to attend Justice's Court.

SEC. 34. Section forty-three hundred and twenty-eight is amended so as to read as follows:

Salaries,
how paid.

4328. The salaries of the county officers must be paid monthly from the Salary County Fund of the county treasury, on the warrant of the Auditor, except that part of the salary of the Superior Judge which is paid by the State, and that shall be paid monthly from the State treasury, on the warrant of the State Controller.

SEC. 35. Section forty-three hundred and twenty-nine is amended so as to read as follows:

Salaries of
Superior
Court
Judges.

4329. The annual salaries of the Superior Court Judges of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, are four thousand dollars each. The annual salaries of such Judges in the other counties are three thousand dollars each.

SEC. 36. Section four thousand three hundred and forty-four is amended to read as follows:

County
charges,
what are.

4344. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title.

2. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the County Jail.

3. The sums required by law to be paid to grand jurors and indigent witnesses in criminal cases.

4. The accounts of the Coroner of the county for such services as are not provided to be paid otherwise.

5. All charges and accounts for services rendered by any Justice of the Peace for services in the examination of persons charged with crime not otherwise provided for by law.

6. The necessary expenses incurred in the support of County Hospitals, and the indigent sick, and the otherwise dependent poor, whose support is chargeable to the county.

7. The contingent expenses necessarily incurred for the use and benefit of the county.

8. Every other sum directed by law to be raised for any county purpose under the direction of the Board of Supervisors, or declared to be a county charge.

SEC. 37. Section four thousand three hundred and forty-eight is added to the Political Code to read as follows:

Officers
entitled to
fees.

Compensa-
tion of
Supervisor.

4348. The County Surveyor, Coroner, and Justices of the Peace, and Constables receive fees and commissions which are prescribed by law, which fees and commissions shall be in full payment for all services rendered by them. Each member of the Board of Supervisors shall receive five dollars a day for each day necessarily employed in attending the sessions of the Board, and twenty cents a mile in traveling to and from his residence to the county seat; *provided*, that no charge shall be made for more than one trip at term of the Board; *and provided further*, that such per diem and mileage shall not exceed in the aggregate the sum of eight hundred dollars per annum for any one of such Supervisors.

SEC. 38. All laws or parts of laws in conflict with this Act are hereby repealed so far as they relate to this Act.

SEC. 39. This Act shall take effect and be in force from and after the first day of July, A. D. eighteen hundred and eighty, at twelve o'clock M.

CHAPTER CXX.

An Act to add a new chapter, to be known as chapter six, consisting of five new sections, to be known as Sections 4445, 4446, 4447, 4448, and 4449, to title three, of part four, of the Political Code, relating to and providing for the funding and refunding of city indebtedness.

[Approved April 27th, 1880.]

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

SECTION 1. A new chapter, to be known as chapter six, consisting of five new sections, to be known as sections four thousand four hundred and forty-five, four thousand four hundred and forty-six, four thousand four hundred and forty-seven, four thousand four hundred and forty-eight, and four thousand four hundred and forty-nine, is hereby added to title three, of part four, of the Political Code, to read as follows:

CHAPTER VI.

FUNDING AND REFUNDING OF CITY INDEBTEDNESS.

- SECTION 4445. Power of Trustees or Municipal Council to fund indebtedness; issue of bonds.
 4446. Sale and exchange of bonds;
 4447. Tax for payment of bonds; "Bond Fund."
 4448. Redemption of bonds.
 4449. Proceedings on failure to levy tax.

4445. The Board of Trustees or Municipal Council of any city having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund or refund the same, and issue bonds of the city therefor in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form: No. —. The City of —, in the County of —, in the State of California, for value received, promises to pay —, or order, at the office of the Treasurer of said city, in —, on the first day of —, 18—, or at any time before that day, at the pleasure of the city, the sum of — dollars, with interest at the rate of — per cent. per annum, payable at the office of the said Treasurer, semi-annually, on the first days of

Refunding
outstanding
indebtedness
of cities.

Form of
bond.

— and —, in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the Board of Trustees [or Municipal Council, as the case may be], under the provisions of chapter six, of title three, of part four, of the Political Code of California, and in conformity with a resolution of said Board of Trustees [or Municipal Council], dated — day of —, 18—. In testimony whereof, the said city, by its Board of Trustees [or Municipal Council], has caused this bond to be signed by the President of the Board of Trustees [or Municipal Council], and attested by the Auditor, with the city seal attached, this — day of —, 18—. (Seal). —, President of the Board of Trustees [or Municipal Council]. Attest: —, Auditor. And the interest coupon shall be in the following form: \$—. The Treasurer of the City of —, County of —, State of California, will pay the holder hereof, on the — day of —, 18—, at his office in —, — dollars for interest on City Bond No. —, issued under provisions of chapter six, of title three, of part four, of the Political Code of California. —, City Auditor. If the President of the Board of Trustees, or Municipal Council, be ex officio Auditor, then, and in that case, said bonds shall be attested by the City Clerk instead of the Auditor.

Bonds to be
delivered
to City
Treasurer.

4446. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively, and sealed, they shall be delivered to the City Treasurer, and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them under the directions of the Board of Trustees, or Municipal Council, on the best available terms, for any legal indebtedness of the city outstanding on the first day of January, eighteen hundred and eighty; but in neither case for a less sum than the face value of the bonds, and all interest accrued on them at the date of such sale or exchange; and if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payments of liabilities existing against the city at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of city indebtedness, the Treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness by indorsing on the face thereof the amount for which they were received, the word "canceled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him, by number, date of sale, amount, date of maturity, the name and post-office address of the purchaser, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the Treasurer of such purchase, giving at the same time the number of the bond transferred, and his post-office address, and every transfer shall be noted on the record. The Treasurer shall also report, under oath, to the Board, at each regular session, a statement of all bonds sold or exchanged by him since the

Cancellation
of old
bonds.

Treasurer
to report
statement of
bonds sold,
etc.

preceding report, and the date of such sale or exchange, and when exchanged, a list or description of the city indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on Bond Fund, and so entered by him on his books; but such bonds shall not be sold or exchanged for any indebtedness of the city, except by the approval of the Board of Trustees or Municipal Council of said city. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks, in at least one newspaper published in the county, the right being reserved in such advertisement to reject any or all such bids.

Sale, how made.

4447. The Board of Trustees, or Municipal Council, shall cause to be assessed and levied each year, upon the taxable property of the city, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of eight years at least forty per cent. of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the "Bond Fund," and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the Treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said Bond Fund.

Assessment to pay interest on bonds.

4448. Whenever the amount in the hands of the Treasurer belonging to the Bond Fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week, for three successive weeks, and in some newspaper of general circulation published in the City of San Francisco, not less than once a week, for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon; and if not presented for payment or redemption within forty days after the first publication of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the post-office address of the owner, as shown by the record kept in the Treasurer's office.

Redemption, how made.

4449. If the Board of Trustees or Municipal Council of any city which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall

Failure to levy tax, proceedings to compel.

have been presented to the City Treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons with the County Treasurer of the county in which said city is situated, taking his receipt therefor, and the same shall be registered in the office of the County Treasurer; and the District Attorney shall, as soon as practicable, proceed by mandamus in the proper Court, in the name of the owner of the bond to compel the said tax to be levied in said city, and at a sufficient rate to realize the amount of principal and interest past due and to become due prior to next levy, and the same shall be levied and collected as a part of the county tax, and paid into the county treasury, and passed to the special credit of such city as bond tax, and shall be paid by warrants as the payments mature to the holder of such registered obligations, as shown by the register in the office of the County Treasurer, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said city.

SEC. 2. This Act shall take effect from and after its passage.

CHAPTER CXXI.

An Act to amend sections three thousand four hundred and fifteen, three thousand four hundred and sixty-six, three thousand four hundred and ninety-five, three thousand five hundred, and three thousand five hundred and forty-eight of an Act entitled "An Act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to the public lands of this State.

[Approved April 28th, 1880.]

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

SECTION 1. Section thirty-four hundred and fifteen of said Code is hereby amended so as to read as follows:

Contests as to
approval of
surveys,
etc., how
disposed of.

3415. After such order is made either party may bring an action in the Superior Court of the county in which the land in question is situated, to determine the conflict, and the production of a certified copy of the entry, made by either the Surveyor-General or the Register, gives the Court full and complete jurisdiction to hear and determine the action.

SEC. 2. Section thirty-four hundred and sixty-six of said Code is hereby amended so as to read as follows:

Delinquent
assessments,
how
collected.

3466. If, at the end of thirty days, or of the longer time fixed by the Trustees, all of the assessments have not been paid, the Treasurer must return the list to the Board of Trustees who must commence actions for the collection of such delinquent assessments, with interest thereon from the time the list was returned to him, and costs, and for the enforcement of the lien on the land assessed, in the Superior

Court of the county in which the same is situated, against the person to whom the same is assessed, and if assessed to "unknown" owners, then against the real owners, giving a full description by legal subdivisions or definite boundaries, and all persons having or claiming any interest therein by fictitious names. Service of complaint and summons in such actions may be made either in the manner prescribed by the Code of Civil Procedure, or if the owner is unknown, or cannot be found, by posting a copy of the summons at the Court-house door, and publishing the same once a week, for four successive weeks, in a newspaper published in the county; and such posting and publication is equivalent to personal service on all persons having or claiming any right, title, or interest in the land assessed to unknown owners, whether named as a party in such action or not. Proof of such posting and publication must be made by the certificate of the Sheriff, or affidavit of the party making the service. In case the service be made by posting and publication, the defendant, or any person claiming any interest in the land assessed, may appear and answer the complaint within forty days after the expiration of the four weeks of posting and publication. Assessments on several tracts may be included in the same action, if listed to the same person. In such action the Court may decree and adjudge a lien against each tract for the amount assessed against the same, and may order them to be sold on execution or decree, as in other cases of sale of real estate. The judgment or decree must direct that the sale be made for gold and silver coin of the United States. The Board of Trustees must pay the moneys collected to the County Treasurer, who must place the same to the credit of the district.

SEC. 3. Section thirty-four hundred and ninety-five of said Code is hereby amended so as to read as follows:

3495. Any person desiring to purchase any portion not less than the smallest legal subdivision of a sixteenth or a thirty-sixth section of any township which has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become so, a resident of the State, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions), under the provisions of this title; that he has not entered any portion of any sixteenth or thirty-sixth section which, together with that now sought to be purchased, exceeds three hundred and twenty acres; that he is an actual settler thereon; that there is no occupation of such lands adverse to any that he has; or if there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days since the plat was filed in the United States Land Office, and that he desires to purchase the same for his own use and benefit, and for the use and benefit of no other person or persons whomsoever, and that he has made no contract or agreement to sell the same.

An affidavit on application to purchase sixteenth and thirty-sixth sections.

SEC. 4. Section thirty-five hundred of said Code is hereby amended so as to read as follows.

Applications
for other
than
sixteenth
and thirty-
sixth
sections.

3500. Any person desiring to purchase any lands mentioned in section three thousand four hundred and ninety-four, except the sixteenth and thirty-sixth sections, must make an affidavit that he is a citizen of the United States (or has filed his intention of becoming so), a resident of the State, of lawful age, that he desires to purchase such lands (describing the same by legal subdivisions), under the provisions of this title, and that there is no valid claim to such land other than that of the applicant, that he is an actual settler thereon; that he has not entered any land in part satisfaction of the unsold portion of the five hundred thousand acre grant, or of the grant in lieu of the sixteenth or thirty-sixth sections which, together with that now sought to be purchased, exceeds three hundred and twenty acres.

SEC. 5. Section thirty-five hundred and forty-eight of said Code is hereby amended so as to read as follows:

Proceedings
against
delinquent
purchasers

3548. After the expiration of the fifty days, he must, in the name of the people of the State of California, commence actions in the Superior Court against all purchasers, or holders of certificates of purchase, who have not either paid the amount due, together with the cost of publication, or surrendered the title to the State, as provided in section three thousand five hundred and seventy, to obtain a judgment of foreclosure of the interest of the purchaser, or assignee of the purchaser in the land, and to annul the certificate of purchase.

Applications
retained
sixty days

SEC. 6. All applications, under whatsoever Act, filed in the Surveyor-General's office, must be retained sixty days before approval, and must be approved (when there is no conflict) by the Surveyor-General, at the expiration of six months.

SEC. 7. This Act takes effect immediately.

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CIVIL CODE.



ACTS AMENDATORY
OF
THE CIVIL CODE

PASSED AT

THE TWENTY-THIRD SESSION OF THE LEGISLATURE.

CHAPTER XI.

An Act to amend sections thirty-four hundred and ninety-one and thirty-four hundred and ninety-two of an Act entitled "An Act to establish a Civil Code," approved March twenty-first, eighteen hundred and seventy-two, relating to public nuisances.

[Approved March 2d, 1880.]

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

SECTION 1. Section three thousand four hundred and ninety-one of said Code is hereby amended so as to read as follows:

3491. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

Remedies
against pub-
lic nuisance.

SEC. 2. Section three thousand four hundred and ninety-two of said Code is hereby amended so as to read as follows:

3492. The remedy by indictment or information is regulated by the Penal Code.

How
regulated.

SEC. 3. This Act takes effect immediately.

CHAPTER XXXVII.

An Act to amend sections twenty-one hundred and seventy of an Act entitled an Act to establish a Civil Code, approved March twenty-first, eighteen hundred and seventy-two, relating to common carriers.

[Approved April 2d, 1880.]

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

SECTION 1. Section twenty-one hundred and seventy of said Code is hereby amended so as to read as follows:

Common
carriers not
to give
preference.

2170. A common carrier must not give preference in time, price, or otherwise, to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this State, shall establish a schedule time for the starting of trains or vessel from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessel at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any Court of competent jurisdiction, upon complaint filed by the District Attorney of the county in the name of the people, and paid into the Common School Fund of the said county.

SEC. 2. This Act takes effect immediately.

CHAPTER XXXIX.

An Act to amend sections eleven hundred and eighty and eleven hundred and eighty-one of an Act entitled "An Act to establish a Civil Code," approved March twenty-first, eighteen hundred and seventy-two, relating to the proof and acknowledgment of instruments.

[Approved April 3d, 1880.]

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

SECTION 1. Section eleven hundred and eighty of said Code is hereby amended so as to read as follows:

By whom
acknowledg-
ments may
be taken in
this State.

1180. The proof or acknowledgment of an instrument may be made at any place within this State before a Justice or Clerk of the Supreme Court, or Judge of a Superior Court.

SEC. 2. Section eleven hundred and eighty-one of said Code is hereby amended so as to read as follows:

Same.

1181. The proof or acknowledgment of an instrument may be made in this State within the city, city and county, county, or district for which the officer was elected or appointed before either:

1. A Clerk of a Court of record; or,
2. A County Recorder; or,
3. A Notary Public; or,
4. A Justice of the Peace.

SEC. 3. This Act takes effect immediately.

CHAPTER XLI.

An Act to amend sections sixty-nine, seventy, eighty, one hundred and thirty-seven, two hundred and twenty-six, two hundred and forty-three, two hundred and forty-four, two hundred and forty-nine, two hundred and fifty-three, two hundred and fifty-eight, two hundred and sixty-five, two hundred and seventy-three, five hundred and ninety-three, five hundred and ninety-six, five hundred and ninety-eight, six hundred and two, twelve hundred and forty-one, twelve hundred and forty-five, twelve hundred and forty-seven, twelve hundred and sixty-five, thirteen hundred and sixty-three, thirteen hundred and sixty-four, twenty-two hundred and eighty-three, twenty-two hundred and eighty-seven, and twenty-two hundred and eighty-nine of an Act entitled "An Act to establish a Civil Code," approved March twenty-first, eighteen hundred and seventy-two, conferring upon the Superior Courts, their Judges or officers, the jurisdiction and authority heretofore exercised in certain cases by the Courts abolished by the Constitution, their Judges or officers.

[Approved April 6th, 1880.]

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

SECTION 1. Section sixty-nine of said Code is hereby amended so as to read as follows:

69. All persons about to be joined in marriage must first obtain a license therefor from the County Clerk of the county in which the marriage is to be celebrated, showing:

One—The identity of the parties.

Two—Their real and full names, and places of residence.

Three—Their ages.

Four—If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such non-aged person has been previously, but is not at the time, married.

For the purpose of ascertaining these facts, the Clerk is authorized to examine parties and witnesses on oath, and to receive affidavits, and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the Clerk, unless the consent, in writing, of the parents of the person under age, or of one of such parents, or of his or her guardian, or of one having charge of such person, be presented to him; and such consent shall be filed by the Clerk; *provided*, that the said Clerk shall not issue a license authorizing the marriage of a white person with a negro, mulatto, or Mongolian.

SEC. 2. Section seventy of said Code is hereby amended so as to read as follows:

By whom
solemnized.

70. Marriage may be solemnized by either a Justice of the Supreme Court, Judge of the Superior Court, Justice of the Peace, priest, or minister of the gospel of any denomination.

SEC. 3. Section eighty of said Code is hereby amended so as to read as follows:

Void
marriages.

80. Either party to an incestuous or void marriage may proceed, by action in the Superior Court, to have the same so declared.

SEC. 4. Section one hundred and thirty-seven of said Code is hereby amended so as to read as follows:

Expense of
action for
divorce.

137. When an action for divorce is pending, the Court may, in its discretion, require the husband to pay, as alimony, any money necessary to enable the wife to support herself, or her children, or to prosecute or defend the action. When the husband willfully deserts the wife, she may, without applying for a divorce, maintain in the Superior Court an action against him for permanent support and maintenance of herself, or of herself and children. During the pendency of such action, the Court may, in its discretion, require the husband to pay, as alimony, any money necessary for the prosecution of the action, and for support and maintenance, and executions may issue therefor, in the discretion of the Court. The final judgment in such action may be enforced by the Court by such order or orders as, in its discretion, it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the Court.

SEC. 5. Section two hundred and twenty-six of said Code is hereby amended so as to read as follows:

Proceedings
on adoption.

226. The person adopting a child, and the child adopted, and the other persons, if within or residents of this State, whose consent is necessary, must appear before the Judge of the Superior Court of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within, or are not residents of this State, then their written consent, duly proved or acknowledged according to sections eleven hundred and eighty-two and eleven hundred and eighty-three of this Code, shall be filed in said Superior Court at the time of the application for adoption.

SEC. 6. Section two hundred and forty-three of said Code is hereby amended so as to read as follows:

Appoint-
ment of
guardian
by Court.

243. A guardian of the person or property, or both, of a person residing in this State, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section two hundred and forty-one, by the Superior Court, as provided in the Code of Civil Procedure.

SEC. 7. Section two hundred and forty-four of said Code is hereby amended so as to read as follows:

Same.

244. A guardian of the property within this State of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the Superior Court.

SEC. 8. Section two hundred and forty-nine of said Code is hereby amended so as to read as follows:

249. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the Superior Court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship in as good condition as he received it.

Duties of guardian of estate.

SEC. 9. Section two hundred and fifty-three of said Code is hereby amended so as to read as follows:

253. A guardian may be removed by the Superior Court for any of the following causes:

Removal of guardian.

1. For abuse of his trust;
2. For continued failure to perform its duties;
3. For incapacity to perform its duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the State;
7. In the case of a guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship.

SEC. 10. Section two hundred and fifty-eight of said Code is hereby amended so as to read as follows:

258. A person of unsound mind may be placed in an asylum for such persons, upon the order of the Superior Court of the county in which he resides, as follows:

Insane persons.

1. The Court must be satisfied, upon examination in open Court, and in the presence of such person, from the testimony of two reputable physicians, that such person is of unsound mind, and unfit to be at large;
2. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, or any citizen, may demand an investigation before a jury, which must be conducted, in all respects, as under an inquisition of lunacy.

SEC. 11. Section two hundred and sixty-five of said Code is hereby amended so as to read as follows:

265. Such consent shall be given:

1. By the father of the minor. If he be dead, or be not of legal capacity to give his consent, or if he shall have abandoned or neglected to provide for his family, and such fact be certified by a Justice of the Peace of the township or county, or sworn to by a credible witness, and such certificate or affidavit be indorsed on the indenture; then,
2. By the mother. If the mother be dead, or be not of legal capacity to give such consent or refusal; then,
3. By the guardian of such infant. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian; then,
4. By the Supervisors of the county, or any two Justices of the Peace, or the Judge of the Superior Court of the county;

Indentures, consent of parents, etc., requested.

5. If such minor be an orphan, under the care and control of any orphan asylum in this State, then by the Board of managers thereof.

SEC. 12. Section two hundred and seventy-three of said Code is hereby amended so as to read as follows:

Deposit of
indenture.

273. The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the County Clerk.

SEC. 13. Section five hundred and ninety-three of said Code is hereby amended so as to read as follows:

Corporations
for purposes
other
than profit,
how formed.

593. Any number of persons associated together for any purpose where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of such association, elect Directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this part.

SEC. 14. Section five hundred and ninety-six of said Code is hereby amended so as to read as follows:

How much
land
friendly, etc.,
societies
may hold.

596. In addition to that provided for in the preceding section, friendly societies and pioneer associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the Superior Court as hereinafter provided.

SEC. 15. Section five hundred and ninety-eight of said Code is hereby amended so as to read as follows:

Corporations
may, by
order of
the Superior
Court, sell
or mortgage
real estate.

598. Corporations of the character mentioned in section five hundred and ninety-three, may mortgage or sell real property held by them, upon obtaining an order for that purpose from the Superior Court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the Court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the Court or Judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise.

SEC. 16. Section six hundred and two of said Code is hereby amended so as to read as follows:

Rules, etc.,
of religious
denomina-
tions
requiring
administra-
tion of tem-
poralities.

602. Whenever the rules, regulations, or discipline of any religious denomination, society, or church, require for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church, to become a sole corporation, in the manner prescribed in this title, as nearly as may be, and with all the powers and duties, and for the

uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record with the Clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission, or certificate, or letters of election, or appointment, duly attested; *provided*, all property held by such bishop, chief priest, or presiding elder, shall be in trust for the use, purpose, and behoof of his religious denomination, society, or church. The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any Judge of the Superior Court in the county in which any corporation is formed under this chapter, shall at all times have access to the books of such incorporation. Any corporation sole, heretofore organized and existing under the laws of this State, may elect to continue its existence under this Act by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or amended articles of incorporation, in the form required by the preceding section, as prescribed by section two hundred and eighty-seven (287) of the Civil Code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions of this Act expressed.

SEC. 17. Section twelve hundred and forty-one of said Code is hereby amended so as to read as follows:

1241. The homestead is subject to execution or forced sale in satisfaction of judgments obtained: When homestead subject to execution.

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises;

2. On debts secured by mechanics', laborers', or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record.

SEC. 18. Section one thousand two hundred and forty-five of said Code is hereby amended so as to read as follows:

1245. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section one thousand two hundred and forty-one is levied upon the homestead, the judgment creditor may apply to the Proceedings on execution against homestead.

Superior Court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

SEC. 19. Section one thousand two hundred and forty-seven of said Code is hereby amended so as to read as follows:

Petition,
where filed.

1247. The petition must be filed with the Clerk of the Superior Court.

SEC. 20. Section twelve hundred and sixty-five of said Code is hereby amended so as to read as follows:

Tenure
by which
homestead
is held.

1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the Superior Court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title.

SEC. 21. Section thirteen hundred and sixty-three of said Code is hereby amended so as to read as follows:

Specific
devise or
legacy.

1363. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the Superior Court to sell the property devised and bequeathed in the cases herein provided.

SEC. 22. Section thirteen hundred and sixty-four of said Code is hereby amended so as to read as follows:

Heir's con-
veyance
good unless
will is
proved
within
four years.

1364. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the Clerk of the Superior Court having jurisdiction thereof, or unless written notice of such devise is filed with the Clerk of the county where the real property is situated, within four years after the devisors death.

SEC. 23. Section twenty-two hundred and eighty-three of said Code is hereby amended so as to read as follows:

Removal of
Trustees
by Court.

2283. The Superior Court may remove any Trustee who has violated or is unfit to execute the trust, or may accept the resignation of a Trustee.

SEC. 24. Section twenty-two hundred and eighty-seven of said Code is hereby amended so as to read as follows:

Vacant Trust-
eeship filled
by Court.

2287. The Superior Court may appoint a Trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

SEC. 25. Section twenty-two hundred and eighty-nine of said Code is hereby amended so as to read as follows:

Superior
Court as
Trustee.

2289. When a trust exists without any appointed Trustee, or where all the Trustees, renounce, die, or are discharged, the Superior Court of the county where the trust property,

or some portion thereof, is situated, must appoint another Trustee, and direct the execution of the trust. The Court may, in its discretion, appoint the original number, or any less number of Trustees.

SEC. 26. This Act takes effect immediately.

CHAPTER L.

An Act to amend section seven (7) of the Civil Code, defining legal holidays.

[Approved April 9th, 1880.]

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

SECTION 1. Section seven of the Civil Code is hereby amended to read as follows:

7. Holidays, within the meaning of this Code, are: Every Sunday, the first day of January, the twenty-second (22d) day of February, the thirtieth (30th) day of May, the fourth day of July, the twenty-fifth (25th) day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday.

SEC. 2. This Act shall take effect immediately.

CHAPTER LVII.

An Act to add a new section to the Civil Code, to be known as section three hundred and twenty-seven, to enforce the provisions of section three, of article twelve, of the Constitution.

[Approved April 12th, 1880.]

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

SECTION 1. A new section is added to the Civil Code, to be known as section three hundred and twenty-seven, to read as follows:

327. Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any Director or Trustee of any corporation or joint stock association from any liability imposed by section three, of article twelve, of the Constitution of California, are hereby declared to be and shall be null and void.

Contracts to relieve Directors from liabilities fixed by Constitution void.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXI.

An Act to amend section four hundred and fifty-six of the Civil Code, relative to the debts of railroad corporations and securities therefor, and sales of the property of said corporations.

[Approved April 15th, 1880.]

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

SECTION 1. Section four hundred and fifty-six of the Civil Code of this State is hereby amended to read as follows:

Railroad
corporations
may borrow
money and
issue bonds.

456. Railroad corporations may borrow, on the credit of the corporation, and under such regulations and restrictions as the Directors thereof, by unanimous concurrence may impose, such sums of money as may be necessary for constructing and completing their railroad, and may issue and dispose of bonds or promissory notes therefor, in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten per cent. per annum; and may also issue bonds or promissory notes of the same denomination and rate of interest in payment of any debts or contracts for constructing and completing their road, with its equipments and all else relative thereto, and for the purchase of railroads and other property within the purposes of the corporation. The amount of bonds, or promissory notes, issued for such purposes, must not exceed in all the amount of their capital stock; and to secure the payment of such bonds or notes they may mortgage their corporate property and franchises, or may secure the payment of such bonds or notes by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this State, or of any other State within the United States, that the Directors of the railroad corporation may by unanimous concurrence select, may be Trustees in such deed of trust.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXXI.

An Act to amend section two thousand nine hundred and forty-one of the Civil Code, relating to the satisfaction of mortgages.

[Approved April 15th, 1880.]

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

SECTION 1. Section two thousand nine hundred and forty-one of the Civil Code is hereby amended so as to read as follows:

2941. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

Satisfaction
of mort-
gages.

SEC. 2. This Act shall take effect immediately.

CHAPTER XC.

An Act to amend section two hundred and ninety of the Civil Code, in regard to articles of incorporation.

[Approved April 16th, 1880.]

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

SECTION 1. Section two hundred and ninety of the Civil Code is hereby amended so as to read as follows:

290. Articles of incorporation must be prepared setting forth:

Articles of
incorpora-
tion, what
to contain.

First—The name of the incorporation.

Second—The purpose for which it is framed.

Third—The place where its principal business is to be transacted.

Fourth—The term for which it is to exist, not exceeding fifty years.

Fifth—The number of its Directors or Trustees, which shall not be less than five nor more than eleven, and the names and residence of those who are appointed for the first year; *provided*, that the corporate powers, business, and property of corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes may be conducted, exercised, and controlled by a Board of not less than five nor more than fifty Directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization; *and provided, also*, that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the

number of the Directors may be increased or diminished by a majority of the stockholders of the corporation to any number not exceeding eleven nor less than five, who must be members of the corporation, whereupon a certificate, stating the number of Directors, must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation.

Sixth—The amount of its capital stock, and the number of shares into which it is divided.

Seventh—If there is a capital stock, the amount actually subscribed, and by whom.

SEC. 2. This Act shall take effect immediately.

CHAPTER CIII.

An Act to amend section six hundred and eleven of the Civil Code, relating to cemetery corporations.

[Approved April 16th, 1880.]

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

SECTION 1. Section six hundred and eleven of the Civil Code is hereby amended so as to read as follows:

May issue
bonds to pay
for grounds.

611. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent. per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery and not otherwise; sixty per cent. of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one-half, of the proceeds of all sales of lots or plats made from such lands; such payment to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, or assigns.

SEC. 2. This Act shall take effect immediately.

CHAPTER CXII.

An Act to amend an Act entitled "An Act to amend section two hundred and ninety-nine of the Civil Code of California," approved March twenty-second, Anno Domini eighteen hundred and seventy-eight.

[Approved April 23d, 1880.]

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

SECTION 1. Section (299) two hundred and ninety-nine of said Civil Code is hereby amended so as to read as follows:

299. No corporation hereafter formed shall purchase, locate, or hold property in any county of this State, without filing a copy of the copy of its articles of incorporation filed in the office of the Secretary of State, duly certified by such Secretary of State, in the office of the County Clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the County Clerk of every county in this State in which it holds any property (except the county where the original articles of incorporation are filed); and if any corporation hereafter acquire any property in any county other than that in which it now holds property, it must, within ninety days thereafter, file with the Clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several County Clerks, and certified copies thereof, shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation shall be filed at the places directed by the general law and this section; *provided*, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; *and provided further*, that the said damages may be recovered in an action brought in any Court of this State of competent jurisdiction, by any party or parties suffering the same.

SEC. 2. This Act shall take effect immediately.

CHAPTER CXV.

An Act to amend section thirteen hundred and eighty-six of the Civil Code, relating to succession.

[Approved April 23d, 1880.]

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

Succession
to and
distribution
of property.

SECTION 1. Section thirteen hundred and eighty-six of the Civil Code is hereby amended so as to read as follows:

1386. When any person having title to any estate not otherwise limited by marriage contract dies, without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes, one-half to the surviving husband or wife, and the other half to the decedent's father and mother, in equal shares, and if either be dead, the whole of said half goes to the other; if there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband, nor wife, the estate must go to his father and mother, in equal shares, or if either be dead, then to the other.

3. If there be neither issue, husband, wife, father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation.

5. If the decedent leave a surviving husband or wife, and

neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife.

6. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

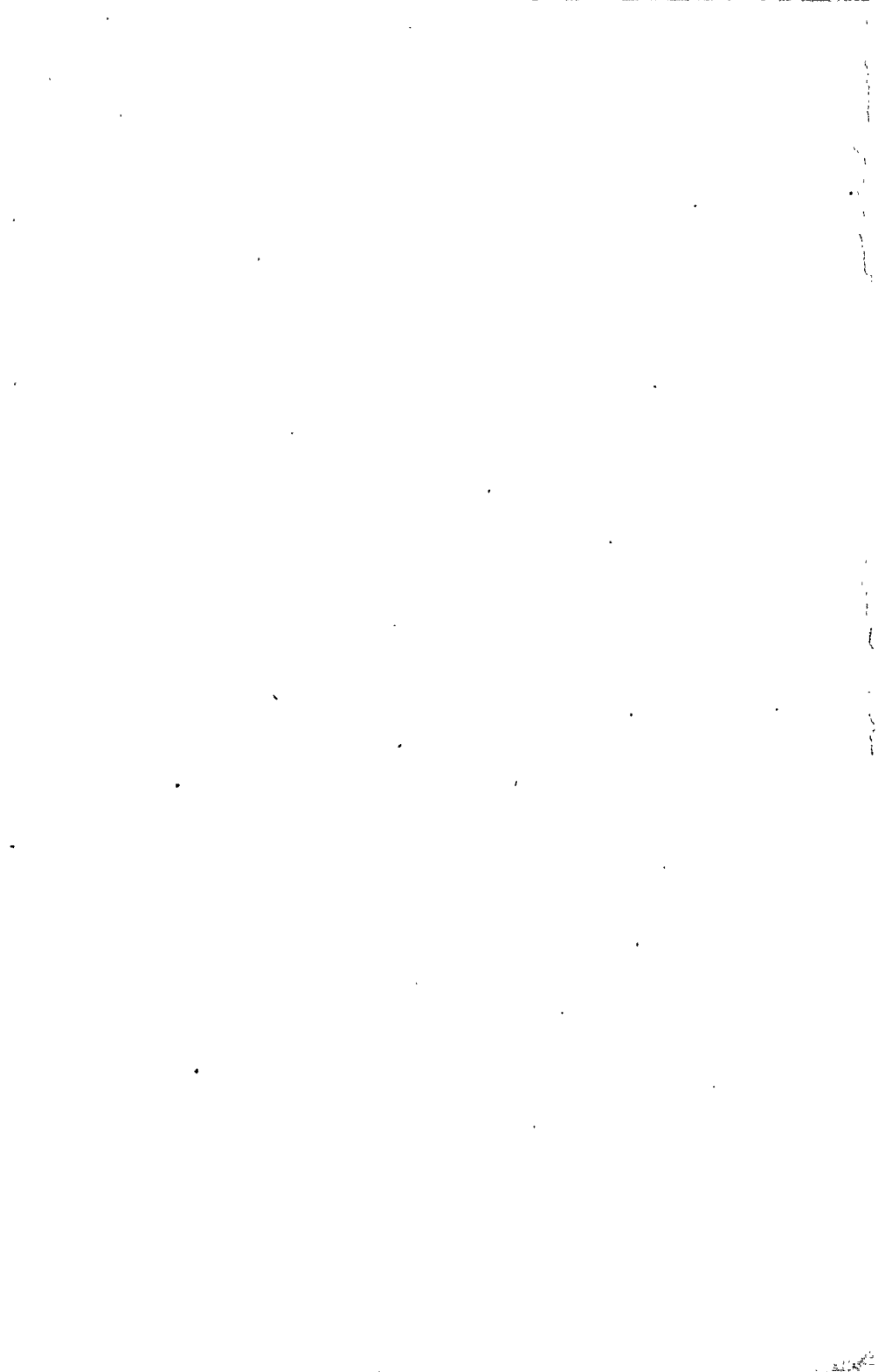
7. If the decedent leave several children, or one child, and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

8. If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

9. If the decedent be a widow or widower, and leave no kindred, and the estate, or any portion thereof, was common property of such decedent, and his or her deceased spouse, while such spouse was living, such common property shall go to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse, by right of representation.

10. If the decedent leave no husband, wife, or kindred, and there be no heirs to take his estate, or any portion thereof, under subdivision nine of this section, the same escheats to the State for the support of common schools.

SEC. 2. This Act shall take effect from and after its passage.



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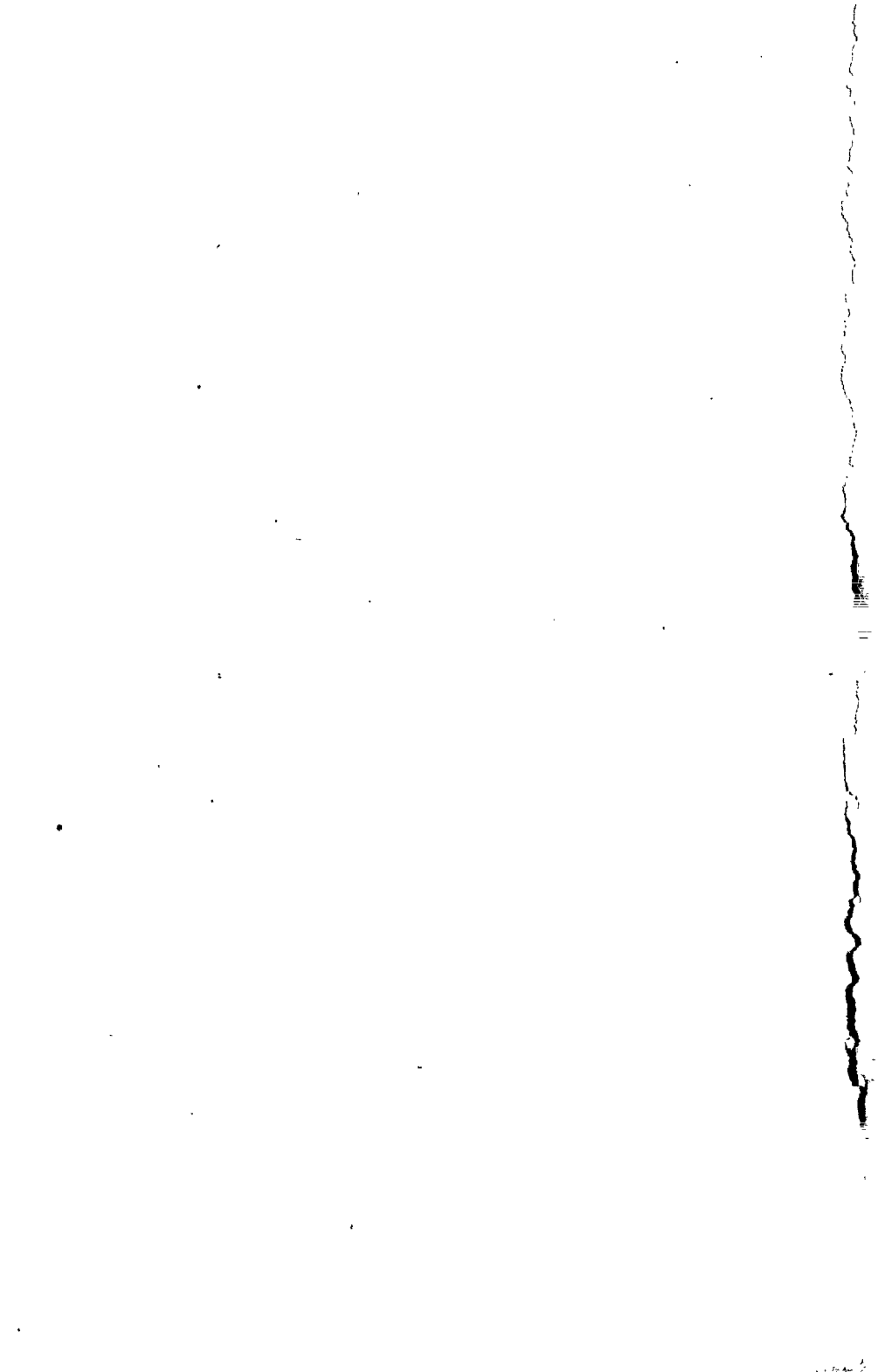
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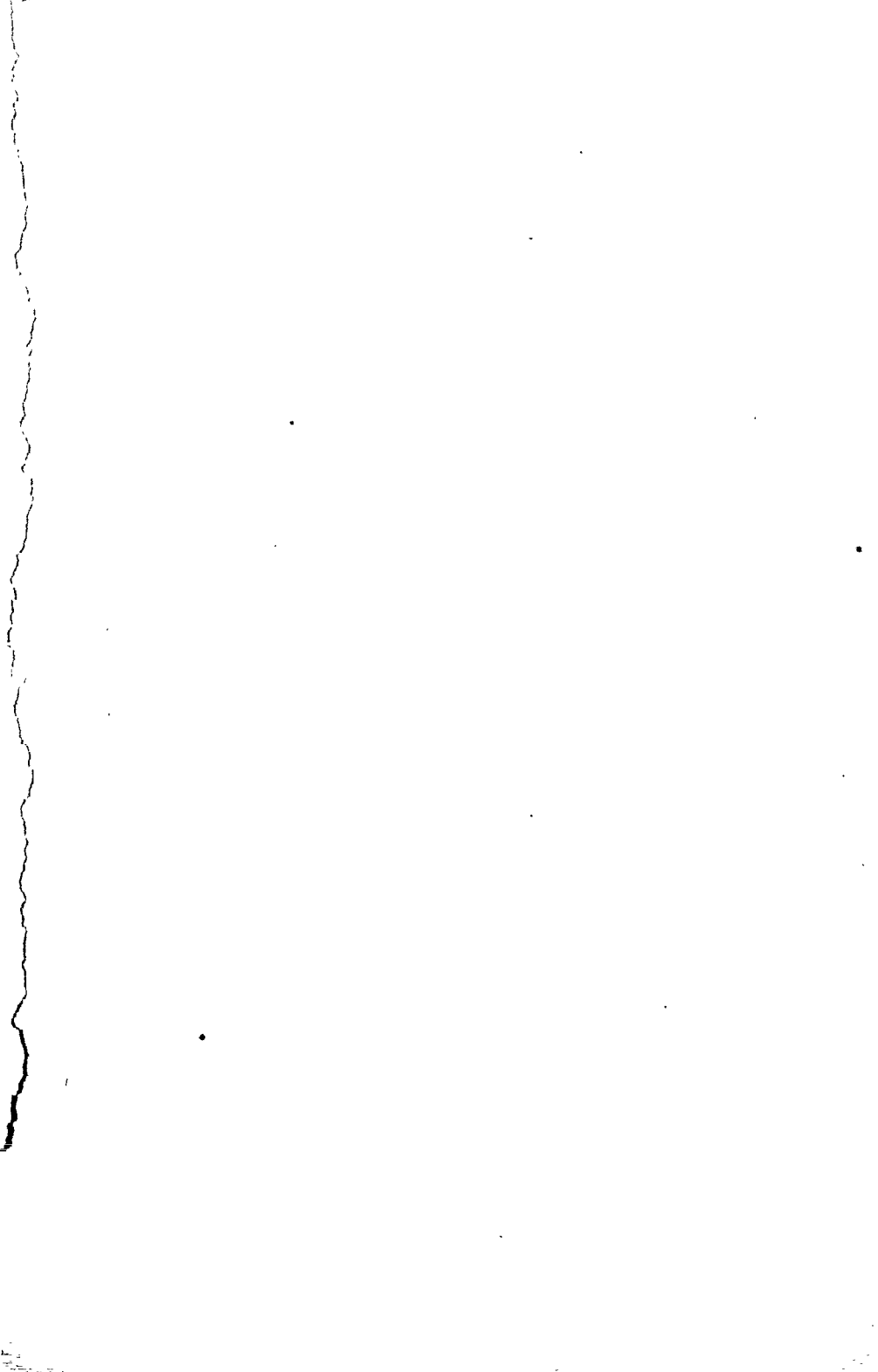
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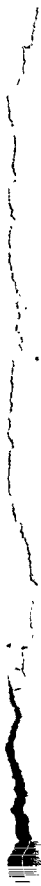
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CODE OF CIVIL PROCEDURE.



ACTS AMENDATORY
OF
THE CODE OF CIVIL PROCEDURE.

PASSED AT
THE TWENTY-THIRD SESSION OF THE LEGISLATURE.

CHAPTER XIII.

An Act to amend section five hundred and ninety-five of the Code of Civil Procedure, relating to postponement of trials.

[Approved March 2d, 1880.]

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

SECTION 1. Section five hundred and ninety-five of the Code of Civil Procedure is hereby amended so as to read as follows:

595. A motion to postpone a trial on the ground of the absence of evidence can 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. A trial shall be postponed when it appears to the Court that the attorney of record, party, or principal witness is actually engaged in attendance upon a session of the Legislature of this State as a member thereof. The Court may require the moving party, where application is made on account of the absence of a material witness, to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admits 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 must not be postponed.

Motion to postpone a trial for absence of testimony, requisites of.

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

CHAPTER XIV.

An Act to amend sections four hundred and thirty-two, four hundred and fifty-four, and four hundred and seventy-three of the Code of Civil Procedure, relating to pleadings in civil actions.

[Approved March 9th, 1880.]

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

SECTION 1. Section four hundred and thirty-two of the Code of Civil Procedure is amended to read as follows:

What proceedings are to be had when complaint is amended.

432. If the complaint is amended, a copy of the amendments must be filed, or the Court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby. The defendant must answer the amendments, or the complaint as amended, within ten days after service thereof, or such other time as the Court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

SEC. 2. Section four hundred and fifty-four of said Code is amended to read as follows:

How to state an account in pleading.

454. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must 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 Judge thereof may order a further account when the one delivered is too general, or is defective in any particular.

SEC. 3. Section four hundred and seventy-three of said Code is amended to read as follows:

Amendments by the Court.

Enlarging time to plead and relieving from judgments, etc.

473. The Court may in furtherance of justice, and on such terms as may be proper, allow a party to 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; and may, upon like terms, enlarge the time for answer or demurrer. The Court may likewise, in its discretion, 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 Code; and may, also, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; *provided*, that application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. When from any cause the summons in an action has not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant or his legal representative, at any time within one year after the rendition of any judgment in such

action, to answer to the merits of the original action. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond or undertaking is sued for taking the same, the officer or sureties may in their answer set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the Court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

SEC. 4. This Act shall take effect immediately.

CHAPTER XV.

An Act to amend sections four hundred and eighty, four hundred and ninety-three, five hundred and twenty-five, five hundred and forty-eight, five hundred and fifty-four, five hundred and fifty-six, and five hundred and sixty-five of the Code of Civil Procedure, relating to provisional remedies in civil actions.

[Approved March 9th, 1880.]

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

SECTION 1. Section four hundred and eighty of the Code of Civil Procedure is amended to read as follows:

480. An order for the arrest of the defendant must be obtained from a Judge of the Court in which the action is brought. Order of arrest, by whom made.

SEC. 2. Section four hundred and ninety-three of said Code is amended to read as follows:

493. 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 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 must be a new undertaking. Notice of justification. New undertaking, if otherwise.

SEC. 3. Section five hundred and twenty-five of said Code is amended to read as follows:

525. An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the Court in which the action is brought, or by a Judge thereof, and when made by a Judge it may be enforced as an order of the Court. Injunction, what is and who may grant it.

SEC. 4. Section five hundred and forty-eight of said Code is amended to read as follows:

Property attached may be sold as under execution, if the interests of the parties require.

548. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the Court or a Judge thereof that the interest of the parties to the action will be subserved by a sale thereof, the Court or Judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the Court to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

SEC. 5. Section five hundred and fifty-four of said Code is amended to read as follows:

Proceedings to release attachments, before whom taken.

554. Whenever the defendant has appeared in the action he may, upon reasonable notice to the plaintiff, apply to the Court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made releasing from the operation of the attachment any or all of the property attached; and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 6. Section five hundred and fifty-six of said Code is amended to read as follows:

When a motion to discharge attachment may be made.

556. The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply, on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, or to a Judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

SEC. 7. Section five hundred and sixty-five of said Code is amended to read as follows:

Appointment of receiver upon dissolution of corporations.

565. Upon the dissolution of any corporation, the Superior Court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

SEC. 8. This Act shall take effect immediately.

CHAPTER XVI.

An Act to amend section five hundred and ninety-three of the Code of Civil Procedure, relating to entry of civil causes on Court calendars.

[Approved March 9th, 1880.]

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

SECTION 1. Section five hundred and ninety-three of the Code of Civil Procedure is amended to read as follows:

593. The Clerk must enter causes upon the calendar of the Court according to the date of issue. Causes once placed on the calendar must remain upon the calendar until finally disposed of; *provided*, that causes may be dropped from the calendar by consent of parties, and may be again restored upon notice.

Clerk must enter causes on the calendar.

When may be restored.

SEC. 2. This Act shall take effect immediately.

CHAPTER XVII.

An Act to amend sections seven hundred and fourteen and seven hundred and fifteen of the Code of Civil Procedure, relating to proceedings supplementary to execution.

[Approved March 9th, 1880.]

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

SECTION 1. Section seven hundred and fourteen of the Code of Civil Procedure is amended to read as follows:

714. 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, is entitled to an order from a Judge of the Court, 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 must be required to attend before a Judge or referee out of the county in which he resides.

Debtor required to answer concerning his property, when.

SEC. 2. Section seven hundred and fifteen of said Code is amended to read as follows:

715. After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a Judge of the Court, that any judgment debtor has property which he unjustly refuses to apply

Proceedings to compel debtor to appear.

In what cases he may be arrested.

What bail may be given.

towards the satisfaction of the judgment, such 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 toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge or referee, as may be directed during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

SEC. 3. This Act shall take effect immediately.

CHAPTER XVIII.

An Act to amend sections nine hundred and forty-three, nine hundred and forty-eight, and nine hundred and fifty-nine of the Code of Civil Procedure, relating to appeals in civil actions.

[Approved March 9th, 1880.]

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

SECTION 1. Section nine hundred and forty-three of the Code of Civil Procedure is amended to read as follows:

Appeal from a judgment for delivery of documents.

943. If the judgment or order appealed from, direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot 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 a Judge thereof, may direct, to the effect that the appellant will obey the order of the appellate Court upon the appeal.

SEC. 2. Section nine hundred and forty-eight of said Code is amended to read as follows:

Justification of sureties on undertaking on appeal.

948. The adverse party may except to the sufficiency of the sureties to any of the undertakings mentioned in sections nine hundred and forty-one, nine hundred and forty-two, nine hundred and forty-three, and nine hundred and forty-five, at any time within thirty days after the filing of such undertaking; and unless they or other sureties, within

twenty days after the appellant has been served with notice of such exception, justify before a Judge of the Court below, or County Clerk, upon five days notice to the respondent of the time and place of justification, execution of the judgment order or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this title, a deposit in the Court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

SEC. 3. Section nine hundred and fifty-nine of said Code is amended to read as follows:

959. The provisions of this chapter do not apply to appeals to Superior Courts.

SEC. 4. This Act shall take effect immediately.

CHAPTER XIX.

An Act to amend section one thousand and fifty-four of the Code of Civil Procedure, relating to the time within which certain acts are to be done.

[Approved March 9th, 1880.]

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

SECTION 1. Section one thousand and fifty-four of the Code of Civil Procedure is amended to read as follows:

1054. When an act to be done, as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or of bills of exceptions, or of amendments thereto, or to the service of notices other than of appeal, the time allowed by this Code may be extended, upon good cause shown by the Court in which the action is pending or a Judge thereof; but such extension shall not exceed thirty days without the consent of the adverse party.

The time within which an act is to be done may be extended.

SEC. 2. This Act shall take effect immediately.

CHAPTER XX.

An Act to amend sections one thousand one hundred and sixty-three, one thousand one hundred and sixty-six, one thousand one hundred and sixty-seven, one thousand one hundred and sixty-eight, one thousand one hundred and seventy-one, one thousand one hundred and seventy-six, and one thousand one hundred and seventy-nine of the Code of Civil Procedure, relating to summary proceedings for obtaining possession of real property in certain cases.

[Approved March 9th, 1880.]

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

SECTION 1. Section one thousand one hundred and sixty-three of the Code of Civil Procedure is amended to read as follows:

Jurisdiction
of Superior
Courts.

1163. The Superior Court of the county in which the property, or some part of it, is situated, shall have jurisdiction of proceedings under this chapter; *provided*, that Justices' Courts, within their respective townships or cities, or cities and counties, shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, when the rental value does not exceed twenty-five dollars per month and when the whole amount of damages claimed does not exceed two hundred dollars.

SEC. 2. Section one thousand one hundred and sixty-six of said Code is amended to read as follows:

Complaint.

1166. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a day designated therein, which shall not be less than three days nor more than twelve days from its date, except in cases when the publication of the summons is necessary, in which case the Court or a Judge, or Justice thereof, may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

When sum-
mons must
be issued.

SEC. 3. Section one thousand one hundred and sixty-seven of said Code is amended to read as follows:

Summons,
form and
service of.

1167. The summons must state the parties to the proceeding, the Court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day, and must notify the defendant to appear and answer within the time designated or that the relief sought

will be taken against him. The summons must be directed to the defendant, and be served at least two days before the return day designated therein, and must be served and returned in the same manner as summons in civil actions is served and returned. Upon the return of any summons issued under this chapter where the same has not, for any reason, been served, or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued.

SEC. 4. Section one thousand one hundred and sixty-eight of said Code is amended to read as follows:

1168. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant. Arrest.

SEC. 5. Section one thousand one hundred and seventy-one of said Code is amended to read as follows:

1171. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the Court in which the action is pending. Trial by jury.

SEC. 6. Section one thousand one hundred and seventy-six of said Code is amended to read as follows:

1176. An appeal taken by the defendant shall not stay proceedings upon the judgment unless the Judge or Justice before whom the same was rendered so directs. Effect of an appeal upon the judgment.

SEC. 7. Section one thousand one hundred and seventy-nine of said Code is amended to read as follows:

1179. The Court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the Court, as provided in section one thousand one hundred and seventy-four. The application may be made by a tenant or sub-tenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made. Forfeiture, relief against.

SEC. 8. This Act shall take effect immediately.

CHAPTER XXI.

An Act to amend sections six hundred and thirteen, six hundred and seventeen, and six hundred and eighteen of the Code of Civil Procedure, relating to trials by jury in civil actions.

[Approved March 10th, 1889.]

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

SECTION 1. Section six hundred and thirteen of the Code of Civil Procedure is amended to read as follows:

Deliberation of jury, how conducted.

613. When the case is finally submitted to the jury, they may decide in Court or retire for deliberation; if they retire, they must be kept together, in some convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the Court. Unless by order of the Court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they or three-fourths of them are agreed upon a verdict, and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

SEC. 2. Section six hundred and seventeen of said Code is amended to read as follows:

While jury are absent, Court may adjourn from time to time.

Sealed verdict.

617. While the jury are absent the Court may adjourn from time to time, in respect to other business; but it is nevertheless 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.

SEC. 3. Section six hundred and eighteen of said Code is amended to read as follows:

Verdict, how declared.

Form of.

Polling the jury.

618. When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into Court, their names called by the clerk, and the verdict rendered by their foreman; the verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the Court or clerk asking each juror if it is his verdict; if upon such inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

SEC. 4. This Act shall take effect immediately.

CHAPTER XXII.

An Act to amend sections seven hundred and forty-two, seven hundred and fifty-five, seven hundred and ninety-four, eight hundred and two, eight hundred and four, eight hundred and sixteen, and eight hundred and twenty-six of the Code of Civil Procedure, relating to actions in particular cases.

[Approved March 10th, 1880.]

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

SECTION 1. Section seven hundred and forty-two of the Code of Civil Procedure is amended to read as follows:

742. The Court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a Judge thereof 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, and of any tunnels, shafts, or drifts therein, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

An order may be made to allow a party to survey and measure the land in dispute.

SEC. 2. Section seven hundred and fifty-five of said Code is amended to read as follows:

755. Immediately after filing the complaint in the Superior Court, the plaintiff must record in the office of the Recorder of the county, or of the several counties 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 filing such notice for record all persons shall be deemed to have notice of the pendency of the action.

Plaintiff must file notice of his pendency.

SEC. 3. Section seven hundred and ninety-four of said Code is amended to read as follows:

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

Guardian of insane person may receive the proceeds of such party's interest.

SEC. 4. Section eight hundred and two of said Code is amended to read as follows:

802. The writ of *sive facies* is abolished.

Sive facies abolished.

SEC. 5. Section eight hundred and four of said Code is amended to read as follows:

804. 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

Name of person entitled to office may be set forth in the complaint.

If fees have been received by the usurper, he may be arrested.

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 Justice of the Supreme Court, or a Judge of the Superior Court, 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.

SEC. 6. Section eight hundred and sixteen of said Code is amended to read as follows:

Summons may be served on owners, etc., of vessels.

816. The summons and copy of the complaint must be served on the owners if they can be found; otherwise, they may be served on the master, mate, or person having charge of the steamer, vessel, or boat.

SEC. 7. Section eight hundred and twenty-six of said Code is amended to read as follows:

Proof of the claims of mariners and others.

826. 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, or by any creditor, it shall be deemed admitted; but if contested, the Clerk must indorse upon the affidavit thereof a statement that it is contested, and the grounds of the contest, and must 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 reviewed by a Court in which the action is pending or a Judge thereof immediately after the same is given, and the judgment of the Court or Judge shall be final. On the review the Court or Judge may use the minutes of the proofs taken by the Clerk or referee, or may take the proofs anew.

SEC. 8. This Act shall take effect immediately.

CHAPTER XXIII.

An Act to amend sections one thousand and four and one thousand and five of the Code of Civil Procedure, relating to motions and orders in civil actions.

[Approved March 10th, 1880.]

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

SECTION 1. Section one thousand and four of the Code of Civil Procedure is amended to read as follows:

Motions and orders, where made.

1004. Motions must be made in the county, or city and county, in which the action is pending. Orders made out of

Court may be made by the Judge of the Court in any part of the State.

SEC. 2. Section one thousand and five of said Code is amended to read as follows:.

1005. When a written notice of a motion is necessary, it must be given, if the Court be held in the same county, or city and county, with both parties, five days before the time appointed for the hearing; otherwise ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but in all cases the Court or a Judge thereof may prescribe a shorter time.

Notice of motion, at what time to be given.

SEC. 3. This Act shall take effect immediately.

CHAPTER XXXII.

An Act to amend sections four hundred and seven and four hundred and twelve of the Code of Civil Procedure, relating to the manner of commencing civil actions.

[Approved March 26th, 1880.]

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

SECTION 1. Section four hundred and seven of the Code of Civil Procedure is amended to read as follows:

407. The summons must be directed to the defendant, signed by the Clerk, and issued under the seal of the Court, and must contain:

Summons, how issued, directed, and what to contain.

1. The names of the parties to the action, the Court in which it is brought, and the county in which the complaint is filed.

2. A statement of the nature of the action in general terms.

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within thirty days, if served elsewhere.

4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it).

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the Court for the relief demanded in the complaint. The name of the plaintiff's attorney must be indorsed on the summons.

SEC. 2. Section four hundred and twelve of said Code is amended to read as follows:

412. Where the person on whom the service is to be made resides out of the State, or has departed from the State, or

Publication when defendant is absent from the State, concealed, or a foreign corporation having no agent, etc.

cannot, after due diligence, be found within the State, or conceals himself to avoid the service of summons, or is a foreign corporation, having no managing or business agent, Cashier, or Secretary within the State, and the fact appears by affidavit to the satisfaction of the Court or a Judge thereof, and it also appears by such affidavit, or by the verified complaint on file, 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 make an order that the service be made by the publication of the summons.

SEC. 3. This Act shall take effect immediately.

CHAPTER XXXIII.

An Act to amend Chapters Two and Three, of Title Thirteen, of Part Two, of the Code of Civil Procedure, and each and every section of said Chapters Two and Three, and to substitute new Chapters Two and Three to take the place thereof in said Code, relating to appeals in civil actions.

[Approved March 26th, 1880.]

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

SECTION 1. Chapters Two and Three, of Title Thirteen, of Part Two, of the Code of Civil Procedure, and each and every section of said Chapters Two and Three, are amended, and new Chapters Two and Three are substituted to take the place thereof in said Code, to read as follows:

CHAPTER II.

APPEALS TO SUPREME COURT.

SECTION 963. When an appeal may be taken.

964. Appeals; in what cases appealed from Justices' Courts.

965. Appeals by executors and administrators.

966. Acts of executors and administrators, where appointment vacated.

When an appeal may be taken.

963. An appeal may be taken to the Supreme Court, from a Superior Court, in the following cases:

1. From a final judgment entered in an action or special proceeding commenced in a Superior Court, or brought into a Superior Court from another Court.

2. From an order granting or refusing a new trial; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; or changing, or refusing to change the place of trial; from any special order made after final judgment; and from such interlocutory judgment in actions for partition as determines the rights and interests of the respective parties and directs partition to be made.

3. From a judgment or order granting, refusing, or revoking letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate; or against or in favor of the validity of a will, or revoking the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sales, or conveyance of real property; or settling an account of an executor, or administrator, or guardian, or refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart the homestead.

964. The foregoing section does not apply in cases appealed from Justices', Police, or other inferior Courts, except cases of forcible entry and detainer, and cases involving the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars.

965. When an executor, administrator, or guardian, who has given an official bond, appeals from a judgment or order of the Superior Court made in the proceedings had upon the estate of which he is executor, administrator, or guardian, his official bond shall stand in the place of an undertaking on appeal; and the sureties thereon shall be liable as on such undertaking.

966. When the judgment or order appointing an executor, or administrator, or guardian, is reversed on appeal, for error, and not for want of jurisdiction of the Court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

CHAPTER III.

APPEALS TO SUPERIOR COURTS.

- SECTION** 974. Appeal from judgment of Justice's or Police Court.
 975. Appeal on questions of law statement.
 976. Appeal on questions of fact, or law and fact.
 977. Transmission of papers to appellate Court.
 978. Undertaking on appeal.
 979. Stay of proceedings on filing undertaking.
 980. Powers of Superior Court on appeal.

974. Any party dissatisfied with a judgment rendered in a civil action in a Police or Justice's Court, may appeal therefrom to the Superior Court of the county, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the Justice or Judge, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Appeal on
questions of
law; state-
ment.

975. When a party appeals to the Superior Court on questions of law alone, he must, within ten days from the rendition of judgment, prepare a statement of the case and file the same with the Justice or Judge. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the Justice or Judge, and if no amendment be filed, the original statement stands as adopted. The statement thus adopted, or as settled by the Justice or Judge, with a copy of the docket of the Justice or Judge, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the Superior Court.

Appeal on
questions of
fact, or law
and fact.

976. When a party appeals to the Superior Court on questions of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in the Superior Court.

Transmis-
sion of
papers to
appellate
Court.

977. Upon receiving the notice of appeal, and on payment of the fees of the Justice or Judge, and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the Justice or Judge must, within five days, transmit to the Clerk of the Superior Court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking filed; and the Justice or Judge may be compelled by the Superior Court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice or Judge by the party or his attorney. In the Superior Court, either party may have the benefit of all legal objections made in the Justice's or Police Court.

Undertak-
ing on
appeal.

978. An appeal from a Justice's or Police Court is not effectual for any purpose, unless an undertaking be filed with two or more sureties in the sum of one hundred dollars for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the Superior Court. When the action is for the recovery of or to enforce or foreclose a lien on specific personal property, the undertaking must be con-

ditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the Court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the Superior Court, and will obey any order made by the Court therein. When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot 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 appeal be dismissed or withdrawn, or the judgment affirmed, or judgment be recovered against him in the action in the Superior Court, 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; or that he will pay any judgment and costs that may be recovered against him in said action in the Superior Court, not exceeding a sum to be fixed by the Justice of the Court from which the appeal is taken, and which sum must be specified in the undertaking. A deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the Justice or Judge, is equivalent to the filing of the undertaking, and in such cases the Justice or Judge must transmit the money to the Clerk of the Superior Court, to be by him paid out on the order of the Court. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the Justice or Judge within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

979. If an execution be issued on the filing of the undertaking staying proceedings, the Justice or Judge must, by order, direct the officer to stay all proceedings on the same. Such officer must, 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.

Stay of proceedings on filing undertaking.

980. Upon an appeal heard upon a statement of the case, the Superior Court may review all orders affecting 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. When the action is tried anew, on appeal, the trial must be conducted in all respects as other trials in the Superior Court. The provisions of this Code as to changing the place of trial, and all the provisions as to trials in the Superior Court, are applicable to trials on appeal in the

Powers of Superior Court on appeal.

Superior Court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the Superior Court, after notice, may order the appeal to be dismissed, with costs; and if it appear to such Court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding twenty-five per cent. of the judgment appealed from. Judgments rendered in the Superior Court on appeal shall have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the Superior Court.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect immediately.

CHAPTER XXXIV.

An Act to amend Sections 838, 843, 844, 845, 897, 898, 899, 912, 918, and 921 of the Code of Civil Procedure, relating to proceedings in Justices' Courts.

[Approved March 26th, 1880.]

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

SECTION 1. Section eight hundred and thirty-eight of the Code of Civil Procedure is amended to read as follows:

Superior
Court,
transfer of
cases to.

838. The parties to an action in a Justice's Court cannot give evidence upon any question which involves the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine; nor can any issue presenting such question be tried by such Court; and if it appear, from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property, or the legality of any tax, impost, assessment, toll, or municipal fine, the Justice must suspend all further proceedings in the action and certify the pleadings, and, if any of the pleadings are oral, a transcript of the same, from his docket to the Clerk of the Superior Court of the county; and from the time of filing such pleadings or transcript with the Clerk, the Superior Court shall have over the action the same jurisdiction as if it had been commenced therein; *provided*, that in cases of forcible entry and detainer, of which Justices' Courts have jurisdiction, any evidence, otherwise competent, may be given, and any question properly involved therein may be determined.

SEC. 2. Section eight hundred and forty-three of said Code is amended to read as follows:

When
guardian
necessary,
how
appointed.

843. When an infant, insane, or incompetent person is a party, he must appear either by his general guardian, if he have one, or by a guardian ad litem appointed by the Justice.

When a guardian ad litem is appointed by the Justice, he must be appointed as follows:

1. If the infant, insane, or incompetent person, be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane or incompetent, upon the application of a relative or friend.

2. If the infant, insane, or incompetent person, be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the infant, if he be of the age of fourteen years and apply at or before the summons is returned; if he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend, or any other party to the action, or by the Justice on his own motion.

SEC. 3. Section eight hundred and forty-four of said Code is amended to read as follows:

844. The summons must be directed to the defendant, and signed by the Justice, and must contain:

Summons, .
how issued,
directed, and
what to
contain.

1. The title of the Court, name of the county and city, or township, in which the action is commenced, and the names of the parties thereto.

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him.

3. A direction that the defendant appear and answer before the Justice, at his office, as specified in section eight hundred and forty-five of this Code.

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appear and answer, the plaintiff will take judgment for the sum claimed by him (stating it).

5. In other actions, a notice that unless defendant so appear and answer, the plaintiff will apply to the Court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed upon the summons.

SEC. 4. Section eight hundred and forty-five of said Code is amended to read as follows:

845. The time specified in the summons for the appearance of the defendant must be as follows:

Time for ap-
pearance of
defendant.

1. If an order of arrest be indorsed upon the summons, forthwith.

2. In all other cases the summons must contain a direction that the defendant must appear and answer the complaint within five days, if the summons be served in the city and county, township, or city in which the action is brought; within ten days if served out of the township or city, but in the county in which the action is brought, and within twenty days if served elsewhere.

SEC. 5. Section eight hundred and ninety-seven of said Code is amended to read as follows:

897. The Justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts): State of California, — County (or

Abstract of
judgment.

city and county, —, plaintiff, vs. —, defendant. In Justice's Court, before —, Justice of the Peace, — Township (or city, or city and county), —, 18— (inserting date of abstract). Judgment entered for plaintiff (or defendant) for \$—, on the — day of —. I certify that the foregoing is a correct abstract of a judgment rendered in said action in my Court, —, or (as the case may be) in the Court of —, Justice of the Peace, as appears by his docket, now in my possession, as his successor in office. —, Justice of the Peace.

SEC. 6. Section eight hundred and ninety-eight of said Code is amended to read as follows:

Abstract
may be
filed and
docketed in
Superior
Court.

898. The abstract may be filed in the office of the County Clerk of the county in which the judgment was rendered, and the judgment docketed in the judgment docket of the Superior Court thereof. The time of the receipt of the abstract by the Clerk must be noted by him thereon, and entered in the docket.

SEC. 7. Section eight hundred and ninety-nine of said Code is amended to read as follows:

Effect of
docketing.

899. From the time of docketing in the County Clerk's office, execution may be issued thereon by the County Clerk to the Sheriff of any county in the State, other than the county in which the judgment was rendered, in the same manner and with like effect as if issued on a judgment of the Superior Court.

SEC. 8. Section nine hundred and twelve of said Code is amended to read as follows:

Entries
therein
primary
evidence of
the fact.

912. The several particulars of the last section specified must be entered under the title of the action to which they relate, and (unless otherwise in this title provided) 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, are prima facie evidence of the facts so stated.

SEC. 9. Section nine hundred and eighteen of said Code is amended to read as follows:

Two Justices
deemed
successors
Superior
Court shall
designate
one.

918. When two or more Justices are equally entitled, under the last section, to be deemed the successors in office of the Justice, a Judge of the Superior Court must, by a certificate subscribed by him and filed in the office of the County Clerk, designate which Justice is the successor of a Justice going out of office, or whose office has become vacant.

SEC. 10. Section nine hundred and twenty-one of said Code is amended to read as follows:

Justices to
receive all
moneys
collected
and pay
same to
parties.

921. Justices of the Peace must receive from the Sheriff or Constables of their county, all moneys collected on any process or order issued from their Courts respectively, and must pay the same, and all moneys paid to them in their official capacity, over to the parties entitled or authorized to receive them, without delay.

SEC. 11. This Act shall take effect immediately.

CHAPTER XXXV.

An Act to amend Part One of the Code of Civil Procedure, and each and every title, chapter, article, and section of said Part One, and substituting a new Part One to take the place thereof in said Code, relating to Courts of justice, and various officers connected therewith.

[Approved April 1st, 1880.]

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

SECTION 1. Part One of the Code of Civil Procedure, and each and every title, chapter, article, and section of said Part One is amended, and a new Part One is substituted to take the place thereof in said Code, to read as follows:

PART I.

OF COURTS OF JUSTICE.

TITLE I.

ORGANIZATION AND JURISDICTION.

CHAPTER I. *Courts of Justice in general.*

II. *Court of Impeachment.*

III. *Supreme Court.*

IV. *Superior Courts.*

V. *Justices' Courts.*

VI. *Police Courts.*

VII. *General provisions respecting Courts of justice.*

CHAPTER I.

COURTS OF JUSTICE IN GENERAL.

SECTION 33. The several Courts of this State.

34. Courts of record.

33. The following are the Courts of justice of this State:

1. The Court of Impeachments;

2. The Supreme Court;

3. The Superior Courts;

4. The Justices' Courts;

5. The Police Courts, and such other inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

34. The Courts enumerated in the first three subdivisions of the last preceding section are Courts of record.

Courts of
Justice in
general.

Courts of
record.

CHAPTER II.

COURT OF IMPEACHMENT.

SECTION 36. Members of the Court.

37. Jurisdiction.

38. Officers of the Court.

39. Trial of impeachments provided for in the Penal Code.

Court of
Impeach-
ment,
members.

36. The Court of Impeachment is the Senate; when sitting as such Court the Senators shall be upon oath; and at least two-thirds of the members elected shall be necessary to constitute a quorum.

Jurisdiction.

37. The Court has jurisdiction to try impeachments, when presented by the Assembly, of the Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice of the Supreme Court, Associate Justices of the Supreme Court, and Judges of the Superior Courts, for any misdemeanor in office.

Officers.

38. The officers of the Senate are the officers of the Court.

Trials.

39. Proceedings on the trial of impeachments are provided for in the Penal Code.

CHAPTER III.

SUPREME COURT.

SECTION 40. Justices, elections, and terms of office.

41. Computation of years of office.

42. Vacancies.

43. Departments.

44. Apportionment of business.

45. Court in bank.

46. Absence or disability of Chief Justice.

47. Sessions.

48. Adjournments.

49. Decisions in writing.

50. Jurisdiction of two kinds.

51. Original jurisdiction.

52. Appellate jurisdiction.

53. Powers in appealed cases.

54. Concurrence necessary to transact business.

55. Transfer of books, papers, and actions.

56. Remittiturs in transferred cases.

Justices of
the Supreme
Court,
elections,
terms of
office.

40. The Supreme Court shall consist of a Chief Justice, and six Associate Justices, who shall be elected by the qualified electors of the State at large, at the general State elections next preceding the expiration of the terms of office of their predecessors respectively, and hold their offices for the term of twelve years from and after the first Monday after the first day of January next succeeding their election; *provided*, that of the Justices elected at the general State election of eighteen hundred and seventy-nine, the Chief Justice shall go out of office at the end of eleven years, and the six Associate Justices shall have so classified, or shall so classify themselves, by lot, that two of them shall go out of office at the end of three years, two of them at the end of seven years, and two of them at the end of eleven years from the first Monday after the first day of January, eighteen hundred and eighty; and

an entry of such classification shall have been, or shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof filed in the office of the Secretary of State.

41. The years during which a Justice of the Supreme Court is to hold office are to be computed respectively from and including the first Monday after the first day of January of any one year to and excluding the first Monday after the first day of January of the next succeeding year. Computation of years of office.

42. If a vacancy occur in the office of a Justice of the Supreme Court, the Governor shall appoint an eligible person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election; and the Justice so elected shall hold the office for the remainder of the unexpired term of his predecessor. Vacancies.

43. There shall be two departments of the Supreme Court, denominated respectively Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time; *provided*, that the Associate Justices shall be competent to sit in either department, and may interchange with one another by agreement among themselves, or if no such agreement be made, as ordered by the Chief Justice. The Chief Justice may sit in either department, and shall preside when so sitting; but the Justices assigned to each department shall select one of their number as presiding Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers; but one or more of the Justices may adjourn from time to time with the same effect as if all were present, and the concurrence of three Justices shall be necessary to pronounce a judgment; *provided*, that if three do not concur, the cause may be reheard in the same department, or transmitted to the other department, or to the Court in bank. Departments.

44. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but when a cause has been allotted to one of the departments, and a judgment pronounced therein, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices; and if so made, it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a cause to be heard in bank. If the order be not made within the time above limited, the judgment shall be final; *provided*, that no judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Apportionment of business.

Chief Justice in writing, with the concurrence of two Associate Justices.

Court in
bank.

45. The Chief Justice or any four Justices may convene the Court in bank at any time, and the Chief Justice shall be the presiding Justice of the Court when so convened. The presence of four Justices shall be necessary to transact any business, and the concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in the Court in bank; *provided*, that if four Justices so present do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument, but to render a judgment a concurrence of four Justices shall be necessary; and every judgment of the Court in bank shall be final, except in cases in which no previous judgment has been rendered in one of the departments, and in such cases the judgment of the Court in bank shall be final, unless within thirty days after such judgment an order be made in writing, signed by five Justices, granting a rehearing.

Absence or
disability of
Chief
Justice.

46. In case of the absence of the Chief Justice from the place at which the Court in bank is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

Sessions.

47. The Supreme Court shall always be open for the transaction of business. It shall hold regular sessions for the hearing of causes, either in bank, or in one or both of its departments, at the Capital of the State, commencing on the first Mondays of May and second Mondays of November; at the City and County of San Francisco, commencing on the second Mondays of January and third Mondays of July; and at the City of Los Angeles, commencing on the first Mondays of April and second Mondays of October; and special sessions at either of the above named places at such other times as may be prescribed by the Justices thereof.

Expenses.

The Justices and officers of the Supreme Court shall be allowed their actual traveling expenses in going to and from their respective places of residence upon the business of the Court, or to attend its sessions. If proper rooms in which to hold the Court, and for the accommodation of the officers thereof, are not provided by the State, together with attendants, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court, or any three Justices thereof, may direct the Clerk of the Supreme Court to provide such rooms, attendants, furniture, fuel, lights, and stationery; and the expenses thereof, certified by any three Justices to be correct, shall be paid out of the State treasury, for which expenses, and to defray the traveling expenses of the Justices and officers of the Supreme Court above mentioned, a sufficient sum shall be annually appropriated out of any funds in the State treasury not otherwise appropriated. The moneys so appropriated shall be subject to the order of the Clerk of the Supreme Court, and be by him disbursed on proper vouchers, and the same shall be accounted for by him in annual settlements with the Controller of State on the first Monday of December of each year.

48. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the Court, or either of its departments, from sitting at any time. Adjournments.

49. In the determination of causes, all decisions of the Supreme Court in bank, or in departments, shall be given in writing, and the grounds of the decision shall be stated. Decisions in writing.

50. The jurisdiction of the Supreme Court is of two kinds: Jurisdiction.

1. Original; and,

2. Appellate.

51. In the exercise of its original jurisdiction the Supreme Court shall have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus; and it shall also have power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction. Original jurisdiction.

52. The Supreme Court shall have appellate jurisdiction: Appellate jurisdiction.

1. In all cases in equity, except such as arise in Justices' Courts.

2. In all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars.

3. In all cases of forcible entry and detainer, proceedings in insolvency, actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law.

4. In all special proceedings.

5. In all criminal cases prosecuted by indictment, or information, in a Court of record, on questions of law alone.

53. The Supreme Court may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. The decision of the Court shall be given in writing, and in giving its decision, if a new trial be granted, the Court shall pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case. Its judgment in appealed cases shall be remitted to the Court from which the appeal was taken. Powers in appealed cases.

54. The concurrence of three Justices of the Supreme Court is necessary for the issuance of any writ, or the transaction of any business, except such as can be done at chambers; *provided*, that each of the Justices shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or any department, or Judge thereof, or before any Superior Court in the State, or any Judge thereof. Concurrence necessary to transact business.

55. All records, books, papers, causes, actions, proceedings, and appeals lodged, deposited, or pending in the Supreme Court abolished by the Constitution, are transferred to the Supreme Court herein provided for, which has the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed, or commenced therein, or, in cases of appeal, appealed thereto. Transfer of books, papers, and actions.

Remittitur
in trans-
ferred cases.

56. In all cases of appeal transferred to the Supreme Court, its judgments shall be remitted to the Superior Courts of the counties, or cities and counties from which the appeals were taken respectively, with the same force and effect as if said cases had been appealed to the Supreme Court from such Superior Courts.

CHAPTER IV.

SUPERIOR COURTS.

SECTION 65. Judges and elections.

66. Superior Courts of two or more Judges.

67. Superior Court of the City and County of San Francisco.

68. Terms of office.

69. Computation of years of office.

70. Vacancies.

71. Superior Courts by Judges of other counties.

72. Judges pro tempore.

73. Sessions.

74. Adjournments.

75. Jurisdiction of two kinds.

76. Original jurisdiction.

77. Appellate jurisdiction.

78. Process.

79. Transfer of books, papers, and actions.

Superior
Courts;
Judges, and
election of.

65. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which one Judge, and for some of which two or more Judges, as hereinafter in subsequent sections specially provided, shall be elected by the qualified electors of the county, or city and county, at the general State elections, next preceding the expiration of the terms of office of their predecessors respectively; *provided*, that in and for the Counties of Yuba and Sutter combined, only one Superior Judge shall be elected, who shall hold the Superior Courts of both said counties, and in accordance with such rules for the dispatch of business in both said counties as he may adopt.

Counties
having two
or more
Judges.

66. In each of the Counties of Alameda, Los Angeles, Sacramento, San Joaquin, Santa Clara, and Sonoma, there shall be elected two Judges of the Superior Court; and in each of said counties, and in any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

Superior
Court of
San Fran-
cisco.

67. In the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court; and there may be as many sessions of said Court at the same time as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may at any time be removed and another chosen in his place, by a vote of any seven of them. The presiding Judge shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any

session of the Superior Court, held by any one or more of the Judges of said Court, shall be equally effective as if all the Judges of said Court presided at such session.

68. The term of office of Judges of the Superior Court Terms. shall be six years from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court elected in the City and County of San Francisco at the general State election of eighteen hundred and seventy-nine shall have so classified, or shall so classify themselves, by lot, that four of them shall go out of office at the end of one year, four of them at the end of three years, and four of them at the end of five years from the first Monday of January, eighteen hundred and eighty; and the entry of such classification shall have been, or shall be, made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State; *and provided further*, that all the other Superior Judges elected at the general State election of eighteen hundred and seventy-nine shall go out of office at the end of five years from the first Monday of January, eighteen hundred and eighty.

69. The years during which a Judge of a Superior Court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year. Computation of years of office.

70. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint an eligible person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term. Vacancies.

71. A Judge of any Superior Court may hold the Superior Court in any county, at the request of the Judge or Judges of the Superior Court thereof, and, upon the request of the Governor, it shall be his duty to do so; and in either case the Judge holding the Court shall have the same power as a Judge thereof. Superior Courts, by Judges of other counties.

72. Any cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar admitted to practice before the Supreme Court, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the Court, and sworn to try the cause; and his action in the trial of such cause shall have the same effect as if he were a Judge of such Court. A Judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of Judge pro tempore in the cause wherein — is plaintiff, and — is defendant, according to the best of my ability." Judges pro tempore.

73. The Superior Courts shall be always open (legal holidays and non-judicial days excepted), and they shall hold their sessions at the county seats of the several counties, or Sessions.

cities and counties, respectively. They shall hold regular sessions, commencing on the first Mondays of January, April, July, and October, and special sessions at such other times as may be prescribed by the Judge or Judges thereof; *provided*, that in the City and County of San Francisco the presiding Judge shall prescribe the times of holding such special sessions.

Adjourn-
ments.

74. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the Court from sitting at any time.

Jurisdiction.

75. The jurisdiction of the Superior Courts is of two kinds:

1. Original; and,
2. Appellate.

Original
jurisdiction.

76. The Superior Courts shall have original jurisdiction:

1. In all cases in equity;
2. In all civil actions in which the subject of litigation is not capable of pecuniary estimation;

3. In all cases at-law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars.

4. Of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, of all matters of probate, of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for.

5. In all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for. Said Courts shall have the power of naturalization, and to issue papers therefor. Said Courts and their Judges, or any of them, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and of habeas corpus on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

Appellate
jurisdiction.

77. The Superior Courts shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law.

Process.

78. The process of the Superior Courts shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated.

Transfer
of books,
papers, and
actions.

79. All records, books, papers, causes, actions, proceedings, and appeals lodged, deposited, or pending in the District Court or Courts, County Court, Probate Court, Municipal Criminal Court, or Municipal Court of Appeals, of, in, or for any county, or city and county, of the State, abolished by the Constitution, are transferred to the Superior Court of such county, or city and county, which has the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed, or commenced therein, or, in cases of appeal, appealed thereto.

CHAPTER V.

JUSTICES' COURTS.

ARTICLE I. OF JUSTICES' COURTS IN CITIES AND COUNTIES.

II. OF JUSTICES' COURTS IN TOWNSHIPS.

III. JUSTICES OF THE PEACE AND JUSTICES' COURTS IN GENERAL.

ARTICLE I.

JUSTICES' COURTS IN CITIES AND COUNTIES.

SECTION 85. Justices' Court and Justices.

86. Justices' Clerk.
87. Sheriff and deputies.
88. Offices and office hours.
89. Actions.
90. Reassignment and transfer of actions.
91. Payment of fees.
92. Certificates, transcripts, and other papers.
93. Justices' docket.
94. Territorial extent of jurisdiction.
95. Practice and rules.
96. Attorneys.
97. Salaries.
98. What Justices successors of others.

85. There shall be in every city and county of more than one hundred thousand population, a Justices' Court, for which five Justices of the Peace shall be elected by the qualified electors of such city and county at the general State election next preceding the expiration of the terms of office of their predecessors. Any one of said Justices may hold Court, and there may be as many sessions of said Court at the same time as there are Justices thereof. The said Justices shall choose one of their number to be presiding Justice, who may at any time be removed and another appointed in his place by a vote of a majority of them; *provided*, that in case of the temporary absence or disability of the presiding Justice, any one of the other Justices, to be designated by the presiding Justice, may act as presiding Justice during such absence or disability.

Justices'
Courts and
Justices.

86. The Supervisors of such city and county shall appoint a Justices' Clerk on the written nomination and recommendation of said Justices, or a majority of them, who shall hold office for two years, and until his successor is in like manner appointed and qualified. Said Justices' Clerk shall take the constitutional oath of office, and give bond in the sum of ten thousand dollars for the faithful discharge of the duties of his office, and in the same manner as is or may be required of other officers of such city and county. A new or additional bond may be required by the Supervisors of such city and county, and in such amount as may be fixed by said Supervisors, whenever they may deem it necessary. The Justices' Clerk shall have authority to appoint two Deputy Clerks, for whose acts he shall be responsible on his official bond, the said Deputy Clerks to hold office during the pleasure of said Clerk. Said Justices' Clerk and Deputy shall have authority to administer oaths, and take and certify affi-

Justices'
Clerk.

davits in any action, suit, or proceeding in said Justices' Court.

Sheriff and
deputies.

87. The Sheriff of such city and county shall be ex officio an officer of said Court, and it shall be his duty to serve or execute, or cause to be served and executed, each and every process, writ, or order that may be issued by said Justices' Court; *provided*, that a summons issued from said Court may be served and returned as provided in section eight hundred and forty-nine of this Code; and that subpoenas may be issued by the Justices' Clerk and served as provided in section one thousand nine hundred and eighty-seven and one thousand nine hundred and eighty-eight of this Code. The said Sheriff may appoint, in addition to the other deputies allowed by law, three deputies, whose duty it shall be to assist said Sheriff in serving and executing the process, writs, and orders of the said Justices' Court. Said deputies shall receive a salary of one hundred and twenty-five dollars per month each, payable monthly, out of the city and county treasury, and out of the special fee fund, after being first allowed and audited as other demands are by law required to be audited and allowed. One of said deputies shall remain in attendance during the sessions of said Court, and at such other times as the said Court or the presiding Justice thereof may order and direct, for the purpose of attending to such duties as may be imposed on said Sheriff or said deputies as herein provided, or required by law. The said Sheriff shall be liable on his official bond for the faithful performance of all duties required of him, or any of his said deputies.

Offices and
office hours.

88. The Supervisors of such city and county shall provide, in some convenient locality in the city and county, a suitable office, or suite of offices for said presiding Justice, Justices' Clerk, Deputy Clerk, and Deputy Sheriff, and offices suitable for holding sessions of said Court, and separate from one another, for each of said Justices of the Peace, together with attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business; and if they are not provided, the Court may direct the Sheriff to provide the same, and the expenses incurred, certified by the Justices to be correct, shall be a charge against the city and county treasury, and paid out of the General Fund thereof. The said Justices, Justices' Clerk, and Deputy Clerk, shall be in attendance at their respective offices for the dispatch of official business, daily, from the hour of eight o'clock A. M. until five o'clock P. M.

Action.

89. All actions, suits, and proceedings in such city and county whereof Justices of the Peace or Justices' Courts have jurisdiction, except those cases of concurrent jurisdiction that may be commenced in some other Court, shall be entitled "In the Justices' Court of the City and County of ——" (inserting the name of the city and county), and commenced and prosecuted in said Justices' Court, which shall be always open. The original process shall be returnable, and the parties summoned required to appear before the presiding Justice, or before one of the other Justices of the Peace, to be designated by the presiding Justice, at his office; but all com-

plaints, answers, and other pleadings and papers, required to be filed, shall be filed, and a record of all such actions, suits, and proceedings made and kept in the Clerk's office aforesaid; and the presiding Justice, and each of the other Justices shall have power, jurisdiction, and authority to hear, try, and determine any action, suit, or proceeding so commenced, and which shall have been made returnable before him, or may be assigned or transferred to him, or any motion, application, or issue therein (subject to the constitutional right of trial by jury), and to make any necessary and proper orders therein.

90. In case of sickness or disability or absence of a Justice of the Peace (on the return of a summons or at the time appointed for trial) to whom a cause has been assigned, the presiding Justice shall reassign the cause to some other Justice, who shall proceed with the trial and disposition of said cause in the same manner as if originally assigned to him; and if, at any time before the trial of a cause or matter returnable or pending before any of said Justices, either party shall object to having the cause or matter tried before such Justice, on the ground that such Justice is a material witness for either party, or on the ground of the interest, prejudice, or bias of such Justice, and such objection be made to appear in the manner prescribed by section eight hundred and thirty-three of this Code, the said Justice shall suspend proceedings, and the presiding Justice, on motion and production before him of the affidavit and proofs, shall order the transfer of the cause or matter for trial before some other Justice, to be designated by him. The presiding Justice may, in like manner, assign or transfer any contested motion, application, or issue in law, arising in any cause returnable or pending before him or any other Justice, to some other Justice; and the said Justice, to whom any cause, matter, motion, application, or issue shall be so as aforesaid assigned or transferred, shall have power, jurisdiction, and authority to hear, try, and determine the same accordingly.

Re-arraignment and transfer of action.

91. All legal process of every kind in actions, suits, or proceedings in said Justices' Court, for the issue or service of which any fee is or may be allowed by law, shall be issued by the said Justices' Clerk upon the order of the presiding Justice, or upon the order of one of the Justices of the Peace, acting as presiding Justice, as in this article provided; and the fees for issuance and service of all such process, and all other fees which are allowed by law for any official services of Justices, Justices' Clerk, or Sheriff, shall be exacted and paid in advance into the hands of said Clerk, and be by him daily, or weekly, or monthly, as the Supervisors may require, and before his salary shall be allowed, accounted for in detail, under oath, and paid into the treasury of such city and county as part of the special fee fund thereof; *provided*, that such payment in advance shall not be exacted from parties who may prove to the satisfaction of the presiding Justice that they have a good cause of action, and that they are not of sufficient pecuniary ability to pay the legal fees; and no judgment shall be rendered in any action before said Justices' Court, or any

Payment of fees

of said Justices, until the fees allowed therefor, and all fees for previous services therein, which are destined to be paid into the treasury, shall have been paid, except in cases of poor persons, as hereinbefore provided.

Certificates,
transcripts,
and other
papers.

92. Cases which by the provisions of law are required to be certified to the Superior Court, by reason of involving the question of title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, shall be so certified by the presiding Justice and Justices' Clerk; and for that purpose, if such question shall arise on the trial, while the case is pending before one of the other Justices, such Justice shall certify the same to the presiding Justice. All abstracts and transcripts of judgments and proceedings in said Court, or in any of the dockets or registers of or deposited in said Court, shall be given and certified from any of such dockets or registers, and signed by the presiding Justice and Clerk, and shall have the same force and effect as abstracts and transcripts of Justices of the Peace in other cases. Appeals from judgments rendered in said Court shall be taken and perfected in the manner prescribed by law; but the notice of appeal, and all the papers required to be filed to perfect it, shall be filed with the Justices' Clerk. Statements on appeal shall be settled by the Justice who tried the cause. Sureties on appeal, or on any bond, or undertaking given in any cause or proceeding in said Court, when required to justify, may justify before any one of the Justices.

Justices'
dockets.

93. In a suitable book, strongly bound, the Justices' Clerk shall keep a permanent record of all actions, proceedings, and judgments commenced, had, or rendered in said Justices' Court, which book shall be a public record, and be known as the "Justices' Docket," in which docket the Clerk shall make the same entries as are provided for in section nine hundred and eleven of this Code, and which said docket and entries therein shall have the same force and effect as is provided by law in reference to dockets of Justices of the Peace. To enable the Clerk to make up such docket, each of the Justices shall keep minutes of his proceedings in every cause returnable before or assigned or transferred to him for trial or hearing; and upon judgment or other disposition of a cause, such Justice shall immediately certify and return the said minutes, together with all pleadings and papers in said cause, to the Clerk's office, who shall immediately thereupon file the same and make the proper entries under the title of the action in the docket aforesaid.

Jurisdiction
of Justices'
Courts.

94. The jurisdiction of the Justices' Court of such city and county extends to the limits of the city and county, and its process may be served in any part thereof.

Practice and
rules.

95. The Justices' Court and the Justices of the Peace of every such city and county shall be governed in their proceedings by the provisions of law regulating proceedings before Justices of the Peace, so far as such provisions are not altered or modified in this article, and the same are or can be made applicable in the several cases arising before them. The Justices' Courts of such city and county shall have power to make rules not inconsistent with the Constitution

and laws for the government of such Justices' Court and the officers thereof; but such rules shall not be in force until thirty days after their publication; and no rules shall be made imposing any tax or charge on any legal proceeding, or giving any allowance to any Justice or officer for services.

96. It shall not be lawful for any Justice of the Peace, Justices' Clerk, or Sheriff of any such city and county, or any of their deputies, to appear or advocate, or in any manner act as attorney, counsel, or agent for any party or person in any cause, or in relation to any demand, account, or claim pending, or to be sued or prosecuted before said Court or Justices, or either of them; nor shall any person other than an attorney at law, duly admitted to practice in Courts of record, be permitted to appear as attorney or agent for any party in any cause or proceeding before said Justices' Court, or any of said Justices, unless he produce a sufficient power of attorney to that effect, duly executed and acknowledged before some officer authorized by law to take acknowledgments of deeds, which power of attorney, or a copy thereof, duly certified by one of the Justices (who, on inspection of the original, and being satisfied of its genuineness, shall certify such copy), shall be filed among the papers in such cause or proceeding.

Justices' Clerk is not to act as attorney.

97. The Justices of the Peace, and Justices' Clerk, and his deputy, shall receive for their official services the following salaries, and no other or further compensation, payable monthly, out of the city and county treasury, and out of the special fee fund thereof, after being first allowed and audited as other similar demands are by law required to be allowed and audited: To the presiding Justice, twenty-seven hundred dollars per annum; to the other Justices of the Peace and the Justices' Clerk, each, twenty-four hundred dollars per annum; to the deputy of the Justices' Clerk, twelve hundred dollars per annum.

Salaries.

98. The Justices of the Peace elected in any such city and county at the general election of eighteen hundred and seventy-nine, or persons appointed to fill their places, are successors of the Justices of the Peace of such city and county who held office at the time of such election; and all records, registers, dockets, books, papers, causes, actions, and proceedings lodged, deposited, or pending before the Justices' Court, or any Justice of any such city and county, are transferred to the Justices' Court of such city and county, herein provided for, which shall have the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed, or commenced therein.

What Justices successors of others.

ARTICLE II.

JUSTICES' COURTS IN TOWNSHIPS.

SECTION 103. Justices' Courts and Justices.

104. Courts, where held.

105. What Justice may hold Court for another.

106. Territorial extent of civil jurisdiction.

107. What Justices successors of others.

5 CIVIL PRO.

Justices'
Courts and
Justices.

103. There shall be at least one Justices' Court in each of the townships of the State, for which one Justice of the Peace shall be elected by the qualified electors of the township, at the general State election next preceding the expiration of the term of office of his predecessor; *provided*, that in any county where, in the opinion of the Board of Supervisors the public convenience requires it, the said Board may, by order, provide that two Justices' Courts may be established in any township, designating the same in such order, and in such case one Justice of the Peace shall be elected in the manner herein provided for each of such Courts. In every city having ten thousand and not more than twenty thousand inhabitants there shall be one Justice of the Peace, and in every city having twenty thousand and not more than one hundred thousand inhabitants two Justices of the Peace, to be elected in like manner by the electors of such cities respectively. No person shall be eligible to the office of Justice of the Peace in any city having over ten thousand inhabitants who has not been admitted to practice law in a Court of record; and no Justice of the Peace shall be permitted to practice law before any other Justice of the Peace in the city or county in which he resides, or to have a partner engaged in the practice of law in any Justices' Court in such city or county. Every Justice of the Peace in any city having over ten thousand inhabitants shall receive an annual salary of two thousand dollars per annum, and shall be provided by the city authorities with a suitable office in which to hold his Court. All fees which are by law chargeable for services rendered by such Justices of the Peace in the cities aforesaid, shall be by them respectively collected, and on the first Monday in each month every such city Justice of the Peace shall make report, under oath, to the City Treasurer, of the amount of fees so by him collected, and pay the amount so reported into the city treasury, to the credit of the General Fund thereof.

Justices'
Court, where
held.

104. A Justices' Court may be held at any place selected by the Justice holding the same, in the township for which he is elected or appointed; and such Court shall be always open for the transaction of business.

What Jus-
tice may
hold Court
for another.

105. A Justice of the Peace of any township may hold the Court of any other Justice of the Peace of the same county, at his request, and while so acting shall be vested with the power of the Justice for whom he so holds Court, in which case the proper entry of the proceedings before the attending Justice, subscribed by him, shall be made in the docket of the Justice for whom he so holds the Court.

Territorial
jurisdiction.

106. The civil jurisdiction of Justices' Courts extends to the limits of the townships in which they are held; but mesne and final process of any Justices' Court in a county may be issued to and served in any part of the county.

What
Justices
successors
of others.

107. The Justices of the Peace elected in the townships at the general State election of eighteen hundred and seventy-nine, or persons appointed to fill their places, are successors of the Justices of the Peace of the townships, respectively, who held office at the time of such election; and, in case the

townships of any county are hereafter changed or altered, the Board of Supervisors of such county shall make provision as to what Justices shall be successors of the Justices of townships so changed or altered.

ARTICLE III.

JUSTICES OF THE PEACE AND JUSTICES' COURTS IN GENERAL.

SECTION 110. Terms of office.

- 111. Vacancies.
- 112. Civil jurisdiction.
- 113. Concurrent jurisdiction.
- 114. Civil jurisdiction restricted.
- 115. Criminal jurisdiction.

110. The term of office of Justices of the Peace shall be ^{Terms.} two years from the first day of January next succeeding their election; *provided*, that all Justices of the Peace elected at the general State election of eighteen hundred and seventy-nine shall go out of office at the end of one year from the first day of January, eighteen hundred and eighty.

111. If a vacancy occurs in the office of a Justice of the ^{Vacancies.} Peace, the Board of Supervisors of the county shall appoint an eligible person to hold the office for the remainder of the unexpired term.

112. The Justices' Courts shall have civil jurisdiction: ^{Civil jurisdiction.}

1. In actions arising on contract for the recovery of money only *if* the sum claimed, exclusive of interest, does not amount to three hundred dollars;

2. In actions for damages for injury to the person or for taking, detaining, or injuring personal property, or for injury to real property where no issue is raised by the verified answer of the defendant involving the title to or possession of the same, *if* the damage claimed do not amount to three hundred dollars;

3. In actions to recover the possession of personal property, *if* the value of such property does not amount to three hundred dollars;

4. In actions for a fine, penalty, or forfeiture, not amounting to three hundred dollars, given by statute, or the ordinance of an incorporated city and county, city, or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

5. In actions upon bonds or undertakings conditioned for the payment of money, *if* the sum claimed does not amount to three hundred dollars, though the penalty may exceed that sum;

6. To take and enter judgment for the recovery of money on the confession of a defendant, when the amount confessed, exclusive of interest, does not amount to three hundred dollars.

113. The Justices' Courts shall have concurrent jurisdiction ^{Concurrent jurisdiction.} with the Superior Courts within their respective townships:

1. In actions of forcible entry and detainer, where the rental value of the property entered upon or unlawfully

detained does not exceed twenty-five dollars per month, and the whole amount of damages claimed does not exceed two hundred dollars;

2. In actions to enforce and foreclose liens on personal property, where neither the amount of the liens nor the value of the property amounts to three hundred dollars.

Civil
jurisdiction
restricted.

114. Except as in the last preceding section provided, the jurisdiction of the Justices' Courts shall not, in any case, trench upon the jurisdiction of the several Courts of record of the State, nor extend to any action or proceeding against ships, vessels, or boats, for the recovery of seamen's wages for a voyage performed in whole or in part without the waters of this State.

Criminal
jurisdiction.

115. The Justices' Courts shall have jurisdiction of the following public offenses committed within the respective counties in which such Courts are established:

1. Petit larceny;

2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony;

3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

CHAPTER VI.

POLICE COURTS.

SECTION 121. Provided for in Political Code.

Police
Courts.

121. Police Courts are established in incorporated cities and counties, cities and towns, and their organization, jurisdiction, and powers provided for in the Political Code, part four.

CHAPTER VII.

GENERAL PROVISIONS RESPECTING COURTS OF JUSTICE.

ARTICLE I. PUBLICITY OF PROCEEDINGS.

II. INCIDENTAL POWERS AND DUTIES OF COURT.

III. JUDICIAL DAYS.

IV. PROCEEDINGS IN CASE OF ABSENCE OF JUDGE.

V. PROVISIONS RESPECTING PLACES OF HOLDING COURTS.

VI. SEALS OF COURTS.

ARTICLE I.

PUBLICITY OF PROCEEDINGS.

SECTION 124. Sittings, public.

125. Sittings, when private.

Sittings of
Courts,
public.

124. The sittings of every Court of justice shall be public, except as provided in the next section.

125. In an action for divorce, criminal conversation, seduc-

tion, or breach of promise of marriage, the Court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the Court, the parties, their witnesses, and counsel; *provided*, that in any cause the Court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all other witnesses in the cause.

Sittings of
Courts,
private.

ARTICLE II.

INCIDENTAL POWERS AND DUTIES OF COURTS.

SECTION 128. Powers respecting conduct of proceedings.

129. Courts of record may make rules.

130. When rules take effect.

128. Every Court shall have power:

1. To preserve and enforce order in its immediate presence;
2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
3. To provide for the orderly conduct of proceedings before it, or its officers;
4. To compel obedience to its judgments, orders, and process, and to the orders of a Judge out of Court, in an action or proceeding pending therein;
5. To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;
6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code;
7. 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;
8. To amend and control its process and orders so as to make them conformable to law and justice.

Powers of
Courts.

129. Every Court of record may make rules not inconsistent with the laws of this State, for its own government and the government of its officers; but such rules shall neither impose any tax or charge upon any legal proceeding, nor give any allowance to any officer for services.

To make
rules.

130. Rules adopted by the Supreme Court shall take effect sixty days, and rules adopted by Superior Courts, thirty days after their publication.

When rules
take effect.

ARTICLE III.

JUDICIAL DAYS.

SECTION 133. Days on which Courts, etc., may be held.

134. Non-judicial days.

135. Appointments on non-judicial days.

133. Courts of justice may be held and judicial business transacted on any day, except as provided in the next section.

Judicial
days.

Non-judicial
days.

134. No Court shall be open, nor shall any judicial business be transacted on Sunday, on the first day of January, on the twenty-second day of February, on the fourth day of July, on the twenty-fifth day of December, on a day in which an election is held throughout the State, or on a day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving, or holiday, except for the following purposes:

1. To give, upon their request, instructions to a jury when deliberating on their verdict;

2. To receive a verdict, or discharge a jury;

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; *provided*, that the Supreme Court shall always be open for the transaction of business; *and provided further*, that injunctions and writs of prohibition may be issued and served on any day.

Appoint-
ments on
non-judicial
days.

135. If any day mentioned in the last section happen to be the day appointed for the holding or sitting of a Court, or to which it is adjourned, it shall be deemed appointed for or adjourned to the next day.

ARTICLE IV.

PROCEEDINGS IN CASE OF ABSENCE OF JUDGE.

SECTION 139. Adjournment for absence of Judge.

140. Adjournment till next regular session.

Adjourn-
ments for
absence of
Judges.

139. If no Judge attend on the day appointed for the holding or sitting of a Court, or on the day to which it may have been adjourned, before noon, the Sheriff or Clerk shall adjourn the same until the next day, at ten o'clock A. M., and if no Judge attend on that day, before noon, the Sheriff or Clerk shall adjourn the same until the following day at the same hour, and so on, from day to day for one week, unless the Judge, by written order, directs it to be adjourned to some day certain, fixed in said order, in which case it shall be so adjourned.

Adjourn-
ment.

140. If no Judge attend for one week, and no written order be made, as provided in the last section, the Sheriff or Clerk shall adjourn the session until the time appointed for the holding of the next regular session.

ARTICLE V.

PROVISIONS RESPECTING PLACES OF HOLDING COURTS.

SECTION 142. Change in certain cases of place of holding Court.

143. Parties to appear at place appointed.

144. When Sheriff to provide Court-rooms, etc.

Change in
certain cases
of place of
holding
Court.

142. The Judge or Judges authorized to hold or preside at a Court appointed to be held at a particular place in a city and county, county, city, or town, may, by an order filed with the City and County or County Clerk, and published as he or they may prescribe, direct that the Court be held or continued at any other place in the city and county, county, city, or

town than that appointed, when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction or danger of the building appointed for holding the Court may render it necessary; and may in the same manner revoke the order, and in his or their discretion, appoint another place in the same city and county, city, or town, for holding the Court.

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

Persons to appear at place appointed.

144. If suitable rooms for holding the Superior Courts and the chambers of the Judges of said Courts be not provided in any city and county, or county, by the Supervisors thereof, together with the attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the Courts, or the Judge or Judges thereof, may direct the Sheriff of the city and county, or county, to provide such rooms, attendants, furniture, fuel, lights, and stationery, and the expenses incurred, certified by the Judge or Judges to be correct, shall be a charge against the city and county treasury, and paid out of the General Fund thereof.

When Sheriff to provide Court-rooms, etc.

ARTICLE VI.

SEALS OF COURTS.

SECTION 147. What Courts shall have seals.

148. Seal of Supreme Court.

149. Seals of Superior Courts.

150. Seals of Police Courts of cities and counties.

151. Seals, how provided; private seals, when used.

152. Clerk of Court to keep seal.

153. Seals of Courts, to what documents affixed.

147. Each of the following Courts shall have a seal :

What Courts to have seals.

1. The Supreme Court;

2. The Superior Courts;

3. The Police Court of every city and county.

148. The seal used by the Supreme Court, abolished by the Constitution, shall be the seal of the Supreme Court herein provided for; but the said Court may direct the Clerk of the Supreme Court to provide two duplicates of said seal, each of which shall be considered the same as and have the same force and effect as the original.

Seal of Supreme Court.

149. The seals of the Superior Courts shall be circular, not less than one and three-fourths inches in diameter, and having in the center any word, words, or design adopted by the Judges thereof, and the following inscription surrounding the same: "Superior Court —, California," inserting the name of the county or city and county; *provided*, that the seal of any such Court, which has been adopted previous to the passage of this Act, shall be the seal of such Court until another be adopted.

Seals of Superior Courts.

150. The Police Court of every city and county may use any seal having upon it the inscription, "Police Court —," (inserting the name of the city and county).

Seal of Police Courts.

151. Courts which have not the necessary seal provided,

How provided.

or the Judge or Judges thereof, shall request the Supervisors of their respective counties, or cities and counties, to provide the same, and in case of their failure to do so may order the Sheriff to provide the same, and the expense thereof shall be a charge against the county or city and county treasury, and paid out of the General Fund thereof; and until such seal be provided the Clerk of each Court may use his private seal whenever a seal is required.

Who to keep
seal.
To what
documents
affixed.

152. The Clerks of the Court shall keep the seal thereof.

153. The seal of a Court need not be affixed to any proceeding therein or document, except:

1. To a writ;
2. To the certificate of probate of a will or of the appointment of an executor, administrator, or guardian;
3. To the authentication of a copy of a record or other proceeding of a Court, or of an officer thereof, or of a copy of a document on file in the office of the Clerk.

TITLE II.

JUDICIAL OFFICERS.

CHAPTER I. *Judicial officers in general.*

II. *Powers and duties of Judges at chambers.*

III. *Disqualifications of Judges.*

IV. *Incidental powers and duties of judicial officers.*

V. *Miscellaneous provisions respecting Courts and judicial officers.*

CHAPTER I.

JUDICIAL OFFICERS IN GENERAL.

SECTION 156. Qualifications of Justices of Supreme Court.

157. Qualifications of Superior Judges.

158. Residence of Superior Judges.

159. Residence and qualification of Justices of the Peace.

160. Judges holding Superior Courts at request of Governor.

161. Justices and Judges ineligible to other than judicial office.

Qualifica-
tion of
Justice of
Supreme
Court.

156. No person shall be eligible to the office of Chief or Associate Justice of the Supreme Court unless he shall have been a citizen of the United States and a resident of this State for two years next preceding his election or appointment, nor unless he shall have been admitted to practice before the Supreme Court of the State.

Qualifica-
tions of
Superior
Judges.

157. No person shall be eligible to the office of Judge of a Superior Court unless he shall have been a citizen of the United States and a resident of this State for two years next preceding his election or appointment, nor unless he shall have been admitted to practice before the Supreme Court of the State.

Residence of
Superior
Judges.

158. Each Judge of a Superior Court shall reside at the county seat of the county in which such Court is held, or within three miles thereof, and within the county, except that in the Counties of Yuba and Sutter the Judge may reside in either of said counties.

159. Every Justice of the Peace shall reside in the city and county, or township, in which his Court is held, and no person shall be eligible to the office of Justice of the Peace unless he shall have been a citizen of the United States and a resident of the city and county, or county, in which he is to serve for one year next preceding his election or appointment.

Residence,
etc., of
Justice of
the Peace.

160. If, by reason of sickness, absence, disability, or other cause, a regular session of the Superior Court cannot be held in any county by the Judge or Judges thereof, or by a Superior Judge, requested by him or them to hold such Court, a certificate of that fact shall be transmitted by the Clerk thereof to the Governor, who may thereupon request some other Superior Judge to hold such Court; and a Judge so holding a Court, at the request of the Governor, shall be allowed his actual expenses in going to, returning from, and attending upon the business of such Court, which shall be a charge against the treasury of the county where such Court is held, and paid out of the General Fund thereof.

Judges hold-
ing Superior
Courts at
request of
Governor.

161. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

Ineligibility
of Judges
and Justices
of the Peace.

CHAPTER II.

POWERS OF JUDGES AT CHAMBERS.

SECTION 165. Powers of Justices of Supreme Court at chambers.

166. Powers of Superior Judges at chambers.

165. The Justices of the Supreme Court, or any of them, may, at chambers, grant all orders and writs which are usually granted in the first instance upon an ex parte application, except writs of mandamus, certiorari, and prohibition; and may, in their discretion, hear applications to discharge such orders and writs.

Powers of
Justices of
Supreme
Court at
chambers.

166. The Judge or Judges of a Superior Court, or any of them, may, at chambers, grant all orders and writs which are usually granted in the first instance upon an ex parte application, and may, at chambers, hear and dispose of such orders and writs; and may also, at chambers, appoint appraisers, receive inventories and accounts to be filed, suspend the powers of executors, administrators, or guardians in the cases allowed by law, grant special letters of administration or guardianship, approve claims and bonds, and direct the issuance from the Court of all writs and process necessary in the exercise of their powers in matters of probate.

Powers of
Superior
Judges at
chambers.

CHAPTER III.

DISQUALIFICATIONS OF JUDGES.

SECTION 170. Disqualifications to sit or act.

171. Certain Judges not to practice law.

172. No judicial officer to have partner practicing law.

Disqualifica-
tion of
Judges.

170. No Justice, Judge, or Justice of the Peace, shall sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding.

But the provisions of this section shall not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the action or proceeding to some other Court.

Certain
Judges not to
practice law.

171. No Justice or Judge of a Court of record shall practice law in any Court of this State during his continuance in office, nor shall any Justice of the Peace practice law before any Justice's Court in the county where he resides.

No judicial
officer to
have partner
practicing
law.

172. No Justice, Judge, or other elective judicial officer, or Court Commissioner, shall have a partner acting as attorney or counsel in any Court of this State.

CHAPTER IV.

INCIDENTAL POWERS AND DUTIES OF JUDICIAL OFFICERS.

SECTION 176. Powers of Judges out of Court.

177. Powers of judicial officers as to conduct of proceedings.

178. To punish for contempt.

179. To take acknowledgments and affidavits.

Powers of
Judges out
of Court.

176. A Justice or Judge may exercise out of Court all the powers expressly conferred upon a Justice or Judge, as contradistinguished from the Court.

Powers of
judicial
officers as to
conduct of
proceedings.

177. Every judicial officer shall have power:

1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;
2. To compel obedience to his lawful orders as provided in this Code;
3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code;
4. 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.

To punish
for con-
tempt.

178. For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt in the cases provided in this Code.

To take
acknowledg-
ments, etc.

179. Each of the Justices of the Supreme Court, and Judges of the Superior Courts, shall have power in any part of the State, and every Justice of the Peace within his city and county, or county, and a Judge of a police or other inferior Court within his city and county, city, or town, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument;

2. The acknowledgment of satisfaction of a judgment of any Court;
3. An affidavit or deposition to be used in this State.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

- SECTION 182. Subsequent applications for orders refused, when prohibited.
 183. Violations of preceding section.
 184. Proceedings not affected by vacancy in office.
 185. Proceedings to be in English language.
 186. Abbreviations and figures.
 187. Means to carry jurisdiction into effect.

182. If an application for an order, made to a Judge of a Court in which the action or proceeding is pending, is refused in whole or in part, or is granted conditionally, no subsequent application for the same order shall be made to any Court Commissioner, or any other Judge, except of a higher Court; but nothing in this section applies to motions refused for informality in the papers or proceedings necessary to obtain the order, or to motions refused with liberty to renew the same.

Subsequent applications for orders refused.

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

Violations of preceding section.

184. No proceeding in any Court of justice, in an action or special proceeding pending therein, shall be affected by a vacancy in the office of all or any of the Judges thereof.

Proceedings, when not affected.

185. Every written proceeding in a Court of justice in this State shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.

Proceedings in English language.

186. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

Abbreviations.

187. When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.

Means to carry jurisdiction into effect.

TITLE III.

PERSONS SPECIALLY INVESTED WITH POWERS OF A JUDICIAL NATURE.

CHAPTER I. *Jurors.*

II. *Court Commissioners.*

CHAPTER I.

JURORS.

ARTICLE I. JURORS IN GENERAL.

- II. QUALIFICATIONS AND EXEMPTIONS OF JURORS.
- III. OF SELECTING AND RETURNING JURORS FOR COURTS OF RECORD.
- IV. OF DRAWING JURORS FOR COURTS OF RECORD.
- V. OF SUMMONING JURORS FOR COURTS OF RECORD.
- VI. OF SUMMONING JURORS FOR COURTS NOT OF RECORD.
- VII. OF SUMMONING JURORS OF INQUEST.
- VIII. OBEDIENCE TO SUMMONS, HOW ENFORCED.
- IX. OF IMPANELING GRAND JURIES.
- X. OF IMPANELING TRIAL JURIES IN COURTS OF RECORD.
- XI. OF IMPANELING TRIAL JURIES IN COURTS NOT OF RECORD.
- XII. OF IMPANELING JURIES OF INQUEST.

ARTICLE I.

JURORS IN GENERAL.

- SECTION 190. Jury defined.
191. Different kinds of juries.
192. Grand jury defined.
193. Trial jury defined.
194. Number of a trial jury.
195. Jury of inquest defined.

Jury de-
fined.

190. A jury is a body of men temporarily selected from the citizens of a particular district, and invested with power to present or indict a person for a public offense, or to try a question of fact.

Juries, dif-
ferent kinds.

191. Juries are of three kinds:

- 1. Grand juries;
- 2. Trial juries;
- 3. Juries of inquest.

Grand jury
defined.

192. A grand jury is a body of men, nineteen in number, returned in pursuance of law, from the citizens of a county, or city and county, before a Court of competent jurisdiction, and sworn to inquire of public offense committed or triable within the county, or city and county.

Trial jury
defined.

193. A trial jury is a body of men returned from the citizens of a particular district before a Court or officer of competent jurisdiction, and sworn to try and determine, by verdict, a question of fact.

Trial jury,
number of.

194. A trial jury shall consist of twelve men; *provided*, that in civil actions and cases of misdemeanor, it may consist of twelve, or of any number less than twelve, upon which the parties may agree in open Court.

Jury of
inquest
defined.

195. A jury of inquest, is a body of men summoned from the citizens of a particular district before the Sheriff, Coroner, or other ministerial officer, to inquire of particular facts.

ARTICLE II.

QUALIFICATIONS AND EXEMPTIONS OF JURORS.

- SECTION 198. Who competent to act as juror.
199. Who not competent to act as juror.
200. Who exempt from jury duty.
201. Who may be excused.
202. Affidavit of claim to exemption.

198. A person is competent to act as juror if he be :

1. A citizen of the United States of the age of twenty-one years, who shall have been a resident of the State one year, and of the county, or city and county, ninety days before being selected and returned ; Juror, who competent to act.

2. In possession of his natural faculties, and of ordinary intelligence, and not decrepit ;

3. Possessed of sufficient knowledge of the English language ;

4. Assessed on the last assessment roll of the county, or city and county, on property belonging to him.

199. A person is not competent to act as a juror :

1. Who does not possess the qualifications prescribed by the preceding section ; or, Who not competent.

2. Who has been convicted of malfeasance in office, or any felony or other high crime.

200. A person is exempt from liability to act as a juror if he be : Exemption from jury duty.

1. A judicial, civil, or military officer of the United States, or of this State ;

2. A person holding a county, city and county, or township office ;

3. An attorney at law ;

4. A minister of the Gospel, or a priest of any denomination, following his profession ;

5. A teacher in a university, college, academy, or school ;

6. A practicing physician, or druggist, actually engaged in the business of dispensing medicines ;

7. An officer, keeper, or attendant of an alms-house, hospital, asylum, or other charitable institution ;

8. Engaged in the performance of duty as officer or attendant of the State Prison, or of a County Jail ;

9. Employed on board of a vessel navigating the waters of this State ;

10. An express agent, mail carrier, Superintendent, employé, or operator of a telegraph line doing a general telegraph business in the State, or keeper of a public ferry or toll gate ;

11. An active member of the National Guard of California, or an active member of a fire department of any city and county, city, town, or village in this State, or an exempt member of a duly organized fire company who had become exempt from jury duty before the passage of this Act ;

12. A Superintendent, engineer, or conductor on a railroad ; or,

13. A person drawn as a juror in any Court of record in this State, upon a regular panel, who has served as such within a year ; but this exemption shall not extend to a person who is summoned as a juror for the trial of a particular case.

201. A juror shall not be excused by a Court for slight or trivial cause, or for hardship or inconvenience to his business, but only when material injury or destruction to his property, or of property intrusted to him, is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence. Excusable from jury duty.

Affidavit of
claim to
exemption.

202. If a person, exempt from liability to act as a juror as provided in section two hundred, be summoned as a juror, he may make and transmit his affidavit to the Clerk of the Court for which he is summoned, stating his office, occupation, or employment; and such affidavit shall be delivered by the Clerk to the Judge of the Court where the name of such person is called, and if sufficient in substance, shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the Clerk.

ARTICLE III.

OF SELECTING AND RETURNING JURORS FOR COURTS OF RECORD.

SECTION 204. Jury lists, by whom and when to be made.

205. How selection shall be made.

206. Lists to contain how many names.

208. Lists to be placed with Clerk.

209. Duty of Clerk; jury boxes.

210. Regular jurors to serve one year.

211. Jurors to be drawn from boxes.

Jury lists, by
whom and
when to be
made.

204. Within thirty days after the passage of this Act the Superior Court in each of the counties of this State shall make an order designating the number of grand jurors, and also the number of trial jurors that, in the opinion of said Court, will be required for the transaction of the business of said Court during the year ending on the first day of January, eighteen hundred and eighty-one; and thereafter, in the month of January in each year, it shall be the duty of said Court to make an order designating the estimated number of grand jurors, and also the number of trial jurors, that will, in the opinion of said Court, be required for the transaction of the business of the Court, and the Court and the trial of causes therein, during the ensuing year. And immediately after said order shall be made, the Board of Supervisors shall select, as provided in the next section, a list of persons to serve as grand jurors and trial jurors in the Superior Court of said county during the ensuing year, or until a new list of jurors shall be provided. In cities and counties having over one hundred thousand inhabitants such selection shall be made by the Judges of the Superior Court.

How selec-
tion shall be
made.

205. They shall proceed to select and list from those assessed on the last preceding assessment roll of such county, or city and county, suitable persons competent to serve as jurors; and in making such selection they shall take the names of such only as are not exempt from serving, who are in possession of their natural faculties and not infirm or decrepit, of fair character, of approved integrity, and of sound judgment.

Lists to con-
tain how
many
names.

206. The list to be made shall contain the number of persons which shall have been designated by the Court. The names for such list shall be selected from the different wards or townships of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making such list.

208. Certified lists of the persons selected to serve as

jurors shall at once be placed in the possession of the County Clerk.

209. On receiving such lists, the County Clerk shall file the same in his office and write down the names contained thereon on separate pieces of paper of the same size and appearance, and fold each piece so as to conceal the name thereon. He shall deposit the pieces of paper having on them the names of the persons selected in a box, to be called the "jury box."

Lists to be placed with Clerk.
Duty of Clerk.

Jury box.

210. The persons whose names are so returned shall be known as regular jurors, and shall serve for one year and until other persons are selected and returned.

Regular Jurors to serve one year.

211. The names of persons, whether for grand or trial jurors, shall be drawn from the "jury box;" and if, at the end of the year, there shall be the names of persons in the "jury box" who may not have been drawn during the year to serve as jurors, the names of such persons may be placed upon the lists of jurors drawn for the succeeding year.

Jurors, how drawn.

ARTICLE IV.

OF DRAWING JURORS FOR COURTS OF RECORD.

SECTION 214. Order of Judge or Judges for drawing of jury.

215. Sheriff to be notified.

216. Sheriff and Judge to witness drawing.

217. Drawing, when to be adjourned.

218. Adjourned drawing to proceed, when.

219. Drawing, how conducted.

220. Preservation of ballots drawn.

221. Copy of list to be furnished by Clerk, when.

214. Whenever the business of the Superior Court shall require the attendance of a trial jury for the trial of criminal cases, or where a trial jury shall have been demanded in any cause or causes at issue in said Court, and no jury is in attendance, the Court may make an order directing a trial jury to be drawn, and summoned to attend before said Court. Such order shall specify the number of jurors to be drawn, and the time at which the jurors are required to attend. And the Court may direct that such causes, either criminal or civil, in which a jury may be required, or in which a jury may have been demanded, be continued, and fixed for trial when a jury shall be in attendance.

Order of Judge for drawing jury.

215. Immediately upon the order mentioned in the preceding section being made, the Clerk shall, in the presence of the Court, proceed to draw the jurors from the "jury-box."

Sheriff to be notified.

219. The Clerk must conduct said drawing as follows:

1. He must shake the box containing the names of jurors so as to mix the slips of paper upon which such names are written as well as possible; he must then draw from the box as many slips of paper as are ordered by the Court.

Drawing, how conducted.

2. A minute of the drawing shall be entered in the minutes of the Court, which must show the name contained on every slip of paper so drawn from the "jury-box."

3. If the name of any person is drawn from the box who is deceased or insane, or who may have permanently removed

from the county, or who is exempt from jury service, and the fact shall be made to appear to the satisfaction of the Court, the name of such person shall be omitted from the list, and the slip of paper containing such name be destroyed and another juror drawn in his place, and the fact shall be entered upon the minutes of the Court. The same proceeding shall be had as often as may be necessary until the whole number of jurors required are drawn.

After the drawing shall be completed, the Clerk shall make a copy of the list of names of the persons so drawn, and certify the same. In his certificate he shall state the date of the order and of the drawing, and the number of jurors drawn, and the time when and the place where such jurors are required to appear. Such certificate and list shall be delivered to the Sheriff for service.

Preservation
of ballots
drawn.

220. After a drawing of persons to serve as jurors, the Clerk shall preserve the ballots drawn, and at the close of the session or sessions for which the drawing was had, he shall replace in the proper box from which they were taken all ballots which have on them the names of persons who did not serve as jurors for the session or sessions aforesaid, and who were not exempt or incompetent.

ARTICLE V.

OF SUMMONING JURORS FOR COURTS OF RECORD.

SECTION 225. Sheriff to summon jurors, how.

226. Of drawing and summoning jurors to attend forthwith.

227. Of summoning jurors to complete a panel.

228. Compensation of elisor.

Sheriff
to summon
jurors; how.

225. The Sheriff, as soon as he receives the list or lists of jurors drawn, shall summon the persons named therein to attend the Court at the opening of the regular session thereof, or at such session or time as the Court may order, by giving personal notice to that effect to each of them, or by leaving a written notice to that effect at his place of residence, with some person of proper age, and shall return the list to the Court at the opening of the regular session thereof, or at such session or time as the jurors may be ordered to attend, specifying the names of those who were summoned, and the manner in which each person was notified.

Of drawing
and sum-
moning
jurors to
attend
forthwith.

226. Whenever jurors are not drawn or summoned to attend any Court of record or session thereof, or a sufficient number of jurors fail to appear, such Court may order a sufficient number to be forthwith drawn and summoned to attend the Court, or it may, by an order entered in its minutes, direct the Sheriff, or an elisor chosen by the Court, forthwith to summon so many good and lawful men of the county, or city and county, to serve as jurors, as may be required, and in either case such jurors must be summoned in the manner provided in the preceding section.

Of summon-
ing jurors to
complete a
panel.

227. When there are not competent jurors enough present to form a panel the Court may direct the Sheriff, or an elisor chosen by the Court, to summon a sufficient number of persons having the qualifications of jurors to complete the panel

from the body of the county, or city and county, and not from the bystanders; and the Sheriff or elisor shall summon the number so ordered accordingly and return the names to the Court.

228. An elisor who shall, by order of a Court of record, summon persons to serve as jurors, shall be entitled to a reasonable compensation for his services, which must be fixed by the Court and paid out of the county, or city and county treasury, and out of the General Fund thereof. Compensation of elisor.

ARTICLE VI.

OF SUMMONING JURORS FOR COURTS NOT OF RECORD.

SECTION 230. Jurors for Justices' or Police Courts.

231. How to be summoned.

232. Officer's return.

230. When jurors are required in any of the Justices' Courts, or in any Police or other inferior Court, they shall, upon the order of the Justice, or any one of the Justices where there is more than one, or if the Judge thereof be summoned by the Sheriff, Constable, Marshal, or policeman of the jurisdiction. Jurors for Justices' or Police Courts.

231. Such jurors must be summoned from the persons competent to serve as jurors, residents of the city and county, township, city, or town in which such Court has jurisdiction, by notifying them orally that they are summoned, and of the time and place at which their attendance is required. How to be summoned.

232. The officer summoning such jurors shall, at the time fixed in the order for their appearance, return it to the Court with a list of the persons summoned indorsed thereon. Officers' return.

ARTICLE VII.

OF SUMMONING JURIES OF INQUEST.

SECTION 235. How to be summoned.

235. Juries of inquest shall be summoned by the officer before whom the proceedings in which they are to sit are to be had, or by any Sheriff, Constable, or policeman, from the persons competent to serve as jurors, resident of the county, or city and county, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required. Juries of inquest, how summoned.

ARTICLE VIII.

OBEDIENCE TO SUMMONS, HOW ENFORCED.

SECTION 238. Attachment and fine.

238. Any juror summoned, who willfully and without reasonable excuse fails to attend, may be attached and compelled to attend; and the Court may also impose a fine not exceeding fifty dollars, upon which execution may issue. If the juror was not personally served, the fine must not be Attachment and fine.

imposed until upon an order to show cause an opportunity has been offered the juror to be heard.

ARTICLE IX.

OF IMPANELING GRAND JURIES.

SECTION 241. Grand jury, when to be impaneled.

242. How constituted.

243. Manner of impaneling prescribed in Penal Code.

Grand jury,
when to be
impaneled.

241. Every Superior Court, whenever in the opinion of the Court the public interests may require it, must make and file with the County Clerk of their respective counties an order directing a jury to be drawn, and designating the number which, in case of a grand jury, shall not be less than twenty-five nor more than thirty. In all counties having less than three Superior Judges there shall be one grand jury drawn and impaneled in each year, and in all counties having three or more Superior Judges there shall be two grand juries drawn and impaneled in each year. Such order must designate the time at which the drawing will take place. The names of such jurors shall be drawn, the list of names certified and summoned as provided for drawing and summoning trial jurors; and the names of any persons drawn who may not be impaneled upon the grand jury may be again placed in the "jury box."

How consti-
tuted.

242. When, of the persons summoned as grand jurors and not excused, nineteen are present, they shall constitute the grand jury. If more than nineteen of such persons are present, the Clerk shall write their names on separate ballots, which he must fold so that the names cannot be seen, place them in a box, and draw out nineteen of them, and the persons whose names are on the ballots so drawn shall constitute the grand jury. If less than nineteen of such persons are present, the panel may be filled as provided in section two hundred and twenty-six of this Code. And whenever, of the persons summoned to complete a grand jury, more shall attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

Impaneling.

243. Thereafter such proceedings shall be had in impaneling the grand jury as are prescribed in part two of the Penal Code.

ARTICLE X.

OF IMPANELING TRIAL JURIES IN COURTS OF RECORD.

SECTION 246. Clerk to call list of jurors summoned.

247. Manner of impaneling prescribed in part two.

Clerk to call
list of jurors
summoned.

246. At the opening of Court on the day trial jurors have been summoned to appear, the Clerk shall call the names of those summoned, and the Court may then hear the excuses of jurors summoned. The Clerk shall then write the names of the jurors present and not excused upon separate slips or ballots of paper, and fold such slips so that the names are

concealed, and there, in the presence of the Court, deposit the slips or ballots in a box, which must be kept sealed or locked until ordered by the Court to be opened.

247. Whenever thereafter a civil action is called by the Court for trial, and a jury is required, such proceedings shall be had in impaneling the trial jury as are prescribed in part two of this Code. If the action be a criminal one, the jury shall be impaneled as prescribed in the Penal Code. Manner of impaneling.

ARTICLE XI.

OF IMPANELING TRIAL JURIES IN COURTS NOT OF RECORD.

SECTION 250. Proceedings in forming jury.

251. Manner of impaneling.

250. At the time appointed for a jury trial in Justices', Police, or other inferior Courts, the list of jurors summoned must be called, and the names of those attending and not excused must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box, from which the trial jury must be drawn. Proceedings in forming jury.

251. Thereafter, if the action is a criminal one, the jury must be impaneled as provided in the Penal Code; if a civil one, as provided in part two of this Code. Manner of impaneling.

ARTICLE XII.

OF IMPANELING JURIES OF INQUEST.

SECTION 254. Manner of impaneling.

254. The manner of impaneling juries of inquest is prescribed in the provisions of the different Codes relating to such inquests. Impaneling juries of inquest.

CHAPTER II.

COURT COMMISSIONERS.

SECTION 258. Appointment and qualifications.

259. Powers of Court Commissioners.

258. The Superior Court of every city and county in the State may appoint six Commissioners, to be designated each as "Court Commissioner" of such city and county; and the Superior Court of every other county in the State may appoint one Commissioner, to be designated as "Court Commissioner" of such county. Such Commissioners shall be citizens of the United States, and residents of the city and county, or county, in which they are appointed, and hold offices during the pleasure of the Courts appointing them. Court Commissioners; appointment, etc.

259. Every Court Commissioner shall have power:

1. To hear and determine ex parte motions for orders and writs, except orders or writs of injunction in the Superior Court of the county, or city and county, for which he is appointed; *provided*, that he shall have power to hear and determine such motions only in the absence or inability to Powers of.

Powers of. act of the Judge or Judges of the Superior Court of the county, or city and county;

2. To take proof and report his conclusions thereon as to any matter of fact other than an issue of fact raised by the pleadings, upon which information is required by the Court; but any party to the proceedings may except to such report within five days after written notice that the same has been filed, and may argue his exceptions before the Court on giving notice of motion for that purpose;

3. To take and approve bonds and undertakings whenever the same may be required in actions or proceedings in such Superior Courts, and to examine the sureties thereon when an exception has been taken to their sufficiency, and to administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the Courts of this State, or in any matter or proceeding whatever, and to take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this State;

4. To charge and collect the same fees for the performance of official acts as are now or may hereafter be allowed by law to Notaries Public in this State for like services; *provided*, that this subdivision shall not apply to any services of such Commissioner, the compensation for which is expressly fixed by law;

5. To provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which said Commissioner resides;

6. To authenticate with his official seal his official acts.

TITLE IV.

MINISTERIAL OFFICERS OF COURTS OF JUSTICE.

CHAPTER I. *Of ministerial officers generally.*

II. *Secretaries and Bailiffs of the Supreme Court.*

III. *Phonographic Reporters.*

CHAPTER I.

OF MINISTERIAL OFFICERS GENERALLY.

SECTION 262. Election powers and duties, where prescribed.

Ministerial
office.

262. The modes and times of election, terms, powers, and duties of the Attorney-General, Clerk of the Supreme Court, Reporter of the Decisions of the Supreme Court, Clerks, Sheriffs, and Coroners, are prescribed in the Political and Penal Codes.

CHAPTER II.

SECRETARIES AND BAILIFFS OF THE SUPREME COURT.

SECTION 265. Appointment.

266. Tenure of office, and duties.

265. The Justices of the Supreme Court may appoint two Secretaries and two Bailiffs, who shall be citizens of the United States and of this State. Officers to be appointed by Supreme Court.

266. The Secretaries and Bailiffs shall hold their offices at the pleasure of the Justices, and shall perform such duties as may be required of them by the Court or any Justice thereof.

CHAPTER III.

PHONOGRAPHIC REPORTERS.

- SECTION 265. Phonographic Reporters for Supreme Court, where provided for.
 269. Phonographic Reporters for Superior Courts, their appointment, and duties.
 270. Qualifications and test of competency.
 271. Attention to duties, Reporters *pro tempore*.
 272. Oath of office.
 273. Reports *puna facie* correct statements.
 274. Fees.

268. Phonographic Reporters for the Supreme Court are provided for in part three of the Political Code. Phonographic Reporters

269. The Judge or Judges of any Superior Court in the State may appoint a competent Phonographic Reporter, or as many such Reporters as there are Judges, to be known as Official Reporter or Reporters of such Court, and to hold office during the pleasure of the Judge or Judges appointing them. Such Reporter, or any one of them, where there are two or more, shall, at the request of either party, or of the Court in a civil action or proceeding, and on the order of the Court, the District Attorney, or the attorney for defendant in a criminal action or proceeding, take down in short-hand all the testimony, the objections made, the rulings of the Court, the exceptions taken, and oral instructions given, and if directed by the Court, or requested by either party, shall, within such reasonable time after the trial of such case as the Court may designate, write out the same in plain, legible long-hand, and verify and file it with the Clerk of the Court in which the case was tried.

270. No person shall be appointed to the position of Official Reporter of any Court in this State, except upon satisfactory evidence of good moral character, and without being first examined as to his competency by at least three members of the bar practicing in said Court, such members to be designated by the Judge or Judges of said Court. The committee of members of the bar so designated shall, upon the request of the Judge or Judges of said Court, examine any person as to his qualifications whom said Judge or Judges may wish to appoint as Official Reporter; and no person shall be appointed to such position upon whose qualifications such committee shall not have reported favorably. The test of competency before such committee shall be as follows: The party examined must write in the presence of said committee at the rate of at least one hundred and fifty words per minute, for five consecutive minutes, upon matter not previously written by or known to him, immediately read the same back to the committee, and transcribe the same into

long-hand writing, plainly and with accuracy. If he pass such test satisfactorily, the committee shall furnish him with a written certificate of that fact, signed by at least a majority of the members of the committee, which certificate shall be filed among the records of the Court.

Attention
to duties.

271. The Official Reporter of any Superior Court shall attend to the duties of his office in person, except when excused for good and sufficient reason by order of the Court, which order shall be entered upon the minutes of the Court. Employment in his professional capacity elsewhere shall not be deemed a good and sufficient reason for such excuse. When the Official Reporter of any Court has been excused in the manner provided in this section, the Court may appoint an Official Reporter pro tempore, who shall perform the same duties and receive the same compensation during the term of his employment as the Official Reporter.

Oath.

272. The Official Reporter of any Court, or Official Reporter pro tempore, shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Reports
prima facie
correct
statement.

273. The report of the Official Reporter, or Official Reporter pro tempore, of any Court, duly appointed and sworn, when written out in long-hand writing and certified as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings.

Fees.

274. The Official Reporter shall receive, as compensation for his services in civil actions and proceedings for taking notes, a sum, to be fixed by the Court or a Judge thereof, not exceeding ten dollars per day, and for transcription a sum to be in like manner fixed not exceeding twenty cents per hundred words; *provided*, that when said Reporter performs services in taking notes in more than one cause on the same day, the Court or Judge thereof shall apportion to per diem allowed between the several actions or proceedings in which such notes are taken. The short-hand notes so taken shall immediately after the cause is submitted be filed with the Clerk, but for the purpose of writing out said notes the Reporter may withdraw the same for a reasonable time. The Reporter's fees for taking notes in civil cases shall be paid by the party in whose favor judgment is rendered, and shall be taxed up by the Clerk of the Court as costs against the party against whom judgment is rendered. In case of the failure of a jury to agree, the plaintiff must pay the Reporter's fees for time employed, and for transcription ordered by plaintiff which have accrued up to the time of the discharge of the jury. In cases where a transcript has been ordered by the Court, the fees for transcription must be paid by the respective parties to the action in equal proportions, or by such of them and in such proportions as the Court, in its discretion, may order; and no verdict or judgment shall be entered up, except the Court shall otherwise order, until the Reporter's fees are paid, or a sum equivalent thereto deposited with the Clerk of the Court therefor. In no case shall a transcript be paid for unless ordered either by the plaintiff or defendant,

or by the Court; nor shall the Reporter be required in any civil case to transcribe his notes until the fees therefor be tendered him, or a sufficient amount to cover the same be deposited in Court for that purpose. The party ordering the Reporter to transcribe any portion of the testimony or proceedings, must pay the fees of the Reporter therefor. In criminal cases, when the testimony has been taken down or transcribed upon the order of the Court, the fees of the Reporter shall be certified by the Court, and paid out of the treasury of the county, or city and county, in which the case is tried, upon the order of the Court.

TITLE V.

PERSONS SPECIALLY INVESTED WITH MINISTERIAL POWERS RELATING TO COURTS OF JUSTICE.

CHAPTER I. *Attorneys and counselors at law.*

II. *Other persons invested with such powers.*

CHAPTER I.

ATTORNEYS AND COUNSELORS AT LAW.

- SECTION 275. Who may be admitted as attorneys.
 276. Qualifications.
 277. Certificate of admission and license.
 278. Oath.
 279. Attorneys of other States.
 280. Roll of attorneys.
 281. Penalty for practicing without license.
 282. Duties.
 283. Authority.
 284. Change of attorney.
 285. Notice of change.
 286. Death or removal of attorney.
 287. Removal and suspension.
 288. Conviction of felony.
 289. Proceedings for removal or suspension.
 290. Accusation.
 291. Verification.
 292. Citation.
 293. Appearance.
 294. Objections to accusation.
 295. Demurrer.
 296. Answer.
 297. Trial.
 298. Reference to take depositions.
 299. Judgment.

275. Any citizen or person resident of this State, who has bona fide declared his or her intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the Courts of this State. All persons are attorneys of the Supreme Court who were on the first day of January, eighteen hundred and eighty, entitled to practice in the Court superseded thereby.

276. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good

Who may be
admitted as
attorneys.

Qualifica-
tions.

moral character, and undergo a strict examination in open Court as to his qualifications by the Justices of the Supreme Court, or by the Justices sitting and holding one of the departments thereof; *provided*, that the several Superior Courts of this State may admit applicants to practice as attorneys and counselors in their respective Courts, but not elsewhere, upon strict examination in open Court, and not otherwise, and upon satisfactory testimonials of good moral character.

Certificate.

277. If, upon examination, he is found qualified, the Supreme Court, or department thereof before which he is examined, shall admit him as an attorney and counselor 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.

Oath.

278. Every person on his admission must take an oath to support the Constitution of the United States and the Constitution of the State of California, and to faithfully discharge the duties of an attorney and counselor at law to the best of his knowledge and ability. A certificate of such oath must be indorsed upon the license.

Attorneys of other States.

279. Every citizen of the United States, or person resident of this State, who has bona fide declared his intention to become a citizen in the manner required by law, who has been admitted to practice law in the highest Court of a sister State, or of a foreign country, where the common law of England constitutes the basis of jurisprudence, may be admitted to practice in the Courts of this State upon the production of his or her license, and satisfactory evidence of good moral character; but the Court may examine the applicant as to his or her qualifications.

Roll of attorneys.

280. Every Clerk shall keep a roll of attorneys and counselors admitted to practice by the Court of which he is Clerk, which roll must be signed by the person admitted before he receives his license.

Penalty.

281. If any person shall practice law in any Court, except a Justice's Court or Police Court, without having received a license as attorney and counselor, he shall be guilty of a contempt of Court.

Duties.

282. It is the duty of an attorney and counselor:

1. To support the Constitution and laws of the United States and of this State;

2. To maintain the respect due to the Courts of justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the Judge or any judicial officer by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or

witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest;

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

283. An attorney and counselor shall have authority:

Authority

1. 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;

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

284. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

Change of attorney.

1. Upon consent of both client and attorney, filed with the Clerk, or entered upon the minutes;

2. Upon the order of the Court, upon the application of either client or attorney, after notice from one to the other.

285. 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, must be given to the adverse party. Until then he must recognize the former attorney.

Notice of change.

286. 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, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

Death or removal.

287. An attorney and counselor may be removed or suspended by the Supreme Court, or any department thereof, or by any Superior Court of the State, for either of the following causes, arising after his admission to practice:

Removal or suspension.

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence;

2. Willful disobedience or violation of an order of the Court requiring him to do or forbear an act connected with, or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

3. Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as attorney and counselor by another person who is not an attorney and counselor.

In all cases where an attorney is removed or suspended by a Superior Court, the judgment or order of removal or suspension may be reviewed on appeal by the Supreme Court.

288. In case of the conviction of an attorney or counselor of a felony or misdemeanor, involving moral turpitude, the

Conviction of felony.

Clerk of the Court in which such conviction is had shall, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings
for removal
or suspen-
sion.

289. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section two hundred and eighty-seven, must be taken by the Court on the receipt of a certified copy of the record of conviction. The proceedings under the second, third, or fourth subdivision of section two hundred and eighty-seven may be taken by the Court for the matters within its knowledge, or may be taken upon the information of another.

Accusation.

290. If the proceedings are upon the information of another, the accusation must be in writing.

Verifica-
tion.

291. The accusation must state the matters charged, and be verified by the oath of some person to the effect that the charges therein contained are true.

Citation.

292. Upon receiving the accusation, the Court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order.

Appearance.

293. 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.

Objections to
accusation.

294. The accused may answer to the accusation either by objecting to its sufficiency or denying it.

Demurrer.

295. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Answer.

296. If an objection to the sufficiency of the accusation be not sustained, the accused must answer within such time as may be designated by the Court.

Trial.

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

Reference
to take
depositions.

298. The Court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment.

299. Upon conviction, in cases arising under the first subdivision of section two hundred and eighty-seven, the judgment of the Court must be that the name of the party shall be stricken from the roll of attorneys and counselors of the Court, and that he be precluded from practicing as such attorney or counselor in all the Courts of this State; and upon conviction in cases under the other subdivisions of that section the judgment of the Court may be according to the gravity of the offense charged; deprivation of the right to practice as attorney or counselor in the Courts of this State permanently, or for a limited period.

CHAPTER II.

OTHER PERSONS INVESTED WITH SUCH POWERS.

SECTION 304. Receivers, executors, administrators, and guardians.

304. The appointment, powers, and duties of receivers, executors, administrators, and guardians are provided for and prescribed in parts two and three of this Code. Receivers,
executors,
etc.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect immediately.

CHAPTER LI.

An Act to amend section ten (10) of the Code of Civil Procedure, defining legal holidays.

[Approved April 9th, 1880.]

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

SECTION 1. Section ten (10) of the Code of Civil Procedure is hereby amended so as to read as follows:

10. Holidays, within the meaning of this Code, are: Every Sunday, the first day of January, the twenty-second (22d) day of February, the thirtieth (30th) day of May, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. Holidays.

SEC. 2. This Act shall take effect immediately.

CHAPTER LV.

An Act to amend sections seven hundred and sixty-three and nine hundred and thirty-nine of the Code of Civil Procedure, relating to proceedings in partition and appeals therefrom.

[Approved April 12th, 1880.]

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

SECTION 1. Section seven hundred and sixty-three of the Code of Civil Procedure of the State of California is hereby amended so as to read as follows:

The Court
may order a
sale or
partition,
and appoint
referees
thereon.

When site
of an incor-
porated city
or town is
included,
proceedings,
how had.

763. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint to the satisfaction of the Court, that the property or any part of it is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale thereof, otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the Court, and appoint three referees therefor, and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained; *provided*, that when the site of an incorporate city or town is included within the exterior boundaries of the property to be partitioned, then on said fact being established by evidence the following proceedings shall be had. The Court shall thereupon direct the referees to survey and appraise the entire property to be partitioned by actual lots and subdivisions then existing in the actual possession of the several tenants in common, exclusive of the value of improvements thereon, first setting apart necessary portions of the property for ways, roads, and streets, as in section seven hundred and sixty-four of this Code provided, and to report such survey and separate appraisement on each lot and subdivision to the Court. The Court may confirm, change, modify, or set aside the report in whole or in part, and if necessary appoint new referees. When, after the final confirmation of the report of such survey and appraisement, it shall appear by evidence to the satisfaction of the Court that an equitable partition of the whole property is impracticable, and a sale of the site of such city or town, or any portion thereof, will be for the best interests of the owners of the whole property, it shall order a sale thereof; *provided*, that within sixty days thereafter any tenant in common, or tenants in common having improvements erected on any town or city lot, or subdivision included in such order of sale, shall have the prior right to purchase the same at such appraised valuation, and may pay into Court the amount so appraised as the value thereof, and upon such payment the title shall vest in such purchaser or purchasers, and the Court shall cause to be executed by said referees a deed for such lot or subdivision in fee and in severalty to such purchaser or purchasers, such further proceedings shall then be had as to the remainder of the property, and the money so paid to the Court, as by this chapter provided. If, during the pendency of the action, any of the parties die, or become insane or otherwise incompetent, the proceedings shall not for that cause be delayed or suspended, but the attorney who has appeared for such party may continue to represent such interest; and in case any such party has not appeared by an attorney, the Court shall appoint an attorney to represent the interest which was held by such party, until his heirs or legal representatives, or successors in interest, shall have appeared in the action; and an attorney so appointed shall be allowed by the Court a reasonable compensation for his services, which may be taxed as costs against the share or

interest represented by such attorney, and may be adjudged a lien thereon, in the discretion of the Court.

SEC. 2. Section nine hundred and thirty-nine of said Code is hereby amended so as to read as follows:

939. An appeal may be taken:

1. From a final judgment in an action or special proceeding commenced in the Court in which the same is rendered within one year after the entry of judgment. But an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment.

Within what
time appeal
may be
taken.

2. From a judgment rendered on an appeal from an inferior Court within ninety days after the entry of such judgment.

3. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment; and from an interlocutory judgment in actions for partition of real property; and from an order confirming, changing, modifying, or setting aside the report in whole or in part of the referees in actions for partition of real property in the cases mentioned in the provisions in section seven hundred and sixty-three of this Code, within sixty (60) days after the order or interlocutory judgment is made and entered in the minutes of the Court, or filed with the Clerk.

SEC. 3. This Act shall take effect immediately.

CHAPTER LXII.

An Act to amend section one thousand three hundred and eighteen of an Act entitled "An Act to establish a Code of Civil Procedure," approved March eleventh, eighteen hundred and seventy-two, relative to the contesting of the probate of wills.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand three hundred and eighteen of said Code is hereby amended so as to read as follows:

1318. The will, and a certificate of the proof thereof, must be filed and recorded by the Clerk, and the same, when so filed and recorded, shall constitute part of the record in the cause or proceeding. All testimony shall be filed by the Clerk.

Will and
proof to be
filed and
recorded.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER LXIV.

An Act to amend section five hundred and twenty-nine of the Code of Civil Procedure, in relation to injunctions.

[Approved April 15th, 1880.]

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

SECTION 1. Section five hundred and twenty-nine of said Code is hereby amended to read as follows:

Security
upon
injunction.

Exception to
securities.

529. On granting an injunction, the Court or Judge must require, except when the people of the State, a county, or municipal corporation, or a married woman in a suit against her husband is a party plaintiff, a written 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. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a Judge or County Clerk in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXVII.

An Act to amend section eleven hundred and eighty-three of an Act entitled "An Act to establish a Code of Civil Procedure," approved March eleventh, eighteen hundred and seventy-two, relating to liens of mechanics and others upon real property.

[Approved April 15th, 1880.]

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

SECTION 1. Section eleven hundred and eighty-three of said Code is hereby amended so as to read as follows:

1183. Mechanics, material men, artisans, architects, and laborers of every class performing labor upon or furnishing material to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, railroad, wagon road, or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished. This lien shall not be affected by the fact that no money is due, or to become due, on any contract made by the owner with any other party.

Mechanic
lien, upon
what.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXVIII.

An Act to amend sections three hundred and sixty-seven, three hundred and seventy-two, and three hundred and seventy-three of the Code of Civil Procedure, relating to parties to civil actions.

[Approved April 15th, 1880.]

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

SECTION 1. Section three hundred and sixty-seven of the Code of Civil Procedure is amended to read as follows:

367. Every action must be prosecuted in the name of the real party in interest, except as provided in section three hundred and sixty-nine of this Code.

Action to be
in name of
party
interested.

SEC. 2. Section three hundred and seventy-two of said Code is amended to read as follows:

372. When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the Court in which the action is pending, in each case. A guardian ad litem may be appointed in any case, when it is deemed by the Court in which the action or proceeding is prosecuted, or by a Judge thereof, expedient to represent the infant, insane, or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

Infant,
insane, or
incompetent
person to
appear by
guardian.

SEC. 3. Section three hundred and seventy-three of said Code is amended to read as follows:

373. When a guardian ad litem is appointed by the Court, he must be appointed as follows:

Guardian,
how
appointed.

1. 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.

2. 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, or if under that age, or if he neglect so to apply, then upon the applica-

tion of a relative or friend of the infant, or of any other party to the action.

3. When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

SEC. 4. This Act shall take effect immediately.

CHAPTER LXX.

An Act to repeal section six hundred and sixty-three of the Code of Civil Procedure.

[Approved April 15th, 1880.]

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

Repealed.

SECTION 1. Section six hundred and sixty-three of the Code of Civil Procedure is hereby repealed.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXI.

An Act to repeal chapters four and five, of title thirteen, of part two, of the Code of Civil Procedure, and each and every section of said chapters four and five, relating to appeals in civil actions.

[Approved April 15th, 1880.]

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

Repealed.

SECTION 1. Chapters four and five, of title thirteen, of part two, of the Code of Civil Procedure, and each and every section of said chapters four and five, are hereby repealed.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXIV.

An Act to amend Sections 1747, 1748, 1749, 1750, 1754, 1755, 1756, 1757, 1758, 1763, 1764, 1766, 1769, 1773, 1774, 1775, 1780, 1781, 1782, 1783, 1784, 1785, 1788, 1791, 1792, 1793, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, and 1808 of the Code of Civil Procedure, relating to guardians and wards.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand seven hundred and forty-seven of the Code of Civil Procedure is amended to read as follows:

1747. The Superior Court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the State and have estate within the county. Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment the Court must cause such notice as such Court deems reasonable to be given to any person having the care of such minor, and to such relatives of the minor residing in the county as the Court may deem proper.

Superior Court to appoint guardians, when and on what petition.

SEC. 2. Section one thousand seven hundred and forty-eight of said Code is amended to read as follows:

1748. If the minor is under the age of fourteen years, the Court may nominate and appoint his guardian. If he is fourteen years of age, he may nominate his own guardian, who, if approved by the Court, must be appointed accordingly.

When minor may nominate guardian, when not.

SEC. 3. Section one thousand seven hundred and forty-nine of said Code is amended to read as follows:

1749. If the guardian nominated by the minor is not approved by the Court, or if the minor resides out of the State, or if, after being duly cited by the Court, he neglects for ten days to nominate a suitable person, the Court or Judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

When appointment made by Court, when minor is over fourteen.

SEC. 4. Section one thousand seven hundred and fifty of said Code is amended to read as follows:

1750. When a guardian has been appointed by the Court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the Court.

Nomination by minors after arriving at fourteen.

SEC. 5. Section one thousand seven hundred and fifty-four of said Code is amended to read as follows:

1754. Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the

Bond of guardian, conditions of.

Court must require of such person a bond to the minor with sufficient sureties, to be approved by the Judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law, and the following conditions shall form a part of such bond without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the Court may order.

2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

3. To render an account on oath of the property, estate, and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the Court directs, and at the expiration of his trust to settle his accounts with the Court, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be indorsed thereon that he will perform the duties of his office as such guardian according to law.

SEC. 6. Section one thousand seven hundred and fifty-five of said Code is amended to read as follows:

1755. When any person is appointed guardian of a minor, the Court may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond shall be responsible.

SEC. 7. Section one thousand seven hundred and fifty-six of said Code is amended to read as follows:

1756. All letters of guardianship issued and all guardians' bonds executed under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the Clerk of the Court having jurisdiction of the persons and estates of the wards.

SEC. 8. Section one thousand seven hundred and fifty-seven of said Code is amended to read as follows:

1757. If any minor having a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor

Court may
insert
conditions
in order
appointing
guardian.

Letters of
guardian-
ship and
bond of
guardian to
be recorded.

Maintenance
of minor out
of income of
his own
property.

may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the Court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

SEC. 9. Section one thousand seven hundred and fifty-eight of said Code is amended to read as follows:

1758. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties with regard to the person and estate of his ward as guardians appointed by the Court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

Guardian to give bond. Powers limited.

SEC. 10. Section one thousand seven hundred and sixty-three of said Code is amended to read as follows:

1763. When it is represented to the Superior Court, or a Judge thereof, upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, such Court or Judge must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced on the hearing.

Guardians of insane and other incompetent persons.

SEC. 11. Section one thousand seven hundred and sixty-four of said Code is amended to read as follows:

1764. If, after a full hearing and examination upon such petition, it appear to the Court that the person in question is incapable of taking care of himself and managing his property, such Court must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

Appointment of guardian by Court after hearing.

SEC. 12. Section one thousand seven hundred and sixty-six of said Code is amended to read as follows:

1766. Any person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend may apply, by petition, to the Superior Court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane or competent. Upon receiving the petition, the Court must appoint a day for a hearing before the Court, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in civil actions. The Court shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the person so declared insane or incompetent, and, in the discretion of the Court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the Court on its own motion. If it be found that the person be of sound mind, and capable of taking care of himself and

Proceeding for restoration of insane, etc.

his property, his restoration to capacity shall be adjudged, and the guardian of such person, if such person be not a minor, shall cease.

SEC. 13. Section one thousand seven hundred and sixty-nine of said Code is amended to read as follows:

Guardian to
recover debts
due his
ward and
represent
him.

1769. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the Court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose.

SEC. 14. Section one thousand seven hundred and seventy-three of said Code is amended to read as follows:

Guardian
to return
inventory
of estate of
ward.

1773. Every guardian must return to the Court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of one hundred thousand dollars, semi-annual returns must be made to the Court. The Court may, upon application made for that purpose by any person, compel the guardian to render an account to the Court of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estates of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the Clerk of the Court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to, or acquired by any ward, or for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Appraisers
to be
appointed.

SEC. 15. Section one thousand seven hundred and seventy-four of said Code is amended to read as follows:

Settlements
of guardians.

1774. The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the Court for settlement and allowance.

SEC. 16. Section one thousand seven hundred and seventy-five of said Code is amended to read as follows:

Allowance
of accounts
of joint
guardians.

1775. When an account is rendered by two or more joint guardians, the Court may, in its discretion, allow the same upon the oath of any of them.

SEC. 17. Section one thousand seven hundred and eighty of said Code is amended to read as follows:

Investment
of proceeds
of sales.

1780. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the Court.

SEC. 18. Section one thousand seven hundred and eighty-one of said Code is amended to read as follows:

1781. To obtain an order for such sale, the guardian must present to the Court in which he was appointed guardian a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale. Order for sale, how obtained.

SEC. 19. Section one thousand seven hundred and eighty-two of said Code is amended to read as follows:

1782. If it appear to the Court, or a Judge thereof, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the Court must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the Court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward, to sell the personal estate, or some part of it, the Court must order the sale to be made. Notice to next of kin, how given.

SEC. 20. Section one thousand seven hundred and eighty-three of said Code is amended to read as follows:

1783. A copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least once a week for three successive weeks in a newspaper printed in the county, or if there be none printed in the county, then in such newspaper as may be specified by the Court in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published. Copy of order to be served, published, or consent filed.

SEC. 21. Section one thousand seven hundred and eighty-four of said Code is amended to read as follows:

1784. The Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons interested in the estate who oppose the application. Hearing of application.

SEC. 22. Section one thousand seven hundred and eighty-five of said Code is amended to read as follows:

1785. On the hearing, the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance, and testimony may be issued by the Court, in the same manner and with like effect as in other cases provided for in this title. Who may be examined on such hearing.

SEC. 23. Section one thousand seven hundred and eighty-eight of said Code is amended to read as follows:

1788. Every guardian authorized to sell real estate, must, before the sale, give bond to the ward, with sufficient surety, to be approved by the Court, or a Judge thereof, with condi- Bond before selling.

tion to sell the same in the manner, and to account for the proceeds of the sale as provided for in this chapter and chapter seven of this title.

SEC. 24. Section one thousand seven hundred and ninety-one of said Code is amended to read as follows:

Conditions of
sale of real
estate of
minor heirs.

1791. All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from date of sale, as in the discretion of the Court is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes, and a mortgage on the real estate sold, with such additional security as the Court deems necessary and sufficient to secure the prompt payment of the amounts so deferred, and the interest thereon.

Bond, etc.,
given for
deferred
payments.

SEC. 25. Section one thousand seven hundred and ninety-two of said Code is amended to read as follows:

Court may
order the
investment
of money of
the ward.

1792. The Court, on the application of a guardian, or any person interested in the estate of any ward, after such notice to persons interested therein as the Court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein, and the Court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

SEC. 26. Section one thousand seven hundred and ninety-three of said Code is amended to read as follows:

Guardians of
non resident
persons.

1793. When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this State and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the Superior Court of any county in which there is any estate of such absent person, for the appointment of a guardian, and if, after notice given to all interested, in such manner as such Court orders by publication or otherwise, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

SEC. 27. Section one thousand seven hundred and ninety-six of said Code is amended to read as follows:

To what
guardian-
ship shall
extend.

1796. The guardianship which is first lawfully granted of any person residing without this State extends to all the estate of the ward within this State, and excludes the jurisdiction of the Court of every other county.

SEC. 28. Section one thousand seven hundred and ninety-seven of said Code is amended to read as follows:

Removal of
non-resident
ward's
property.

1797. When the guardian and ward are both non-residents, and the ward is entitled to property in this State, which may be removed to another State or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the State or foreign country of the residence of the ward, upon the application of the guardian to the Superior Court of the county in which the estate of the ward, or the principal part thereof, is situated.

SEC. 29. Section one thousand seven hundred and ninety-eight of said Code is amended to read as follows:

1798. The application must be made upon ten days notice to the resident executor, administrator, or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under the hand of the Clerk and seal of the Court, from which his appointment was derived, showing:

Proceedings
in such
removal.

1. A transcript of the record of his appointment.

2. That he has entered upon the discharge of his duties.

3. That he is entitled, by the laws of the State, of his appointment to the possession of the estate of the ward; or, must produce and file a certificate, under the hand and seal of the Clerk of the Court having jurisdiction in the country of his residence, of the estates of persons under guardianship, or of the highest Court of such country, attested by a Minister, Consul, or Vice-Consul of the United States, resident in such country, that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward, without the appointment of any Court. Upon such application, unless good cause to the contrary is shown, the Court must make an order granting to such guardian leave to take and remove the property of his ward to the State or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

SEC. 30. Section one thousand seven hundred and ninety-nine of said Code is amended to read as follows:

1799. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the Court the receipt therefor of the foreign guardian of such absent ward.

Discharge of
person in
possession.

SEC. 31. Section one thousand eight hundred of said Code is amended to read as follows:

1800. Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward or to his estate, the Superior Court, or a Judge thereof, may cite such suspected person to appear before such Court, and may examine and proceed with him on such charge in the manner provided in this title with respect to persons suspected of and charged with concealing or embezzling the effects of a decedent.

Examination
of
persons
suspected of
defrauding
wards or
concealing
property.

SEC. 32. Section one thousand eight hundred and one of said Code is amended to read as follows:

1801. When a guardian, appointed either by the testator or a Court, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the Superior Court may, upon such notice to the guardian as the Court may require, remove

Removal and
resignation
of guardian
and
surrender
of estate.

him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the Court may appoint another in the place of the guardian who resigned or was removed.

SEC. 33. Section one thousand eight hundred and two of said Code is amended to read as follows:

Guardian-
ship, how
terminated.

1802. The marriage of a minor ward terminates the guardianship of the person of such ward, but not the estate; and the guardian of an insane or other person may be discharged by the Court, when it appears on the application of the ward or otherwise, that the guardianship is no longer necessary.

SEC. 34. Section one thousand eight hundred and three of said Code is amended to read as follows:

New bond,
when
required.

1803. The Court may require a new bond to be given by a guardian whenever such Court deems it necessary, and may discharge the existing sureties from further liability, after due notice given as such Court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

SEC. 35. Section one thousand eight hundred and four of said Code is amended to read as follows:

Guardian's
bond to be
filed.

1804. Every bond given by a guardian must be filed and preserved in the office of the Clerk of the Superior Court of the county, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

SEC. 36. Section one thousand eight hundred and eight of said Code is amended to read as follows:

Order
appointing
guardian,
how entered.

1808. Any order appointing a guardian, must be entered as and become a decree of the Court. The provisions of this title relative to the estates of decedents, so far as they relate to the practice in the Superior Court, apply to proceedings under this chapter.

SEC. 37. This Act shall take effect immediately.

CHAPTER LXXV.

An Act to amend section one thousand of the Code of Civil Procedure, relating to inspection of writings.

[Approved April 15th, 1886.]

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

SECTION 1. Section one thousand of the Code of Civil Procedure is amended to read as follows:

A party may
demand
inspection
and copy of
a book,
paper, etc.

1000. Any Court in which an action is pending, or a Judge thereof 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 entries of accounts in any book, or of any document or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the Court may exclude the entries of accounts of the book, or the document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the Court may also punish the party refusing for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXVI.

An Act to amend section one thousand and fifty-five of the Code of Civil Procedure, relating to actions against Sheriffs.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand and fifty-five of the Code of Civil Procedure is amended to read as follows:

1055. If an action be brought against a Sheriff for an act done by virtue of his office, and he give written notice thereof 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 may, on motion upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Action
against a
Sheriff for
official acts.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXVII.

An Act to amend section one thousand one hundred and eight of the Code of Civil Procedure, relating to writs of review, mandate, and prohibition.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand one hundred and eight of the Code of Civil Procedure is amended to read as follows:
10 CIVIL PRO.

Writs of
review,
mandate, and
prohibition
may issue
and be heard
at any time.

1108. Writs of review, mandate, and prohibition issued by the Supreme Court, or by a Superior Court, may, in the discretion of the Court issuing the writ, be made returnable, and a hearing thereon be had at any time.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXXII.

An Act to amend section one thousand two hundred and eighty-three of the Code of Civil Procedure, relating to arbitrations.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand two hundred and eighty-three of the Code of Civil Procedure is amended to read as follows:

Submission
may be
entered as
an order of
Court.

1283. It may be stipulated in the submission that it be entered as an order of the Superior Court, for which purpose it must be filed with the Clerk of the county where the parties, or one of them, reside. The Clerk must 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 must be made. When so entered the submission cannot 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 is not made an order of the Court, it may be revoked at any time before the award is made.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXXIII.

An Act to amend Sections 1116, 1118, 1119, 1120, 1125, 1126, and 1127, and to repeal Section 1124 of the Code of Civil Procedure, relating to contesting certain elections.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand one hundred and sixteen of the Code of Civil Procedure is amended to read as follows:

Statement
of cause of
contest
in illegal
voting.

1116. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one

or more specified voting precincts illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

SEC. 2. Section one thousand one hundred and eighteen of said Code is amended to read as follows:

1118. Upon the statement being filed, the County Clerk must inform the Superior Court of the county thereof, which shall thereupon order a special session of such Court to be held at the Court-room, on some day to be named by it, not less than ten nor more than twenty days from the date of such order, to hear and determine such contested election.

Superior
Judge to
hold special
session for
trial of
contest.

SEC. 3. Section one thousand one hundred and nineteen of said Code is amended to read as follows:

1119. The Clerk shall thereupon issue a citation for the person, whose right to the office is contested, to appear at the time and place specified in the order, which citation must be delivered to the Sheriff, and served either upon the party in person, or, if he cannot be found, by leaving a copy thereof at the house where he last resided, at least five days before the time so specified.

Citation to
issue.

SEC. 4. Section one thousand one hundred and twenty of said Code is amended to read as follows:

1120. The Clerk must issue subpoenas for witnesses at the request of either party, which must be served as other subpoenas; and the Superior Court shall have full power to issue attachments to compel the attendance of witnesses who have been subpoenaed to attend.

Witnesses,
attendance
of, how
enforced.

SEC. 5. Section one thousand one hundred and twenty-five of said Code is amended to read as follows:

1125. If the proceedings are dismissed for insufficiency, or want of prosecution, or the election is by the Court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested in favor of the party contesting the same. Primarily each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner as similar costs are collected in other cases.

Costs.

SEC. 6. Section one thousand one hundred and twenty-six of said Code is amended to read as follows:

1126. Either party, aggrieved by the judgment of the Court, may appeal therefrom to the Supreme Court, as in other cases of appeal thereto from the Superior Court.

Appeal.

SEC. 7. Section one thousand one hundred and twenty-seven of said Code is amended to read as follows:

When
election
void and
office vacant.

1127. Whenever an election is annulled, or set aside by the judgment of the Superior Court, and no appeal has been taken within ten days thereafter, the commission, if any has issued, is void, and the office vacant.

SEC. 8. Section one thousand one hundred and twenty-four of said Code is hereby repealed.

SEC. 9. This Act shall take effect immediately.

CHAPTER LXXXIV.

An Act to amend section one thousand and fifty-eight of the Code of Civil Procedure, relating to civil actions wherein the State, or an officer thereof, or a county, city and county, city, or town, is a party.

[Approved April 15th, 1880.]

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

SECTION 1. Section one thousand and fifty-eight of the Code of Civil Procedure is amended to read as follows:

People of
State not
required to
give bonds
when State
is a party.

1058. In any civil action or proceeding wherein the State, or the people of the State, is a party plaintiff, or any State officer, in his official capacity or on behalf of the State, or any county, city and county, city, or town, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the State, or the people thereof, or any officer thereof, or of any county, city and county, city, or town; but on complying with the other provisions of this Code the State, or the people thereof, or any State officer acting in his official capacity, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this Code.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXXXV.

An Act to amend Sections 1295, 1298, 1303, 1305, 1313, 1317, 1322, 1338, 1340, 1345, 1360, 1361, 1362, 1372, 1373, 1383, 1388, 1389, 1391, 1393, 1394, 1397, 1398, 1402, 1403, 1406, 1411, 1412, 1413, 1414, 1415, 1426, 1427, 1430, 1431, 1432, 1433, 1436, 1443, 1444, 1452, 1453, 1459, 1460, 1461, 1464, 1465, 1466, 1468, 1469, 1470, 1474, 1475, 1485, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1503, 1504, 1507, 1510, 1512, 1517, 1519, 1523, 1526, 1529, 1530, 1531, 1532, 1536, 1537, 1540, 1541, 1549, 1552, 1555, 1561, 1564, 1566, 1569, 1570, 1575, 1585, 1588, 1590, 1591, 1597, 1598, 1602, 1603, 1604, 1616, 1618, 1622, 1623, 1624, 1625, 1629, 1632, 1633, 1640, 1649, 1661, 1667, 1669, 1675, 1676, 1677, 1680, 1684, 1685, 1686, 1692, 1693, 1694, 1696, 1704, 1705, 1706, 1716, 1718, 1720, 1721, 1722, 1726, 1729, 1730, 1733, 1734, 1735, 1736, 1737, and 1740 of the Code of Civil Procedure, relating to the settlement of estates of deceased persons.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand two hundred and ninety-five of the Code of Civil Procedure is amended to read as follows:

1295. When the estate of the decedent 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, or being such non-resident, and dying within the State, and not leaving estate in the county where he died, the Superior Court of that county in which application is first made, for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate. When jurisdiction of Superior Court over estates decided by first application.

SEC. 2. Section one thousand two hundred and ninety-eight of said Code is amended to read as follows:

1298. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the Superior Court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby. Custodian of will to deliver same to whom.

SEC. 3. Section one thousand three hundred and three of said Code is amended to read as follows:

1303. When the petition is filed, and the will produced, the Superior Court, or a Judge thereof, must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the Clerk of the Court by publishing the same in a newspaper of the county; if there be none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a Notice of petition for probate, how given.

weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

SEC. 4. Section one thousand three hundred and five of said Code is amended to read as follows:

Petition may be presented to Court, and what Judge may do.

1305. A Judge of the Superior Court may at any time receive petitions for the probate of wills, and make and issue all necessary orders and writs, to enforce the production of wills, and the attendance of witnesses, and may appoint special sessions of his Court for hearing petitions, trial of issues, and admitting wills to probate.

SEC. 5. Section one thousand three hundred and thirteen of said Code is amended to read as follows:

How jury obtained and trial had.

1313. When a jury is demanded, the Superior Court must impanel a jury to try the case, in the manner provided for impaneling trial juries in Courts of record, and the trial must be conducted in accordance with the provisions of part two, title eight, chapter four, of this Code. A trial by the Court must be conducted as provided in part two, title eight, chapter five, of this Code.

SEC. 6. Section one thousand three hundred and seventeen of said Code is amended to read as follows:

If proved, certificate to be attached.

1317. If the Court is satisfied, upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the Judge and attested by the seal of the Court, must be attached to the will.

SEC. 7. Section one thousand three hundred and twenty-two of said Code is amended to read as follows:

Wills proved in other States to be recorded, when and where.

1322. All wills duly proved and allowed in any other of the United States, or in any foreign country or State, may be allowed and recorded in the Superior Court of any county in which the testator shall have left any estate.

SEC. 8. Section one thousand three hundred and thirty-eight of said Code is amended to read as follows:

Proof of lost or destroyed will to be taken.

1338. Whenever any will is lost or destroyed, the Superior Court must take proof of the execution and validity thereof and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

SEC. 9. Section one thousand three hundred and forty of said Code is amended to read as follows:

Provisions of lost will to be recorded, certified, and letters thereon granted.

1340. When a lost will is established, the provisions thereof must be distinctly stated and certified by the Judge, under his hand and the seal of the Court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration, with the will annexed, must be issued thereon in the same man-

ner as upon wills produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence as provided in section one thousand three hundred and sixteen.

SEC. 10. Section one thousand three hundred and forty-five of said Code is amended to read as follows:

1345. The Superior Court must not receive or entertain a petition for the probate of a nuncupative will until the lapse of ten days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife (if any), and all other persons resident in the State or county interested in the estate are notified as hereinbefore provided.

Additional requirements in probate of nuncupative wills.

SEC. 11. Section one thousand three hundred and sixty of said Code is amended to read as follows:

1360. Letters testamentary must be substantially in the following form: State of California, County, or City and County of ——. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Superior Court of the County, or City and County of —, C. D., who is named therein as such, is hereby appointed executor. Witness, G. H., Clerk of the Superior Court of the County, or City and 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.

SEC. 12. Section one thousand three hundred and sixty-one of said Code is amended to read as follows:

1361. Letters of administration, with the will annexed, must be substantially in the following form: State of California, County [or City and County] of ——. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Superior Court of the County, or City and 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 Superior Court of the County, or City and County of —, with the seal of the Court affixed, the — day of —, A. D. 18—. (Seal.) By order of the Court. G. H., Clerk.

Form of letters of administration with the will annexed.

SEC. 13. Section one thousand three hundred and sixty-two of said Code is amended to read as follows:

1362. Letters of administration must be signed by the Clerk, under the seal of the Court, and substantially in the following form: State of California, County, or City and County of —. C. D. is hereby appointed administrator of the estate of A. B., deceased. (Seal.) Witness, G. H., Clerk of the Superior Court of the County, or City and County of —, with the seal thereof affixed, the — day of —, A. D. 18—. By order of the Court. G. H., Clerk.

Form of letters of administration.

SEC. 14. Section one thousand three hundred and seventy-two of said Code is amended to read as follows:

1372. Letters of administration may be granted by the Court at any time appointed for the hearing of the applica-

Letters of administration, when granted.

tion, or at any time to which the hearing is continued or postponed.

SEC. 15. Section one thousand three hundred and seventy-three of said Code is amended to read as follows:

Notice of
application.

1373. When a petition praying for letters of administration is filed, the Clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the Court is held, containing the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing.

SEC. 16. Section one thousand three hundred and eighty-three of said Code is amended to read as follows:

Revocation
of letters of
administra-
tion.

1383. When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them who is competent, or any competent person at the written request of any one of them, may obtain the revocation of the letters, and be entitled to the administration, by presenting to the Court a petition praying the revocation, and that letters of administration may be issued to him.

SEC. 17. Section one thousand three hundred and eighty-eight of said Code is amended to read as follows:

Bond of
adminis-
trator, form
and
requirement
of.

1388. Every person to whom letters testamentary or of administration are directed to issue, must, before receiving them, execute a bond to the State of California, with two or more sufficient sureties, to be approved by the Superior Court, or a Judge thereof. In form, the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits, and issues of real property belonging to the estate, which values must be ascertained by the Superior Court, or a Judge thereof, by examining on oath the party applying, and any other persons.

SEC. 18. Section one thousand three hundred and eighty-nine of said Code is amended to read as follows:

Additional
bonds, when
required.

1389. The Superior Court, or a Judge thereof, must require an additional bond whenever the sale of any real estate belonging to an estate is ordered; but no such additional bond must be required when it satisfactorily appears to the Court that the penalty of the bond given before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in or that will come into the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

SEC. 19. Section one thousand three hundred and ninety-one of said Code is amended to read as follows:

Separate
bonds when
more than
one admin-
istrator.

1391. When two or more persons are appointed executors or administrators, the Superior Court, or a Judge thereof, must require and take a separate bond from each of them.

SEC. 20. Section one thousand three hundred and ninety-three of said Code is amended to read as follows:

1393. In all cases where bonds or undertakings are required to be given, under this title, the sureties must justify thereon in the same manner and in like amounts as required by section ten hundred and fifty-seven of this Code, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds and undertakings must be approved by a Judge of the Superior Court before being filed or recorded.

Bonds and justification of sureties on.

Must be approved.

SEC. 21. Section one thousand three hundred and ninety-four of said Code is amended to read as follows:

1394. Before the Judge approves any bond required under this title, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the Judge must, at the same time, cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

Citation and requirements of Judge on deficient bonds.

SEC. 22. Section one thousand three hundred and ninety-seven of said Code is amended to read as follows:

1397. Any person interested in an estate may, by verified petition, represent to the Superior Court, or a Judge thereof, that the sureties of the executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the State, or that from any other cause the bond is insufficient, and ask that further security be required.

Petition showing failing sureties and asking for further bonds.

SEC. 23. Section one thousand three hundred and ninety-eight of said Code is amended to read as follows:

1398. If the Court, or a Judge thereof, is satisfied that the matter requires investigation, a citation must 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 must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the Court, or a Judge thereof, may order.

Citation to executor, etc., to show cause against such application.

SEC. 24. Section one thousand four hundred and two of said Code is amended to read as follows:

1402. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the Judge, without any application, must cause him to be cited to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

Further security ordered without application of party interested.

SEC. 25. Section one thousand four hundred and three of said Code is amended to read as follows:

Release of
sureties.

1403. When a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the Superior Court, or a Judge thereof, for relief. The Court or Judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place, to be therein specified, and to give other security. If he has absconded, left, or removed from the State, or if he cannot be found, after due diligence and inquiry, service may be made as provided in section one thousand three hundred and ninety-eight.

SEC. 26. Section one thousand four hundred and six of said Code is amended to read as follows:

Applications
to be
determined
any time.

1406. The applications authorized by the nine preceding sections of this chapter may be heard and determined at any time. All orders made therein must be entered upon the minutes of the Court.

SEC. 27. Section one thousand four hundred and eleven of said Code is amended to read as follows:

Special
adminis-
trators, when
appointed.

1411. When there is delay in granting letters testamentary or of administration from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an executor or administrator dies, or is suspended, or removed, the Superior Court, or a Judge thereof, must appoint a special administrator to collect and take charge of the estate of the decedent in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or he may direct the Public Administrator, of his county to take charge of the estate.

SEC. 28. Section one thousand four hundred and twelve of said Code is amended to read as follows:

Special
letters may
issue at any
time.

1412. The appointment may be made at any time, and without notice, and must be made by entry upon the minutes of the Court, specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the Clerk must issue letters of administration to such person in conformity with the order.

SEC. 29. Section one thousand four hundred and thirteen of said Code is amended to read as follows:

Preference
given to
persons
entitled
to letters.

1413. In making the appointment of a special administrator, the Court or Judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment.

SEC. 30. Section one thousand four hundred and fourteen of said Code is amended to read as follows:

Special
adminis-
trator to give
bond and
take oath.

1414. Before any letters issue to any special administrator, he must give bond in such sum as the Court or Judge may direct, with sureties to the satisfaction of the Court or Judge conditioned for the faithful performance of his duties; and

he must take the usual oath, and have the same indorsed on his letters.

SEC. 31. Section one thousand four hundred and fifteen of said Code is amended to read as follows:

1415. The special administrator must collect and preserve for the executor or administrator, all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues, and profits, claims, and demands of the estate; must take the charge and management of, enter upon, and preserve from damage, waste, and injury, the real estate, and for any such and all necessary purposes may commence and maintain or defend suits and other legal proceedings as an administrator; he may sell such perishable property as the Court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent.

Duties of special administrator.

SEC. 32. Section one thousand four hundred and twenty-six of said Code is amended to read as follows:

1426. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the Court must issue letters of administration, with the will annexed or otherwise, to the widow or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Who to act when all acting are incompetent.

SEC. 33. Section one thousand four hundred and twenty-seven of said Code is amended to read as follows:

1427. Any executor or administrator may, at any time, by writing, filed in the Superior Court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the Court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivery up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the Court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

Executors or administrators may resign, when.

SEC. 34. Section one thousand four hundred and thirty of said Code is amended to read as follows:

1430. No will shall be admitted to probate, or letters testamentary or of administration granted, before any Judge who is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or is in any other manner interested or disqualified from acting.

When Judge not to act.

1465. Upon the return of the inventory, or at any subsequent time during the administration, the Court may, on its

All property exempt from execution to

SEC. 35. Section one thousand four hundred and thirty-one of said Code is amended to read as follows:

Judge being
disqualified,
proceedings
to be
transferred,
and where.

1431. When a petition is filed in the Superior Court praying for admission to probate of a will, or for granting letters testamentary or of administration, or when proceedings are pending in the Superior Court for the settlement of an estate, and there is no Judge of said Court qualified to act, an order must be made transferring the proceeding to the Superior Court of an adjoining county; and the Clerk of the Court ordering the transfer must transmit to the Clerk of the Court to which the proceeding is ordered to be transferred, a certified copy of the order, and all the papers on file in his office in the proceeding; and thereafter the Court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

SEC. 36. Section one thousand four hundred and thirty-two of said Code is amended to read as follows:

Transfer not
to change
right to
administer.

1432. The transfer of a proceeding from one Court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinafter provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as Judge of the Court wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the Court from which it was originally transferred, by filing a petition setting forth these facts, and moving the Court therefor.

SEC. 37. Section one thousand four hundred and thirty-three of said Code is amended to read as follows:

When
proceeding
to be
returned to
original
Court.

1433. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the Court that the convenience of parties interested would be promoted by such change, the Judge must make an order transferring the proceeding back to the Court where it was originally commenced; and the Clerk of the Court ordering the transfer must transmit to the Clerk of the Court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding; and the Court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

SEC. 38. Section one thousand four hundred and thirty-six of said Code is amended to read as follows:

Suspension
of powers of
executor.

1436. Whenever a Judge of a Superior Court has reason to believe, from his own knowledge, or from credible information, that any executor or administrator has wasted, embez-

zled 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 is incompetent to act, or has permanently removed from the State, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the Court, suspend the powers of such executor or administrator until the matter is investigated.

SEC. 39. Section one thousand four hundred and forty-three of said Code is amended to read as follows:

1443. Every executor or administrator must make and return to the Court, within three months after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Inventory to be returned, including the homestead.

SEC. 40. Section one thousand four hundred and forty-four of said Code is amended to read as follows:

1444. To make the appraisement, the Court, or a Judge thereof, must appoint three disinterested persons (any two of whom may act), who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the Court or Judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the estate is in any other county than that in which letters issued, appraisers thereof may be appointed, either by the Court or Judge having jurisdiction of the estate, or by the Court or Judge of such other county, on request of the Court or Judge having jurisdiction.

Appraisement and pay of appraisers.

SEC. 41. Section one thousand four hundred and fifty-two of said Code is amended to read as follows:

1452. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and forfeits of the real estate until the estate is settled, or until delivered over by order of the Court to the heirs or devisees; and must keep in good tenable repair all houses, buildings, and fixtures thereon which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting title to the same, against any one except the executor or administrator; but this section shall not be so construed as requiring them so to do.

Administrator and executor to possess real and personal estate.

SEC. 42. Section one thousand four hundred and fifty-three of said Code is amended to read as follows:

1453. Unless it satisfactorily appear to the Court that the rents, issues, and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, the Court, at the end of the time limited for the presentation of claims against the estate, must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

Executor or administrator to deliver real estate to heirs or devisees.

SEC. 43. Section one thousand four hundred and fifty-nine of said Code is amended to read as follows:

Citation to
person
suspected
to have
embezzled
estate, etc.

1459. If any executor, administrator, or other person interested in the estate of a decedent, complains to the Superior Court, or a Judge thereof, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any lost will, the said Court or Judge may cite such person to appear before such Court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where the decedent dies, or where letters have been granted, he may be cited and examined either before the Superior Court of the county where he is found or before the Superior Court of the county where the decedent dies, or where letters have been granted. But if, in the latter case, he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

SEC. 44. Section one thousand four hundred and sixty of said Code is amended to read as follows:

Refusal
to obey
citation,
penalty for,
and for
embezzle-
ment.

May be
compelled to
disclose by
imprison-
ment.

1460. If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the Court may, by warrant for that purpose, commit him to the County Jail, there to remain in close custody until he submits to the order of the Court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidences of or tending to disclose the right, title, interest, or claim of the decedent, to any real or personal estate, claim, or demand, or any lost will of the decedent, the Court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the County Jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the Court. The order for such disclosure made upon such examination shall be prima facie evidence of the right of the executor or administrator to such property in any action brought for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the Court or jury, or for return of the property and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Liable for
double
damages.

SEC. 45. Section one thousand four hundred and sixty-one of said Code is amended to read as follows:

1461. The Superior Court, or a Judge thereof, upon the complaint, on oath, of any executor or administrator, may cite any person who has been intrusted with any part of the estate of the decedent to appear before such Court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the Court may proceed against him as provided in the preceding section.

Persons intrusted with estate of decedent may be cited to account.

SEC. 46. Section one thousand four hundred and sixty-four of said Code is amended to read as follows:

1464. When a person dies leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the Superior Court, or a Judge thereof.

Widow and minor children may remain in decedent's house, etc.

SEC. 47. Section one thousand four hundred and sixty-five of said Code is amended to read as follows:

1465. Upon the return of the inventory, or at any subsequent time during the administration, the Court may, on its own motion, or on petition therefor, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all the property exempt from execution, including the homestead, selected, designated, and recorded; *provided*, such homestead was selected from the common property, or from the separate property, of the persons selecting or joining in the selection of the same. If none has been selected, designated, and recorded, or, in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the Court must select, designate, and set apart, and cause to be recorded, a homestead for the use of the surviving husband or wife and the minor children; or if there be no surviving husband or wife, then for the use of the minor children, in the manner provided in article two of this chapter, out of the common property, or if there be no common property, then out of the real estate belonging to the decedent.

All property exempt from execution to be set apart for use of family.

SEC. 48. Section one thousand four hundred and sixty-six of said Code is amended to read as follows:

1466. If the amount set apart be insufficient for the support of the widow and children, or either, the Court or a Judge thereof must 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, must not be longer than one year after granting letters testamentary or of administration.

May make extra allowance.

SEC. 49. Section one thousand four hundred and sixty-eight of said Code is amended to read as follows:

1468. When property is set apart for the use of the family by the Superior Court, such property shall be for the benefit

Property set apart for whose benefit.

of the several parties, as provided in section fourteen hundred and sixty-five of this Code.

SEC. 50. Section one thousand four hundred and sixty-nine of said Code is amended to read as follows:

Administra-
tion when
estate does
not exceed
fifteen
hundred
dollars

1469. If, upon the return of the inventory of the estate of a deceased person, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars, and if there be a widow or minor children of the deceased, the Court or a Judge thereof shall, by order, require all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be assigned for the use and support of the family of the deceased. Notice thereof shall be given and proceedings had in the same manner as provided in sections one thousand six hundred and thirty-three, one thousand six hundred and thirty-five, and one thousand six hundred and thirty-eight of this Code. If, upon the hearing, the Court finds that the value of the estate does not exceed the sum of fifteen hundred dollars, it shall, by a decree for that purpose, assign for the use and support of the widow and minor children, if there be a widow and minor children, and if no widow, then for the children, if there be any, and if no children, then for the widow, the whole of the estate, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration, and there must be no further proceedings in the administration, unless further estate be discovered.

SEC. 51. Section one thousand four hundred and seventy of said Code is amended to read as follows:

When all
property,
except the
homestead,
go to
children.

1470. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this article, the whole property so set apart, other than the homestead, must go to the minor children.

SEC. 52. Section one thousand four hundred and seventy-four of said Code is amended to read as follows:

Rights of
survivor to
homestead.

1474. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either the husband or the wife, without his or her consent, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the Superior Court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the Civil Code.

SEC. 53. Section one thousand four hundred and seventy-five of said Code is amended to read as follows:

Selected and
recorded
homestead
set off to
person
entitled.

1475. If the homestead selected and recorded prior to the death of the decedent be returned in the inventory appraised at not exceeding five thousand dollars in value, or was previously appraised as provided in the Civil Code, and such

appraised value did not exceed that sum, the Superior Court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or incumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims against the estate, the claims so secured must be paid out of such funds. If the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed, and the liens or incumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

Subsisting
liens, how
paid.

SEC. 54. Section one thousand four hundred and eighty-five of said Code is amended to read as follows:

1485. The costs of all proceedings in the Superior Court provided for in this chapter, must be paid by the estate as expenses of administration. Persons succeeding by purchase or otherwise to the interests, rights, and title of successors to homesteads, or to the right to have homesteads set apart to them, as in this chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Costs, to
whom
chargeable.

SEC. 55. Section one thousand four hundred and ninety-three of said Code is amended to read as follows:

1493. All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; *provided, however*, that when it is made to appear by the affidavit of the claimant, to the satisfaction of the Court, or a Judge thereof, that the claimant had no notice as provided in this chapter, by reason of being out of the State, it may be presented at any time before a decree of distribution is entered.

Time within
which claim
against an
estate must
be presented.

SEC. 56. Section one thousand four hundred and ninety-four of said Code is amended to read as follows:

1494. Every claim which is due, when presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the Superior Court.

Claims to be
sworn to,
and when
allowed to
bear same
interest as
judgments.

SEC. 57. Section one thousand four hundred and ninety-five of said Code is amended to read as follows:

Superior
Judge may
present
claim, and
action
thereon.

1495. Any Judge of a Superior Court may present a claim against the estate of a decedent for allowance to the executor or administrator thereof, and if the executor or administrator allows the claim, he must in writing designate some other Judge of the Superior Court of the same or an adjoining county, who, upon the presentation of such claim to him, is vested with power to allow or reject it, and the Judge presenting such claim, in case of its rejection by the executor or administrator, or by such Judge as shall have acted upon it, has the same right to sue in a proper Court for its recovery as other persons have when their claims against an estate are rejected.

SEC. 58. Section one thousand four hundred and ninety-six of said Code is amended to read as follows:

Allowance
and rejection
of claims.

1496. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to a Judge of the Superior Court for his approval, who must in the same manner indorse upon it his allowance or rejection. If the executor or administrator, or the Judge, refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and if the presentation be made by a Notary, the certificate of such Notary, under seal, shall be prima facie evidence of such presentation and the date thereof. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the Judge, after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

SEC. 59. Section one thousand four hundred and ninety-seven of said Code is amended to read as follows:

Approved
claims or
copies to be
filed.

1497. Every claim allowed by the executor or administrator, and approved by a Judge of the Superior Court, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited, if demanded, unless it be lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim, or any part thereof, be secured by a mortgage or other lien which has been recorded in the office of the Recorder of the county in which the land affected by it lies, it shall be sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in Court, he

Claims
secured by
liens may
be described.

Lost claims

may withdraw the same when a copy thereof has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the Clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

SEC. 60. Section one thousand four hundred and ninety-eight of said Code is amended to read as follows:

1498. When a claim is rejected either by the executor or administrator, or a Judge of the Superior Court, the holder must 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 two months after it becomes due, otherwise the claim shall be forever barred.

Rejected claims to be sued for within three months.

SEC. 61. Section one thousand four hundred and ninety-nine of said Code is amended to read as follows:

1499. No claim must be allowed by the executor or administrator, or by a Judge of the Superior Court, which is barred by the statute of limitations. When a claim is presented to a Judge for his allowance, he may, in his discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim.

Claims barred by statute of limitations. When and who Judge may examine.

SEC. 62. Section one thousand five hundred and three of said Code is amended to read as follows:

1503. Whenever any claim is presented to an executor or administrator, or to a Judge, and he is willing to allow the same in part, he must state in his indorsement 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 therefor brought against the executor or administrator, unless he recover a greater amount than that offered to be allowed.

Allowance of claim in part.

SEC. 63. Section one thousand five hundred and four of said Code is amended to read as follows:

1504. A judgment rendered against an executor or administrator, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and a Judge; and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment must be filed among the papers of the estate in Court. No execution must 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.

SEC. 64. Section one thousand five hundred and seven of said Code is amended to read as follows:

1507. If the executor or administrator doubts 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 Superior Court, or a Judge thereof. Upon filing the agreement and approval of such Court or Judge, in the office of the Clerk of the Court for the county in which the letters testamentary or of administration were granted, the Clerk

May refer doubtful claims.

must enter a minute of the order referring the matter in controversy to the person so selected, or, if the parties consent, a reference may be had in the Court; and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and Judge.

SEC. 65. Section one thousand five hundred and ten of said Code is amended to read as follows:

Claims of
executor,
etc., against
estate.

1510. If the executor or administrator is a creditor of the decedent, his claim duly authenticated by affidavit must be presented for allowance or rejection to a Judge of the Superior Court, and its allowance by the Judge is sufficient evidence of its correctness, and must be paid as other claims in due course of administration. If, however, the Judge reject the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the Judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant recover no judgment, he must pay all costs, including defendant's reasonable attorneys fees, to be fixed by the Court.

SEC. 66. Section one thousand five hundred and twelve of said Code is amended to read as follows:

Executor
to return
statement
of claims.

1512. At the same time at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the Court, or a Judge thereof, and from time to time thereafter he must present a statement of claims subsequently presented to him, if so required by the Court, or a Judge thereof. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by him.

SEC. 67. Section one thousand five hundred and seventeen of said Code is amended to read as follows:

No sales
valid except
by order of
Court.

1517. No sale of any property of an estate of a decedent is valid unless made under order of the Superior Court, except as otherwise provided in this chapter. All sales must be under oath reported to and confirmed by the Court before the title to the property sold passes.

SEC. 68. Section one thousand five hundred and nineteen of said Code is amended to read as follows:

But one
petition,
order, and
sale must
be had
when it is
possible to
do so.

1519. When it appears to the Court that the estate is insolvent, or that it will require a sale of all the property of the estate, of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in section fifteen hundred and twenty-two. The Court, when a petition for the sale of any property for any of the purposes herein named is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate. In such case the petition must set forth substantially the facts required by section fifteen hundred and thirty-seven.

SEC. 69. Section one thousand five hundred and twenty-three of said Code is amended to read as follows:

1523. If claims against the estate have been allowed, and a sale of property is necessary for their payment, or for the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appear for the best interests of the estate, he may, at any time after filing the inventory in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Order to sell
personal
property.

SEC. 70. Section one thousand five hundred and twenty-six of said Code is amended to read as follows:

1526. The sale of personal property must be made at public auction for such money or currency as the Court may direct, and after public notice given for at least ten days by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless for good reason shown the Court, or a Judge thereof, orders a private sale, or a shorter notice. Public sales of such property must be made at the Court-house door, or at the residence of the decedent, or at some other public place; but no sale shall be made of any personal property which is not present at the time of sale, unless the Court otherwise order.

Sale of
personal
property.

SEC. 71. Section one thousand five hundred and twenty-nine of said Code is amended to read as follows:

1529. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines, or interests in mines, such mines or interests may be sold under the order of the Court having jurisdiction of the estate, as hereinafter provided.

Mines may
be sold, how.

SEC. 72. Section one thousand five hundred and thirty of said Code is amended to read as follows:

1530. The executor or administrator, or any heir at law, or creditor of the estate, or any partner or member of any mining company, in which interests or shares are held or owned by the estate, may file in the Court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Petition for
sale, who
may file and
what to
contain.

SEC. 73. Section one thousand five hundred and thirty-one of said Code is amended to read as follows:

Order to
show cause,
how made
and on what
notice

1531. Upon the presentation of such petition, the Court, or a Judge thereof, must make an order directing all persons interested to appear before such Court, at a time and place specified, not less than four or 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 such mine, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as such Court or Judge shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 74. Section one thousand five hundred and thirty-two of said Code is amended to read as follows:

Order of
sale, when
and how
made.

1532. If, upon hearing the petition, it appears to the satisfaction of the Court that it is to the interest of the estate that such mining property or interests of the estate should be sold, or that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, or tenants in common, such Court must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

SEC. 75. Section one thousand five hundred and thirty-six of said Code is amended to read as follows:

To sell real
estate, when.

1536. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate for that purpose, upon the order of the Court; and an application for the sale of real property may also embrace the sale of personal property.

SEC. 76. Section one thousand five hundred and thirty-seven of said Code is amended to read as follows:

Verified
petition for
sale, what to
contain, and
to what it
may refer.

1537. To obtain such order for the sale of real property, he must present a verified petition to the Superior Court, or a Judge thereof, 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 decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the peti-

tion; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

SEC. 77. Section one thousand five hundred and forty of said Code is amended to read as follows:

1540. The Court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Hearing
after proof
of service.

SEC. 78. Section one thousand five hundred and forty-one of said Code is amended to read as follows:

1541. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the Court or Judge, in the same manner and with like effect as in other cases.

Adminis-
trator,
executor,
and
witnesses
may be
examined.

SEC. 79. Section one thousand five hundred and forty-nine of said Code is amended to read as follows:

1549. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, if none, then in such paper as the Court or a Judge thereof may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice; and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the Clerk of the Court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the Court or Judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen but not less than eight days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order.

Private sale
of real
estate, how
made, and
notice.

Bids, when
and how
received.

SEC. 80. Section one thousand five hundred and fifty-two of said Code is amended to read as follows:

Hearing
and setting
aside sale,
and when
resale may
be ordered.

1552. The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the Court, which must be filed in the office of the Clerk, at any time subsequent to the sale. A hearing upon the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the Court or Judge must fix the day for the hearing, of which notice of at least ten days must be given by the Clerk, by notices posted in three public places in the county, or by publication in a newspaper, or both, as the Court or Judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the Court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, the Court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place; if an offer of ten per cent. more in amount than that named in the return be made to the Court in writing, by a responsible person, it is in the discretion of the Court to accept such offer and confirm the sale to such person, or to order a new sale.

SEC. 81. Section one thousand five hundred and fifty-five of said Code is amended to read as follows:

Convey-
ances.

1555. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the Court authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the County Recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent, in the premises, at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyances.

SEC. 82. Section one thousand five hundred and sixty-one of said Code is amended to read as follows:

Sales
without
order.

1561. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without order of the Court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale be confirmed by the Court

SEC. 83. Section one thousand five hundred and sixty-four of said Code is amended to read as follows:

1564. When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the Court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from their distributive shares, respectively, for the purpose of paying such contribution.

Contribution
among
legatees.

SEC. 84. Section one thousand five hundred and sixty-six of said Code is amended to read as follows:

1566. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such, the sale must not be confirmed by the Court until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent 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 Court or Judge shall approve.

Conditions
of sale.

SEC. 85. Section one thousand five hundred and sixty-nine of said Code is amended to read as follows:

1569. When any sale is made by an executor or administrator, pursuant to provisions of this chapter, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay; and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statute of limitations, pending the proceedings for the settlement of the estate. The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the Court, to be received by the Clerk thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the Clerk of the Court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless for good cause shown, after notice to the executor or administrator, the Court otherwise directs.

Sales by
executors or
adminis-
trators of
lands under
mortgages
or liens.

SEC. 86. Section one thousand five hundred and seventy of said Code is amended to read as follows:

1570. At any sale, under order of the Court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due

The holder
of the
mortgage or
lien may
purchase
the lands.

him from the proceeds of the sale is a payment pro tanto. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the Court, or the Clerk thereof, an amount sufficient to pay such expenses.

SEC. 87. Section one thousand five hundred and seventy-five of said Code is amended to read as follows:

Account of
sale to be
returned.

1575. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the Court, within thirty days 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.

SEC. 88. Section one thousand five hundred and eighty-five of said Code is amended to read as follows:

Surviving
partner to
settle up
business.

Interest
therein to be
appraised.

1585. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory, and be appraised as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him, in right of the decedent. Upon the application of the executor or administrator, the Court, or a Judge thereof, may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Account to
be rendered.

SEC. 89. Section one thousand five hundred and eighty-eight of said Code is amended to read as follows:

May
compound.

1588. Whenever a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approbation of the Court, or a Judge thereof, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just, and for the best interest of the estate.

SEC. 90. Section one thousand five hundred and ninety of said Code is amended to read as follows:

When
executor to
sue, as
provided in
preceding
section.

1590. No executor or administrator is bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor, as the Court, or a Judge thereof, shall direct.

SEC. 91. Section one thousand five hundred and ninety-one of said Code is amended to read as follows:

Disposition
of estate
recovered.

1591. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from

the Court; and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator.

SEC. 92. Section one thousand five hundred and ninety-seven of said Code is amended to read as follows:

1597. When a person who is bound by contract in writing to convey any real estate dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the Court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Executor to complete contracts for sale of real estate.

SEC. 93. Section one thousand five hundred and ninety-eight of said Code is amended to read as follows:

1598. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the Court, or Judge thereof, must appoint a time and place for hearing the petition, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this State as he may designate.

Petition for executor to make conveyance, and notice of hearing.

SEC. 94. Section one thousand six hundred and two of said Code is amended to read as follows:

1602. If, upon hearing, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the Court must dismiss the petition without prejudice to the right of the petitioner, who may, at any time within six months thereafter, proceed by action to enforce a specific performance thereof.

Rights of petitioner to enforce contract.

SEC. 95. Section one thousand six hundred and three of said Code is amended to read as follows:

1603. Every conveyance made in pursuance of a decree as provided in this chapter, shall pass the title to the estate contracted for, as fully as if the contracting party himself was still living and executed the conveyance.

Effect of conveyance.

SEC. 96. Section one thousand six hundred and four of said Code is amended to read as follows:

1604. A copy of the decree for a conveyance, as provided in this chapter, duly certified and recorded in the office of the Recorder of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Effect of recording a copy of the decree.

SEC. 97. Section one thousand six hundred and sixteen of said Code is amended to read as follows:

1616. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suits in Courts, and for his services such fees as provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless, by a written instrument, filed in the Court,

Compensation of the executor and administrator.

he renounces all claim for compensation provided by the will.

SEC. 98. Section one thousand six hundred and eighteen of said Code is amended to read as follows:

Executors'
and admin-
istrators'
commis-
sions.

1618. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commission 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 ten thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent.; and the same commission must be allowed administrators. In all cases, such further allowance may be made as the Court may deem just and reasonable, for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section; and Public Administrators shall receive the same compensation and allowances as are allowed in this title to other administrators.

SEC. 99. Section one thousand six hundred and twenty-two of said Code is amended to read as follows:

To render
an exhibit
of receipts
and disburse-
ments,
and claims
allowed.

1622. Six months after his appointment, and 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 must 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.

SEC. 100. Section one thousand six hundred and twenty-three of said Code is amended to read as follows:

Citation to
account.

1623. If the executor or administrator fails to render an exhibit for six months after his appointment, the Court, or a Judge thereof, must cause a citation to be issued requiring him to appear and render it.

SEC. 101. Section one thousand six hundred and twenty-four of said Code is amended to read as follows:

Petition for
citation to
render final
or other
account.

1624. Any persons interested in the estate may, at any time before the final settlement of accounts, present his petition to the Court, or a Judge thereof, 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.

SEC. 102. Section one thousand six hundred and twenty-five of said Code is amended to read as follows:

Citation to
account on
application.

1625. If the Court, or a Judge thereof, is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear, at some day to be named in the citation, and render an exhibit as prayed for.

SEC. 103. Section one thousand six hundred and twenty-nine of said Code is amended to read as follows:

1629. When the authority of an executor or administrator ceases, or is revoked for any reason, he may be cited to account before the Court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Executor to account after his authority revoked.

SEC. 104. Section one thousand six hundred and thirty-two of said Code is amended to read as follows:

1632. 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 uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed five hundred dollars against any one estate, and if, upon such settlement of accounts, it appear that debts against the deceased have been paid without the affidavit and allowance prescribed by statute or sections one thousand four hundred and ninety-four, one thousand four hundred and ninety-five, and one thousand four hundred and ninety-six of this Code, and it shall be proven by competent evidence to the satisfaction of the Court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, it shall be the duty of the said Court to allow the said sums so paid in the settlement of said accounts.

Vouchers for items, when excepted.

SEC. 105. Section one thousand six hundred and thirty-three of said Code is amended to read as follows:

1633. When any account is rendered for settlement, the Court, or a Judge thereof, must appoint a day for the settlement thereof; the Clerk must thereupon give notice thereof by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. The Court, or a Judge thereof, may order such further notice to be given as may be proper.

Day of settlement to be appointed, and must give notice thereof.

SEC. 106. Section one thousand six hundred and forty of said Code is amended to read as follows:

1640. Pending the settlement of any estate, on the petition of any party interested therein, and upon good cause shown therefor, the Court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or of this State. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the Court, or a Judge thereof.

Funds pending settlement.

SEC. 107. Section one thousand six hundred and forty-nine of said Code is amended to read as follows:

1649. When a decree is made by the Court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the Court, in favor of each creditor, and the same proceeding may be had under such execution as under

After decree of payment of debts, executor personally liable to creditors.

execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

SEC. 108. Section one thousand six hundred and sixty-one of said Code is amended to read as follows:

Decree
prayed for
to require
bond,
which
must be
given.

1661. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the Court must make an order in conformity with the prayer of the applicant, requiring:

May order
whole or
part of
share to be
delivered.

1. Each heir, legatee, or devisee obtaining such order, before receiving his share, or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the Court, or a Judge thereof, with sureties to be approved by the Judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Where
partition
necessary,
how made.

Costs.

2. 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, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings shall be paid by the applicant, or if there be more than one, shall be apportioned equally amongst them.

SEC. 109. Section one thousand six hundred and sixty-seven of said Code is amended to read as follows:

Distribution
when
decedent
was not a
resident of
the State.

1667. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this State, leaving a will which has been duly proved or allowed in the State of his residence, and an authenticated copy thereof has been admitted to probate in this State, and it is necessary, in order that the estate, or any part thereof, may be distributed according to the will, that the estate in this State should be delivered to the executor or administrator in the State, or place of his residence, the Court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the Court, is a full discharge of the executor or administrator with the will annexed, in this State, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the Court.

SEC. 110. Section one thousand six hundred and sixty-nine of said Code is amended to read as follows:

No distribu-
tion made
till all taxes
on personal
property
are paid.

1669. Before any decree of distribution of an estate is made, the Court must be satisfied, by the oath of the executor or administrator, or otherwise, that all State, county, and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

SEC. 111. Section one thousand six hundred and seventy-five of said Code is amended to read as follows:

1675. When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed Commissioners for that purpose by the Court, who must be duly sworn to the faithful discharge of their duties, a certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the Court deems it proper and just, it is sufficient to appoint one Commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

Estate in common.

Commissioners.

SEC. 112. Section one thousand six hundred and seventy-six of said Code is amended to read as follows:

1676. Such partition may be ordered and had in the Superior Court on the petition of any person interested. But before Commissioners are appointed, or partition ordered by the Court as directed in this chapter, notice thereof must be given to all persons interested who reside in this State, or to their guardians, and to the agents, attorneys, or guardians, if any in this State, of such as reside out of this State, either personally or by public notice, as the Court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the Commissioners must not be appointed until the order or decree is made distributing the estate.

Partition and notice thereof, and the time of filing petition.

SEC. 113. Section one thousand six hundred and seventy-seven of said Code is amended to read as follows:

1677. If the real estate is in different counties, the Court may, if deemed proper, appoint Commissioners for all or different Commissioners for each county. The estate in each county must be divided separately among the heirs, devisees, or legatees as if there was no other estate to be divided, but the Commissioners first appointed must, unless otherwise directed by the Court, make division of such real estate wherever situated within this State.

Estate in different counties, how divided.

SEC. 114. Section one thousand six hundred and eighty of said Code is amended to read as follows:

1680. When the real estate cannot be divided without prejudice or inconvenience to the owners, the Court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by the Commissioners. When the Commissioners appointed to make partition are of

Whole estate may be assigned to one, in certain cases.

the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the Court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the Commissioners, and on making or securing the payment as before provided, the Court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

SEC. 115. Section one thousand six hundred and eighty-four of said Code is amended to read as follows:

To make
report, and
partition to
be recorded.

1684. The Commissioners must report their proceedings, and the partition agreed upon by them, to the Court, in writing, and the Court may, for sufficient reasons, set aside the report and commit the same to the same Commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment, or decree of partition made thereon, attested by the Clerk under the seal of the Court, must be recorded in the office of the Recorder of the county where the lands lie.

SEC. 116. Section one thousand six hundred and eighty-five of said Code is amended to read as follows:

When Com-
missioners,
to make
partition,
are not
necessary.

1685. When the Court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint Commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

SEC. 117. Section one thousand six hundred and eighty-six of said Code is amended to read as follows:

Advance-
ments to
heirs.

1686. All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the Court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the Court, or in case of appeal, of the Supreme Court, is binding on all parties interested in the estate.

SEC. 118. Section one thousand six hundred and ninety-two of said Code is amended to read as follows:

Agent to
give bond,
and com-
pensation.

1692. The agent must execute a bond to the State of California, to be approved by the Court, or a Judge thereof, conditioned that he shall faithfully manage and account for the estate. The Court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 119. Section one thousand six hundred and ninety-three of said Code is amended to read as follows:

Unclaimed
estate, how
disposed of.

1693. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the Court that it is for the benefit of those interested, it shall be sold under the order of the Court, and the proceeds, after deducting the expenses of the sale allowed by the Court, must be paid into the State treasury. When the payment is made, the agent must take from the treasury duplicate receipts, one

of which he must file in the office of the Controller and the other in the Court.

SEC. 120. Section one thousand six hundred and ninety-four of said Code is amended to read as follows:

1694. The agent must render the Court appointing him, annually, an account, showing:

1. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

When real and personal property of absentee to be sold.

2. The income derived therefrom.

3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

4. Expenses incurred in the care, protection, and management thereof, and whether paid or unpaid. When filed the Court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the Court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the State treasury.

SEC. 121. Section one thousand six hundred and ninety-six of said Code is amended to read as follows:

1696. When any person appears and claims the money paid into the treasury, the Court making the distribution must inquire into such claim, and being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the Controller must draw his warrant on the Treasurer for the amount.

Certificate to claimant.

SEC. 122. Section one thousand seven hundred and four of said Code is amended to read as follows:

1704. Orders and decrees made by the Court, or a Judge thereof, in probate proceedings, need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the Court or Judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this title. All orders and decrees of the Court or Judge must be entered at length in the minute book of the Court.

Orders and decrees to be entered in minutes.

SEC. 123. Section one thousand seven hundred and five of said Code is amended to read as follows:

1705. When any publication is ordered, such publication must be made daily, or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The Court, or a Judge thereof, may, however, order a less number of publications during the period.

How often publication to be made.

SEC. 124. Section one thousand seven hundred and six of said Code is amended to read as follows:

1706. When it is provided in this title that any order or decree of the Court, or a Judge thereof, or a copy thereof, must be recorded in the office of the County Recorder, from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

Recorded decree or order to impart notice from date of filing.

SEC. 125. Section one thousand seven hundred and sixteen of said Code is amended to read as follows:

Issues
joined,
how tried
and
disposed of.

1716. All issues of fact joined in probate proceedings must be tried in conformity with the requirements of article two, chapter two, of this title, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein, on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the Court as in civil actions.

SEC. 126. Section one thousand seven hundred and eighteen of said Code is amended to read as follows:

Court to
appoint
attorney
for minor
or absent
heirs,
devisees,
legatees, or
creditors,
when and
what com-
pensation
he is to
receive.

1718. At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration; for sales of real estate, and confirmations thereof; settlements, partitions, and distributions of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the Court may, in its discretion, appoint some competent attorney at law to represent in all such proceedings the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the State; and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties so far as known for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the Court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary, the Court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

SEC. 127. Section one thousand seven hundred and twenty of said Code is amended to read as follows:

Costs, by
whom paid
in certain
cases.

1720. When it is not otherwise prescribed in this title, the Superior Court, or the Supreme Court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the Superior Court.

SEC. 128. Section one thousand seven hundred and twenty-one of said Code is amended to read as follows:

Executor,
administrator,
etc., to
be removed
when
committed
for
contempt,
and another
appointed.

1721. Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the Court, or a Judge thereof, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the Court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto executor, administrator, or guardian in his stead.

SEC. 129. Section one thousand seven hundred and twenty-two of said Code is amended to read as follows:

1722. Whenever an infant, insane, or incompetent person has a guardian of his estate residing in this State, personal service upon the guardian of any process, notice, or order of the Court concerning the estate of a deceased person in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

Service of process on guardian.

SEC. 130. Section one thousand seven hundred and twenty-three of said Code is amended to read as follows:

1726. Every Public Administrator, duly elected, commissioned, and qualified, must take charge of the estates of persons dying within his county, as follows:

What estates to be administered by Public Administrators.

1. Of the estate of decedents for which no administrators are appointed, and which, in consequence thereof, are being wasted, uncared for, or lost;

2. Of the estate of decedents who have no known heirs;

3. Of the estates ordered into his hands by the Court; and,

4. Of the estates upon which letters of administration have been issued to him by the Court.

SEC. 131. Section one thousand seven hundred and twenty-four of said Code is amended to read as follows:

1729. The Public Administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same according to the provisions of this title, subject to the control and directions of the Court.

Must return inventory; how to administer estates.

SEC. 132. Section one thousand seven hundred and thirty of said Code is amended to read as follows:

1730. If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the Public Administrator has charge, he must, under the order of the 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 or under his control.

When Public Administrator to deliver up estate.

SEC. 133. Section one thousand seven hundred and thirty-three of said Code is amended to read as follows:

1733. When the Public Administrator complains to the Superior Court, or a Judge thereof, 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 such Administrator is entitled in his official capacity, the Court or Judge may cite such person to appear before the Court, and may examine him, on oath, touching the matter of such complaint.

Order to examine party charged with embezzling estate.

SEC. 134. Section one thousand seven hundred and thirty-four of said Code is amended to read as follows:

1734. All such interrogatories and answers must be reduced to writing and signed by the party examined, and filed in the Court. If the person so cited refuses to appear

Punishment for refusing to attend.

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 commit him to the County Jail, there to remain, in close custody, until he submits to the order of the Court.

SEC. 135. Section one thousand seven hundred and thirty-five of said Code is amended to read as follows:

Order on
Public Ad-
ministrator
to account

1735. The Court may, at any time, order the Public Administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

SEC. 136. Section one thousand seven hundred and thirty-six of said Code is amended to read as follows:

Every six
months to
make and
publish
return of
condition
of estate.

1736. The Public Administrator must, once in every six months, make to the Superior Court, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from such estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands; publish the same six times in some newspaper published in the county, or if there is none, then post the same, legibly written or printed, in the office of the County Clerk of the county.

SEC. 137. Section one thousand seven hundred and thirty-seven of said Code is amended to read as follows:

Estate
moneys,
escheats, etc.

1737. It is the duty of every Public Administrator, as soon as he shall receive the same, to deposit with the County Treasurer of the county in which the probate proceedings are pending, all moneys of the estate not required for the current expenses of the administration; and such moneys may be drawn upon the order of the executor or administrator, countersigned by a Superior Judge, when required for the purposes of administration. It shall be the duty of the County Treasurer to receive and safely keep all such moneys, and pay them out upon the order of the executor or administrator, when countersigned by a Superior Judge, and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and the County Treasurer shall be allowed one per cent. upon all moneys received and kept by him, and no greater fees for any services herein provided; and for the safe keeping and payment of all such moneys, as herein provided, the said Treasurer and his sureties shall be responsible upon his official bond. The moneys thus deposited may, upon order of the Court, be invested, pending the proceedings, in securities of the United States, or of this State, when such investment is deemed by the Court to be for the best interests of the estate. After a final settlement of the affairs of any estate, if there be no heirs, or other claimants thereof, the County Treasurer shall pay into the State treasury all moneys and effects in his hands belonging to the estate, upon order of the Court; and if any such moneys and effects escheat to the State, they must be disposed of as other escheated estates.

Moneys
deposited,
how
invested.

SEC. 138. Section one thousand seven hundred and forty of said Code is amended to read as follows:

1740. When it appears, from the returns made in pursuance of the foregoing sections, that any money remains in the hands of the Public Administrator (after a final settlement of the estate), unclaimed, which should be paid over to the County Treasurer, the Superior Court, or a Judge thereof, must order the same to be paid over to the County Treasurer, and on failure of the Public Administrator to comply with the order within ten days after the same is made, the District Attorney for the county must immediately institute the requisite legal proceedings against the Public Administrator for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

Proceedings
against
Public
Administra-
tor for
failure to
pay over
money as
ordered

Sec. 139. This Act shall take effect immediately.

CHAPTER LXXXVI.

An Act to amend sections one thousand two hundred and twenty-seven, one thousand two hundred and thirty, and one thousand two hundred and thirty-three of the Code of Civil Procedure, relating to the voluntary dissolution of corporations.

[Approved April 16th, 1880]

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

SECTION 1. Section one thousand two hundred and twenty-seven of the Code of Civil Procedure is amended to read as follows:

1227 A corporation may be dissolved by the Superior Court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

Corporation,
how
dissolved.

SEC. 2. Section one thousand two hundred and thirty of said Code is amended to read as follows:

1230. If the Court is satisfied that the application is in conformity with this title, a Judge thereof must order it to be filed with the Clerk, and that the Clerk give not less than thirty nor more than fifty days notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements posted up in three of the principal public places in the county.

Filing
application
and
publication
of notice.

SEC. 3. Section one thousand two hundred and thirty-three of said Code is amended to read as follows:

1233. The application, notices, and proof of publication, objections (if there be any), and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the Superior Courts

Judgment
roll and
appeals.

SEC. 4. This Act shall take effect immediately.

CHAPTER LXXXVII.

An Act to amend sections one thousand two hundred and sixty-nine and one thousand two hundred and seventy-two of the Code of Civil Procedure, relating to escheated estates.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand two hundred and sixty-nine of the Code of Civil Procedure is amended to read as follows:

Manner of
commencing
proceedings
relative to
escheated
estates.

1269. When the Attorney-General is informed that any real estate has escheated to this State, he must file an information in behalf of the State in the Superior Court of the county in which such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last seized, the name of the occupant and person claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have escheated, with an allegation that, by reason thereof, the State of California has right by law to such estate. Upon such information, a summons must issue to such person, requiring him to appear and answer the information within the time allowed by law in civil actions; and the Court must make an order setting forth briefly the contents of the information, and requiring all persons interested in the estate to appear and show cause, if any they have, within forty days from the date of the order, why the same should not vest in this State; which order must be published for at least one month from the date thereof, in a newspaper published in the county, if one be published therein, and in case no newspaper is published in the county, in some other newspaper in this State.

SEC. 2. Section one thousand two hundred and seventy-two of said Code is amended to read as follows:

Proceedings
by persons
claiming
escheated
estates.

1272. Within twenty years after judgment in any proceeding had under this title, a person not a party or privy to such proceeding may file a petition in the Superior Court of the County of Sacramento, showing his claim or right to the property, or the proceeds thereof. A copy of such petition must be served on the Attorney-General at least twenty days before the hearing of the petition, who must answer the same; and the Court thereupon must try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property, or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid into the State treasury, then it must order the Controller to draw his warrant on the treasury for the payment of the same, but without interest or cost to the State, a copy of which order, under the seal of the Court, shall be a sufficient voucher for drawing such warrant. All persons who fail to appear and

file their petitions within the time limited are forever barred, saving, however, to infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petitions at any time within the time limited, or five years after their respective disabilities cease.

SEC. 3. This Act shall take effect immediately.

CHAPTER XCVI.

An Act to amend section four hundred and forty-nine of the Code of Civil Procedure, concerning verifications of pleadings.

[Approved April 16th, 1880.]

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

SECTION 1. Section four hundred and forty-nine of the Code of Civil Procedure is amended to read as follows:

449. But the execution of the instrument mentioned in the two preceding sections, is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case. Execution of an instrument when not deemed admitted.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER XCVIII.

An Act to repeal section one thousand and fifty-six of the Code of Civil Procedure.

[Approved April 16th, 1880.]

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

SECTION. 1. Section one thousand and fifty-six of the Code of Civil Procedure is hereby repealed. Repealed.

SEC. 2. This Act shall take effect immediately.

CHAPTER XCIX.

An Act to amend section one thousand eight hundred and eighty of the Code of Civil Procedure, relating to witnesses.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand eight hundred and eighty of the Code of Civil Procedure is amended to read as follows:

Persons
who cannot
testify.

1880. The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim, or demand against the estate of a deceased person, as to any matter or fact occurring before the death of such deceased person.

SEC. 2. This Act shall take effect immediately.

CHAPTER C.

An Act to amend section one thousand five hundred and seventy-three of the Code of Civil Procedure, relating to the time within which certain actions may be commenced.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand five hundred and seventy-three of the Code of Civil Procedure is hereby amended so as to read as follows:

Limitations
of actions for
vacating
sale, etc.

1573. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the settlement of the final account of the executor or administrator. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

SEC. 2. This Act shall take effect immediately.

CHAPTER CV.

An Act to amend section one thousand three hundred and seventy-nine of the Code of Civil Procedure, relating to the granting of letters of administration.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand three hundred and seventy-nine of the Code of Civil Procedure is amended to read as follows:

1379. Administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in the Court. When the person entitled is a non-resident of the State, affidavits, taken ex parte before any officer authorized by the laws of this State to take acknowledgments and administer oaths out of this State, may be received as prima facie evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the Court.

Letters of administration may be granted to others than those entitled.

SEC. 2. This Act shall take effect immediately.

CHAPTER CVI.

An Act to amend sections eight hundred and seventy-one and nine hundred of the Code of Civil Procedure, relating to proceedings in Justices' Courts.

[Approved April 16th, 1880.]

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

SECTION 1. Section eight hundred and seventy-one of the Code of Civil Procedure is amended to read as follows:

871. If the defendant fail to appear, and to answer or demur within the time specified in the summons, then, upon proof of service of summons, the following proceedings must be had:

Judgment, when by default.

1. If the action is based upon a contract, and is for the recovery of money, or damages only, the Court must render judgment in favor of plaintiff for the sum specified in the summons.

2. In all other actions the Court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such sum (not exceeding the amount stated in the summons), as appears by such evidence to be just.

SEC. 2. Section nine hundred of said Code is amended to read as follows:

Judgment
not a lien
unless
abstract is
recorded in
Recorder's
office.

900. A judgment rendered in a Justice's Court creates no lien upon any lands of the defendant, unless such an abstract is filed in the office of the Recorder of the county in which the lands are situated. When so filed, and from the time of filing the judgment, becomes 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, and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied.

SEC. 3. This Act shall take effect immediately.

CHAPTER CX.

An Act to amend section one thousand one hundred and forty-four of the Code of Civil Procedure, relating to discharge of persons imprisoned on civil process.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand one hundred and forty-four of the Code of Civil Procedure is amended to read as follows:

Notice of
application
for discharge
from prison.

1144. Such person must cause a notice in writing to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to a Judge of the Superior Court of the county in which such person may be confined, for the purpose of obtaining a discharge from his imprisonment.

SEC. 2. This Act shall take effect immediately.

CHAPTER CXI.

An Act to amend sections one thousand nine hundred and ninety-four, one thousand nine hundred and ninety-five, two thousand and twenty-four, two thousand and thirty-six, two thousand and thirty-seven, two thousand and seventy, and two thousand and eighty-four of the Code of Civil Procedure, relating to evidence.

[Approved April 16th, 1880.]

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

SECTION 1. Section one thousand nine hundred and ninety-four of the Code of Civil Procedure is amended to read as follows:

1994. Every warrant of commitment, issued by a Court or officer pursuant to this chapter, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this chapter, must be directed to the Sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the Superior Court.

Contents of
warrant.

SEC. 2. Section one thousand nine hundred and ninety-five of said Code is amended to read as follows:

1995. If the witness be a prisoner, confined in a jail or prison within this State, 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:

If a witness
be a prisoner,
how
brought.

1. By the Court itself in which the action or special proceeding is pending, unless it be a Justice's Court.

2. By a Justice of the Supreme Court, or a Judge of the Superior Court of the county where the action or proceeding is pending, if pending before a Justice's Court, or before a Judge or other person out of Court.

SEC. 3. Section two thousand and twenty-four of said Code is amended to read as follows:

2024. The deposition of a witness out of this State may be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Court, or a Judge thereof, on the application of either party, upon five days previous notice to the other. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or, if they do not agree, to any Judge or Justice of the Peace, or Commissioner, selected by the Court or Judge issuing it. If issued to any country out of the United States, it may be directed to a Minister, Ambassador, Consul, Vice-Consul, or Consular Agent of the United States in such country, or to any person agreed upon by the parties.

Testimony
of witness
out of State,
how taken.

Out of the
United
States, how
taken.

SEC. 4. Section two thousand and thirty-six of said Code is amended to read as follows:

2036. If a commission to take such testimony has been issued from the Court, or a Judge thereof, before which such action or proceeding is pending, on producing the commission to a Judge of the Superior Court with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpoena to the witness, requiring him to appear and testify before the Commissioner named in the commission, at a specified time and place.

How to
procure
witness upon
commission.

SEC. 5. Section two thousand and thirty-seven of said Code is amended to read as follows:

2037. If a commission has not been issued, and it appear to a Judge of the Superior Court, or to a Justice of the Peace, by affidavit satisfactory to him:

How if no
commission.

1. That the testimony of the witness is material to either party.

2. That a commission to take the testimony of such witness has not been issued.

3. That, according to the law of the State where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such Judge or Justice, will be received in the action or proceeding; he must issue his subpoena requiring the witness to appear and testify before him at a specified time and place.

SEC. 6. Section two thousand and seventy of said Code is amended to read as follows:

Court to
discharge
witness from
arrest.

2070. The Court or officer issuing the subpoena, and the Court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of section two thousand and sixty-seven. If the Court have adjourned before the arrest, or before application for the discharge, a Judge of the Court may grant the discharge.

SEC. 7. Section two thousand and eighty-four of said Code is amended to read as follows:

Manner of
application
for order.

2084. The applicant must produce to a Judge of the Superior Court a petition, verified by the oath of the applicant, stating:

1. That the applicant expects to be a party to an action in a Court in this State, and, in such case, the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved. The Judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this State, must be personally served, and, if unknown, such notice must be served on the Clerk of the county where the property to be affected by such evidence is situated, or the Judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the Judge, for the same period required for the publication of summons. The Judge must also designate in his order the Clerk of the county to whom the deposition must be returned when taken.

SEC. 8. This Act shall take effect immediately.

CHAPTER CXIII.

An Act to amend sections one thousand two hundred and seventy-five, one thousand two hundred and seventy-six, one thousand two hundred and seventy-eight, and one thousand two hundred and seventy-nine of the Code of Civil Procedure, relating to change of names.

[Approved April 23d, 1880.]

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

SECTION 1. Section one thousand two hundred and seventy-five of the Code of Civil Procedure is amended to read as follows:

1275. Applications for change of names must be heard and determined by the Superior Courts. Jurisdiction.

SEC. 2. Section one thousand two hundred seventy-six of said Code is amended to read as follows:

1276. All applications for change of names must be made to the Superior Court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, or scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order or society, may by petition, apply to the Superior Court of the county in which the property of said corporation is situated for a change of its corporate name. Such petition must be signed by the Trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any friendly society. Application for change of name, how made.

SEC. 3. Section twelve hundred and seventy-eight of said Code is amended to read as follows:

1278. Such application must be heard at such time as the Court may appoint, and objections may be filed by any person who can, in such objections, show to the Court good reason against such change of name. On the hearing, the Court may examine on oath, any of the petitioners, remonstrants, Hearing of application and remonstrance.

or other persons, touching the application, and may make an order changing the name, or dismissing the application, as to the Court may seem right and proper.

SEC. 4. Section twelve hundred and seventy-nine of said Code is amended to read as follows:

County Clerk
to make
return to
Secretary of
State of all
changes of
names.

1279. Each County Clerk shall, annually, in the month of January, make a return to the office of the Secretary of State of all changes of names made in the Superior Court of his county under this title. Such return shall show the date of the decree of the Court, original name, name decreed, and residence. Such returns shall be published in a tabular form with the statutes first published thereafter.

SEC. 5. This Act shall take effect immediately.

CHAPTER CXVI.

An Act to amend section one thousand two hundred and forty-three, one thousand two hundred and forty-four, and one thousand two hundred and fifty-four of the Code of Civil Procedure, relating to eminent domain.

[Approved April 26th, 1880.]

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

SECTION 1. Section one thousand two hundred and forty-three of the Code of Civil Procedure is amended to read as follows:

Eminent
domain,
jurisdiction
in Superior
Court.

1243. All proceedings under this title must be brought in the Superior Court of the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

SEC. 2. Section one thousand two hundred and forty-four of said Code is amended to read as follows:

The
complaint
and its
contents.

1244. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff

but the Court may consolidate or separate them to suit the convenience of parties.

When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or of an incorporated village or town, the Board of Supervisors of the county may be named as plaintiff.

SEC. 3. Section twelve hundred and fifty-four of said Code is amended to read as follows:

1254. At any time after trial and judgment entered or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into Court, for the defendant, the full amount of the judgment, and such further sum as may be required by the Court as a fund to pay any further damages and costs that may be recovered in said proceeding, as well as all damages that may be sustained by the defendant, if, for any cause, the property shall not be finally taken for public use, the Superior Court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and, if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into Court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the Court. It shall be the duty of the Court, or a Judge thereof, upon application being made by such defendant, to order and direct that the money so paid into Court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. In ascertaining the amount to be paid into Court, the Court shall take care that the same be sufficient and adequate. The payment of the money into Court, as hereinbefore provided for, shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain, as to all accidents, defalcations, or other contingencies (as between the parties to the proceedings), at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination, and until the Court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by rule of Court to take it. If, for any reason, the money shall at any time be lost, or otherwise abstracted, or withdrawn, through no fault of the defendant, the Court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally

Putting
plaintiff in
possession.

brought to an end, and until paid over or made payable to the defendant by order of Court, as above provided, and until such time or times the County Clerk shall be deemed to be the custodian of the money, and shall be liable to the plaintiff upon his official bond for the same, or any part thereof, in case it be for any reason lost or otherwise abstracted or withdrawn. The Court may order the money to be deposited in the State treasury, and in such case it shall be the duty of the State Treasurer to receive all such moneys, duly receipt for and safely keep the same in a special fund, to be entered on his books as a condemnation fund for such purpose, and for such duty he shall be liable to the plaintiff upon his official bond. The State Treasurer shall pay out such money so deposited in such manner and at such times as the Court or a Judge thereof may, by order or decree, direct. In all cases where a new trial has been granted upon the application of the defendant, and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

SEC. 4. This Act shall take effect immediately.

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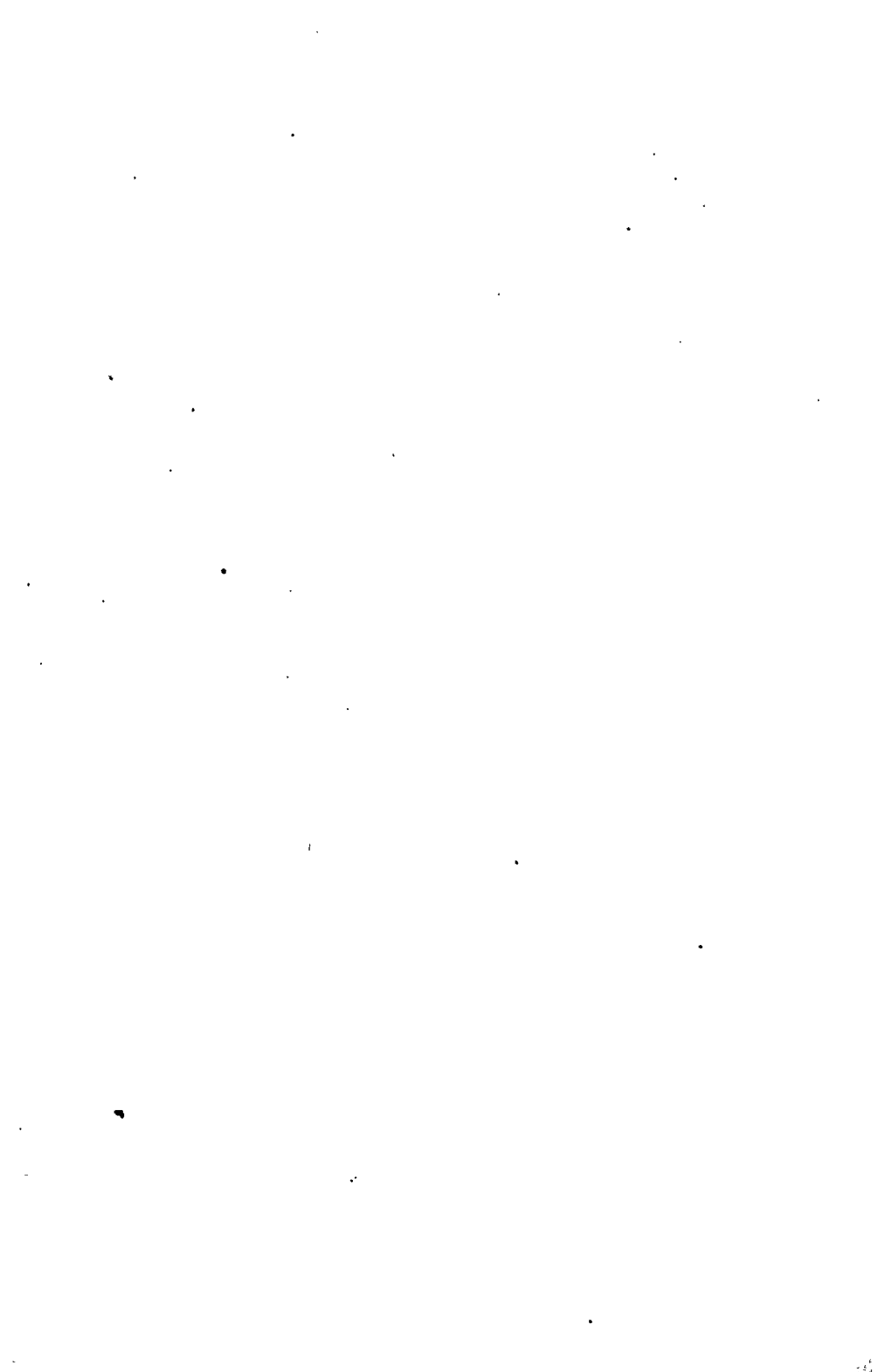
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PENAL CODE.



ACTS AMENDATORY
OF
THE PENAL CODE

PASSED AT
THE TWENTY-THIRD SESSION OF THE LEGISLATURE.

CHAPTER I.

An Act to repeal section four hundred and twenty of the Penal Code.

[Approved February 7th, 1880.]

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

SECTION 1. Section four hundred and twenty of the Penal Code is hereby repealed. Repealing.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER III.

An Act to amend the Penal Code by adding two new sections thereto, to be known as sections one hundred and seventy-eight and one hundred and seventy-nine, prohibiting the employment of Chinese by corporations.

[Approved February 13th, 1880.]

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

SECTION 1. A new section is hereby added to the Penal Code, to be numbered section one hundred and seventy-eight. Officers of corporations not to employ Chinese.

178. Any officer, director, manager, member, stockholder, clerk, agent, servant, attorney, employe, assignee, or contractor of any corporation now existing, or hereafter formed under the laws of this State, who shall employ, in any man-

Punishment. ner or capacity, upon any work or business of such corporation, any Chinese or Mongolian, is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the County Jail of not less than fifty nor more than five hundred days, or by both such fine and imprisonment; *provided*, that no director of a corporation shall be deemed guilty under this section who refuses to assent to such employment, and has such dissent recorded in the minutes of the Board of Directors.

Subsequent violations. 1. Every person who, having been convicted for violating the provisions of this section, commits any subsequent violation thereof after such conviction, is punishable as follows:

Punishment. 2. For each subsequent conviction such person shall be fined not less than five hundred nor more than five thousand dollars, or by imprisonment not less than two hundred and fifty days nor more than two years, or by both such fine and imprisonment.

SEC. 2. A new section is hereby added to the Penal Code, to be known as section one hundred and seventy-nine, and to read as follows:

Corporations not to employ Chinese. **179.** Any corporation now existing, or hereafter formed under the laws of this State, that shall employ, directly or indirectly, in any capacity, any Chinese or Mongolian, shall be guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five hundred nor more than five thousand dollars, and upon the second conviction shall, in addition to said penalty, forfeit its charter and franchise, and all its corporate rights and privileges, and it shall be the duty of the Attorney-General to take the necessary steps to enforce such forfeiture.

Penalty.

SEC. 3. This Act shall take effect immediately.

CHAPTER IV.

An Act to amend sections fourteen hundred and eighteen and fourteen hundred and nineteen of the Penal Code, relating to reprieves, commutations, and pardons.

[Approved February 18th, 1880.]

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

SECTION 1. Section fourteen hundred and eighteen of said Code is hereby amended so as to read as follows:

Governor's power in respect to convictions for treason.

1418. He may suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the Legislature at its next meeting, when the Legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; *provided*, that neither the Governor nor the Legislature shall have power to grant

pardons or commutations of sentence in any case where the convict has been twice convicted of felony, after the first day of January, eighteen hundred and eighty, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

SEC. 2. Section fourteen hundred and nineteen of said Code is hereby amended so as to read as follows:

1419. He must, at the beginning of every session, communicate to the Legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same.

Governor to communicate to Legislature reprieves, commutations, and pardons.

SEC. 3. This Act shall take effect immediately.

CHAPTER V.

An Act to amend sections seven hundred and thirty-seven, seven hundred and forty-six, seven hundred and forty-nine, and seven hundred and fifty-three of the Penal Code, relating to impeachments.

[Approved February 18th, 1880.]

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

SECTION 1. Section seven hundred and thirty-seven of said Code is hereby amended so as to read as follows:

737. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice, Associate Justices of the Supreme Court, and Judges of the Superior Courts, are liable to impeachment for any misdemeanor in office.

Officers liable to impeachment.

SEC. 2. Section seven hundred and forty-six of said Code is hereby amended so as to read as follows:

746. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes, and if two-thirds of the members elected do not concur in a conviction he must be acquitted.

Two-thirds necessary to a conviction.

SEC. 3. Section seven hundred and forty-nine of said Code is hereby amended so as to read as follows:

749. The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the State.

Notice of the judgment.

SEC. 4. Section seven hundred and fifty-three of said Code is hereby amended so as to read as follows:

753. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

Impeachment not a bar to indictment.

SEC. 5. This Act shall take effect immediately.

CHAPTER VI.

An Act to amend sections one thousand four hundred and seventy-five and one thousand five hundred and four of the Penal Code, relating to the writ of "habeas corpus."

[Approved February 18th, 1880.]

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

SECTION 1. Section fourteen hundred and seventy-five of the said Code is hereby amended so as to read as follows:

Habeas corpus, by whom issued, and before whom returnable.

1475. The writ of habeas corpus may be granted:

1. By the Supreme Court, or any Justice thereof, upon petition by or on behalf of any person restrained of his liberty in this State. When so issued it may be made returnable before the Court, or any Justice thereof, or before any Superior Court or any Judge thereof.

2. By the Superior Courts, or a Judge thereof, upon petition by or on behalf of any person restrained of his liberty in their respective counties.

SEC. 2. Section fifteen hundred and four of said Code is hereby amended so as to read as follows:

1504. All such writs and process, when made returnable before a Judge, must be returned before him at the county seat, and there heard and determined.

SEC. 3. This Act shall take effect immediately.

CHAPTER VII.

An Act to amend sections six hundred and eighty-nine, one thousand and forty-two, one thousand four hundred and thirty, one thousand four hundred and thirty-five, of the Penal Code, relating to trials by jury.

[Approved February 25th, 1880.]

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

SECTION 1. Section six hundred and eighty-nine of the Penal Code is hereby amended so as to read as follows:

No person to be convicted but upon verdict or judgment.

689. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section one thousand and eleven, or upon a judgment of a Court, a jury having been waived in a criminal case not amounting to felony.

SEC. 2. Section one thousand and forty-two of said Code is hereby amended so as to read as follows:

1042. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open Court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open Court. Issue of fact,
how tried.

SEC. 3. Section fourteen hundred and thirty of said Code is hereby amended so as to read as follows:

1430. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the Court must proceed to try the case. Issue, how
tried.

SEC. 4. Section fourteen hundred and thirty-five of said Code is hereby amended so as to read as follows:

1435. A trial by jury may be waived by the consent of both parties expressed in open Court and entered in the docket. The formation of the jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure. Jury trial,
how waived.

SEC. 5. This Act shall take effect immediately.

CHAPTER XXIV.

An Act to repeal section five hundred and ninety-nine of the Penal Code, relating to the protection of seals and sea-lions, near the Cliff House, in the City and County of San Francisco.

[Approved March 12th, 1880.]

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

SECTION 1. That section five hundred and ninety-nine of the Penal Code is hereby repealed. Repealed.

SEC. 2. This Act shall take effect from and after its passage.

CHAPTER XXV.

An Act to amend sections one thousand three hundred and thirty-eight and one thousand three hundred and fifty-three of the Penal Code, providing for the examination of witnesses.

[Approved March 12th, 1880.]

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

SECTION 1. Section thirteen hundred and thirty-eight of the Penal Code is hereby amended so as to read as follows:

1338. The application may be made to the Court, or to a Judge thereof, and must be upon three days' notice to the District Attorney. Application
to whom
made.

SEC. 2. Section thirteen hundred and fifty-three of said Code is hereby amended so as to read as follows:

Application
to whom
made.

1353. The application may be made to the Court, or a Judge thereof, and must be upon three days' notice to the District Attorney.

SEC. 3. This Act takes effect immediately.

CHAPTER XXVI.

An Act to amend section one thousand and twenty-nine of the Penal Code, relating to prosecutions of Judges of the Superior Courts.

[Approved March 12th, 1880.]

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

SECTION 1. Section one thousand and twenty-nine of the Penal Code is hereby amended so as to read as follows:

Indictments
against
a Judge of
the Superior
Court, cer-
tificate of
facts to be
transmitted
to Governor.

1029. When an indictment is found or an information filed in a Superior Court against a Judge thereof, a certificate of that fact must be transmitted by the Clerk to the Governor, who shall thereupon designate and direct a Judge of the Superior Court of another county to preside at the trial of the such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

SEC. 2. This Act shall take effect immediately.

CHAPTER XXVII.

An Act to repeal sections ten hundred and twenty-eight, ten hundred and thirty, eleven hundred and twelve, and eleven hundred and forty-three of the Penal Code, relating to judicial proceedings in criminal cases.

[Approved March 12th, 1880.]

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

Repealed.

SECTION 1. Sections ten hundred and twenty-eight, ten hundred and thirty, eleven hundred and twelve, and eleven hundred and forty-three of the Penal Code, are hereby repealed.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER XXVIII.

An Act to amend section eight hundred and eight of the Penal Code, declaring who are magistrates.

[Approved March 12th, 1880.]

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

SECTION 1. Section eight hundred and eight of the Penal Code is hereby amended so as to read as follows:

808. The following persons are magistrates:

1. The Justices of the Supreme Court;
2. The Judges of the Superior Courts;
3. Justices of the Peace;
4. Police magistrates in towns or cities.

Who are
magistrates.

SEC. 2. This Act shall take effect immediately.

CHAPTER XLII.

An Act to amend sections eighty-six, eighty-nine, two hundred and twenty-eight, five hundred and four, five hundred and fourteen, of the Penal Code, relating to crimes and punishments.

[Approved April 6th, 1880.]

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

SECTION 1. Section eighty-six of the Penal Code is hereby amended so as to read as follows:

86. Every member of either of the Houses composing the Legislature of this State who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another member of the Legislature shall give any such vote, either upon the same or another question is punishable by imprisonment in the State Prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office or public trust.

Receiving
bribes by
members
of the
Legislature.

SEC. 2. Section eighty-nine of said Code is hereby amended so as to read as follows:

89. Every person who obtains, or seeks to obtain money or other thing of value from another person, upon a pre-

Lobbying,
and penalty
for.

tense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding except for perjury in giving such testimony.

SEC. 3. Section two hundred and twenty-eight of said Code is hereby amended so as to read as follows:

Persons
fighting
duels dis-
franchised.

228. Any citizen of this State who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment, upon conviction.

SEC. 4. Section five hundred and four of said Code is hereby amended so as to read as follows:

When
officers of
State or any
association
guilty of
embezzle-
ment.

504. Every officer of this State, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, Director, Trustee, Clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

SEC. 5. Section five hundred and fourteen of said Code is hereby amended so as to read as follows:

Punishment
for embez-
zlement.

514. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it, shall be taken as its value; *provided*, that if the embezzlement or defalcation be of the public funds of the United States, or of this State, or of any county, city and county, or municipality within this State, the offense is a felony, and shall be punishable by imprisonment in the State Prison not less than one year nor more than ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this State.

SEC. 6. This Act shall take effect immediately.

CHAPTER XLIII.

An Act to add a new section to the Penal Code, to be known as section one hundred and eleven, relating to costs in certain criminal actions.

[Approved April 6th, 1880.]

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

SECTION 1. A new section is hereby added to the Penal Code, to be known as section one hundred and eleven, to read as follows:

111. Whenever a trial shall be had of any person under any of the provisions of sections one hundred and five and one hundred and six of this Code, and whenever a convict in the State Prison shall be tried for any crime committed therein, the County Clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, properly certified to by a Superior Judge of said county, which statement shall be sent to the Board of State Prison Directors for their approval; and after such approval, said Board shall cause the amount of such costs to be paid out of the money appropriated for the support of the State Prison to the County Treasurer of the county where such trial was had.

Trials for escapes of convicts, or for crimes committed in State Prison, to be a charge against the State.

SEC. 2. This Act shall take effect immediately.

CHAPTER XLVI.

An Act to amend sections one thousand two hundred and forty-six, one thousand two hundred and forty-eight, and one thousand two hundred and fifty-two of the Penal Code, relative to appeals to the Supreme Court.

[Approved April 9th, 1880.]

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

SECTION 1. Section one thousand two hundred and forty-six of said Code is hereby amended so as to read as follows:

1246. Upon the appeal being taken, the Clerk with whom the notice of appeal is filed must, within ten days thereafter, in case the bill of exceptions has been settled by the Judge before the giving of said notice, but if not, then within ten days from the settlement of the bill of exceptions, without charge, transmit to the Clerk of the appellate Court a copy of the notice of appeal, and of the record, and of all bills of

Duty of Clerks upon appeal.

exceptions, instructions, and indorsements thereon; and, upon the receipt thereof, the Clerk of the appellate Court must file the same and perform the same services as in civil cases, without charge.

SEC. 2. Section one thousand two hundred and forty-eight of said Code is hereby amended so as to read as follows:

For what
irregularity,
and how
dismissed.

1248. If the appeal is irregular in any substantial particular, but not otherwise, the appellate Court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed.

SEC. 3. Section one thousand two hundred and fifty-two of said Code is hereby amended so as to read as follows:

Appeals,
when to be
heard and
determined.

1252. All appeals in criminal cases must be heard and determined by the appellate Court within sixty days after the record is filed in said appellate Court, unless continued on motion or with the consent of the defendant.

SEC. 4. This Act shall take effect from and after its passage.

CHAPTER XLVII.

An Act to amend Sections 682, 784, 787, 788, 789, 790, 792, 800, 801, 802, 806, 888, 949, 950, 951, 953, 954, 955, 957, 958, 959, 960, 961, 964, 965, 966, 967, 968, 970, 971, 972, 976, 977, 981, 982, 985, 988, 989, 990, 996, 997, 998, 999, 1004, 1005, 1008, 1009, 1012, 1018, 1019, 1021, 1022, 1024, 1033, 1043, 1047, 1048, 1052, 1065, 1074, 1093, 1095, 1098, 1099, 1100, 1103, 1104, 1113, 1114, 1115, 1117, 1121, 1125, 1126, 1131, 1141, 1148, 1150, 1158, 1159, 1160, 1165, 1170, 1185, 1187, 1188, 1200, 1207, 1238, 1284, 1285, 1289, 1310, 1326, 1335, 1346, 1349, 1354, 1358, 1368, 1370, 1373, 1382, 1383, 1395, 1396, 1401, 1429, and to repeal Sections 969 and 1025 of the Penal Code, and to add a new section thereto, to be known as Section 809, to provide for prosecutions by information, and to adapt the provisions of said Code thereto.

[Approved April 9th, 1880.]

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

SECTION 1. Section six hundred and eighty-two of the Penal Code is hereby amended so as to read as follows:

Public of-
fenses, how
prosecuted.

682. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the State;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the State may keep, with the consent of Congress, in time of peace;

3. Offenses tried in Justices' and Police Courts.

SEC. 2. Section seven hundred and eighty-four of said Code is hereby amended so as to read as follows:

784. The jurisdiction of a criminal action:

Jurisdiction
of criminal
action.

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this State, or to be sent out of the State, or from one county to another, or to be sold as a slave, or in any way held to service; or,

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

SEC. 3. Section seven hundred and eighty-seven of said Code is hereby amended so as to read as follows:

787. The jurisdiction of a criminal action for escaping from prison is in any county of the State.

Jurisdiction
if criminal
action for
escaping
from prison.

SEC. 4. Section seven hundred and eighty-eight of said Code is hereby amended so as to read as follows:

788. The jurisdiction of a criminal action for treason, when the overt act is committed out of the State, is in any county of the State.

Jurisdiction
if a criminal
action for
treason
committed out of
the State.

SEC. 5. Section seven hundred and eighty-nine of said Code is hereby amended so as to read as follows:

789. The jurisdiction of a criminal action for stealing in any other State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this State, is in any county into or through which such stolen property has been brought.

Jurisdiction
if a criminal
action for
stealing, etc.,
property out
of this State
and bring-
ing it there-
in.

SEC. 6. Section seven hundred and ninety of said Code is hereby amended so as to read as follows:

790. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county or out of the State, is in the county where the injury was inflicted.

Jurisdiction
if a criminal
action for
murder, etc.,
where in-
jury was in-
flicted in one
county and
party dies
out of that
county.

SEC. 7. Section seven hundred and ninety-two of said Code is hereby amended so as to read as follows:

792. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this Code if he were so present and aiding and abetting therein.

Jurisdiction
in cases of
principals
who are not
present, etc.,
at commis-
sion of prin-
cipal offense.

SEC. 8. Section eight hundred of said Code is hereby amended so as to read as follows:

Limitation of three years in all other felonies.

800. An indictment for any other felony than murder must be found or an information filed within three years after its commission.

SEC. 9. Section eight hundred and one of said Code is hereby amended so as to read as follows:

Limitation of one year in misdemeanors.

801. An indictment for any misdemeanor must be found or an information filed within one year after its commission.

SEC. 10. Section eight hundred and two of said Code is hereby amended so as to read as follows:

Exception when defendant is out of the State.

802. If, when the offense is committed, the defendant is out of the State, the indictment may be found or an information filed within the term herein limited after his coming within the State, and no time during which the defendant is not an inhabitant of, or usually resident within this State, is part of the limitation.

SEC. 11. Section eight hundred and six of said Code is hereby amended so as to read as follows:

Information defined.

806. The complaint is the allegation in writing made to a Court or magistrate that a person has been guilty of some designated offense.

SEC. 12. The following is added as a new section to said Code, to be known as section eight hundred and nine:

Filing information after examination and commitment.

809. When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this Code, it shall be the duty of the District Attorney, within thirty days thereafter, to file in the Superior Court of the county in which the offense is triable an information charging the defendant with such offense. The information shall be in the name of the people of the State of California, and subscribed by the District Attorney, and shall be in form like an indictment for the same offense.

SEC. 13. Section eight hundred and eighty-eight of said Code is hereby amended so as to read as follows:

What prosecutions must be by indictment, etc.

888. All public offenses triable in the Superior Courts must be prosecuted by indictment or information, except as provided in the next section.

SEC. 14. Section nine hundred and forty-nine of said Code is hereby amended so as to read as follows:

First pleading by the people is indictment or information.

949. The first pleading on the part of the people is the indictment or information.

SEC. 15. Section nine hundred and fifty of said Code is hereby amended so as to read as follows:

Indictment or information, what must contain.

950. The indictment or information must contain:

1. The title of the action, specifying the name of the Court to which the same is presented, and the names of the parties;
2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 16. Section nine hundred and fifty-one of said Code is hereby amended so as to read as follows:

Form of indictment.

951. It may be substantially in the following form: The People of the State of California against A. B., in the Superior Court of the County of —, the — day of —,

A. D. eighteen ——. A. B. is accused by the grand jury of the County of —, by this indictment (or by the District Attorney by this information), of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the — day of —, A. D. eighteen —, at the County of — (here set forth the act or omission charged as an offense), contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the State of California.

SEC. 17. Section nine hundred and fifty-three of said Code is hereby amended so as to read as follows:

953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information.

When defendant is indicted by fictitious name, etc.

SEC. 18. Section nine hundred and fifty-four of said Code is hereby amended so as to read as follows:

954. The indictment or information must charge but one offense, but the same offense may be set forth in different forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

What indictment or information must charge.

SEC. 19. Section nine hundred and fifty-five of said Code is hereby amended so as to read as follows:

955. The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense.

Statement as to time when offense was committed.

SEC. 20. Section nine hundred and fifty-seven of said Code is hereby amended so as to read as follows:

957. The words used in an indictment or information are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

Construction of words used in an indictment or information.

SEC. 21. Section nine hundred and fifty-eight of said Code is hereby amended so as to read as follows:

958. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used.

Construction of words used in a statute.

SEC. 22. Section nine hundred and fifty-nine of said Code is hereby amended so as to read as follows:

959. The indictment or information is sufficient if it can be understood therefrom:

Indictment or information, when sufficient.

1. That it is entitled in a Court having authority to receive it, though the name of the Court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the Court was held, or if an information, that it was subscribed and presented to the Court by the District Attorney of the county in which the Court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a

statement that his true name is to the jury or District Attorney, as the case may be, unknown.

4. That the offense was committed at some place within the jurisdiction of the Court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense 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.

7. That the act or omission charged as the offense 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.

SEC. 23. Section nine hundred and sixty of said Code is hereby amended so as to read as follows :

Indictment,
etc., when
not insuffi-
cient.

960. No indictment or information is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits.

SEC. 24. Section nine hundred and sixty-one of said Code is hereby amended so as to read as follows :

Presump-
tions of law,
etc., need
not be stated.

961. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information.

SEC. 25. Section nine hundred and sixty-four is hereby amended so as to read as follows :

Pleading in
indictment
for libel.

964. An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded ; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

SEC. 26. Section nine hundred and sixty-five of said Code is hereby amended so as to read as follows :

Pleading in
indictment
or informa-
tion for for-
gery, where
instrument
has been de-
stroyed or
withheld by
defendant.

965. When an instrument which is the subject of an indictment or information 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, or information, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 27. Section nine hundred and sixty-six of said Code is hereby amended so as to read as follows :

Pleading in
an indict-
ment or in-
formation
for perjury
or suborna-
tion of per-
jury.

966. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense 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 it, with proper allegations of the falsity of the

matter on which the perjury is assigned ; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

SEC. 28. Section nine hundred and sixty-seven of said Code is hereby amended so as to read as follows :

967. In an indictment or information for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

Pleading in indictment or information for larceny or embezzlement.

SEC. 29. Section nine hundred and sixty-eight of said Code is hereby amended so as to read as follows:

968. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Pleading in an indictment or information for selling, etc., lewd and obscene books.

SEC. 30. Section nine hundred and sixty-nine of said Code is hereby repealed.

Repealed.

SEC. 31. Section nine hundred and seventy of said Code is hereby amended so as to read as follows:

970. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

Indictment against several, one or more may be acquitted.

SEC. 32. Section nine hundred and seventy-one of said Code is hereby amended so as to read as follows:

971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against his principal.

Distinction between accessory before the fact and principal abrogated.

SEC. 33. Section nine hundred and seventy-two of said Code is hereby amended so as to read as follows:

972. An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted.

Accessory may be indicted and tried though principal has not been

SEC. 34. Section nine hundred and seventy-six of said Code is hereby amended so as to read as follows:

976. When the indictment or information is filed, the defendant must be arraigned thereon before the Court in which it is filed, unless the cause is transferred to some other county for trial.

Defendant must be arraigned in the Court where indictment or information was found.

SEC. 35. Section nine hundred and seventy-seven of said Code is hereby amended so as to read as follows:

Defendant
when to be
present at ar-
raignment.

977. If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

SEC. 36. Section nine hundred and eighty-one of said Code is hereby amended so as to read as follows:

Form of
Bench war-
rant.

981. The bench warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of ——. The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State: An indictment having been found (or information filed) on the — day of —, A. D. eighteen —, in the Superior Court of the County of —, charging C. D. with the crime of — (designating it generally); you are, therefore, commanded forthwith to arrest the above named C. D., and bring him before that Court (or if the indictment and information has been sent to another Court, then before that Court, naming it), to answer said indictment (or information), or if the Court be not in session, 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 — day of —, A. D. —.

By order of said Court.

[SEAL.]

E. F., Clerk.

SEC. 37. Section nine hundred and eighty-two of said Code is hereby amended so as to read as follows:

Directions
in the bench
warrant if
the offense is
bailable.

982. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the Sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench warrant a direction to the following effect: "Or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment (or information);" and the Court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the Clerk, to the following effect: "The defendant is to be admitted to bail in the sum of — dollars."

SEC. 38. Section nine hundred and eighty-five of said Code is hereby amended so as to read as follows:

Ordering de-
fendant into
custody or
increasing
bail when
indictment
is for felony.

985. When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the Court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

SEC. 39. Section nine hundred and eighty-eight of said Code is hereby amended so as to read as follows:

Arraign-
ment, how
made.

988. The arraignment must be made by the Court, or by the Clerk or District Attorney under its direction, and con-

sists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information.

SEC. 40. Section nine hundred and eighty-nine of said Code is hereby amended so as to read as follows:

989. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the Court may proceed accordingly; but if he alleges that another name is his true name, the Court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein.

Proceedings on arraignment when defendant is not indicted by his true name.

SEC. 41. Section nine hundred and ninety of said Code is hereby amended so as to read as follows:

990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information.

Time allowed and how defendant may answer on arraignment.

SEC. 42. Section nine hundred and ninety-six of said Code is hereby amended so as to read as follows:

996. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Defendant waves objections unless he makes the motion.

SEC. 43. Section nine hundred and ninety-seven of said Code is hereby amended so as to read as follows:

997. The motion must be heard at the time it is made, unless for cause the Court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted, the Court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the District Attorney; *provided*, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if before indictment or information filed he has not been examined and committed by a magistrate.

Motion when heard. If denied or granted, what proceedings are to be had.

SEC. 44. Section nine hundred and ninety-eight of said Code is hereby amended so as to read as follows:

998. If the Court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead

Effect of order for submission.

thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is found or information filed before the next grand jury of the county is discharged, the Court must, on the discharge of such grand jury, make the order prescribed by the preceding section.

SEC. 45. Section nine hundred and ninety-nine of said Code is hereby amended so as to read as follows:

Order no bar
to another
prosecution.

999. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense.

SEC. 46. Section one thousand and four of said Code is hereby amended so as to read as follows:

Grounds of
demurrer.

1004. The defendant may demur to the indictment or information when it appears upon the face thereof, either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the Court has no jurisdiction of the offense charged therein.

2. That it does not substantially conform to the requirement of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two.

3. That more than one offense is charged.

4. That the facts stated do not constitute a public offense.

5. That it contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

SEC. 47. Section one thousand and five of said Code is hereby amended so as to read as follows:

Demurrer,
how put in
and its form.

1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded.

SEC. 48. Section one thousand and eight of said Code is hereby amended so as to read as follows:

If allowed,
bar to another
prosecution,
when.

1008. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the Court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to another grand jury, or directs a new information to be filed; *provided*, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases.

SEC. 49. Section one thousand and nine of said Code is hereby amended so as to read as follows:

If resubmis-
sion not
ordered, de-
fendant dis-
charged, etc.

1009. If the Court does not permit the information to be amended, nor direct that an information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

SEC. 50. Section one thousand and twelve of said Code is hereby amended so as to read as follows:

1012. When the objections mentioned in section one thousand and four appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

When objections, forming ground of demurrer, must or may be taken.

SEC. 51. Section one thousand and eighteen of said Code is hereby amended so as to read as follows:

1018. A plea of guilty can be put in by the defendant himself only in open Court, unless upon indictment or information against a corporation, in which case it may be put in by counsel. 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.

Plea of guilty, how put in, and when it may be withdrawn.

SEC. 52. Section one thousand and nineteen of said Code is hereby amended so as to read as follows:

1019. The plea of not guilty puts in issue every material allegation of the indictment or information.

What plea of not guilty puts in issue.

SEC. 53. Section one thousand and twenty-one of said Code is hereby amended so as to read as follows:

1021. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

What is not a formal acquittal.

SEC. 54. Section one thousand and twenty-two is hereby amended so as to read as follows:

1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had.

What is a formal acquittal.

SEC. 55. Section one thousand and twenty-four of said Code is hereby amended so as to read as follows:

1024. If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered.

Defendant refusing to answer, plea of not guilty to be entered. Repealed.

SEC. 56. Section one thousand and twenty-five of said Code is hereby repealed.

SEC. 57. Section one thousand and thirty-three of said Code is hereby amended so as to read as follows:

1033. A criminal action may be removed from the Court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the action is pending.

When action may be removed

SEC. 58. Section ten hundred and forty-three of said Code is hereby amended so as to read as follows:

1043. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of iden-

When presence of defendant is necessary on the trial.

tification, the Court may, upon application of the District Attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

SEC. 59. Section one thousand and forty-seven of said Code is hereby amended so as to read as follows:

Clerk to prepare a calendar.

1047. The Clerk must keep a calendar of all criminal actions pending in the Court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

SEC. 60. Section one thousand and forty-eight of said Code is hereby amended so as to read as follows:

Order of disposing of issues on the calendar.

1048. The issues on the calendar must be disposed of in the following order, unless for good cause the Court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.

2. Prosecutions for misdemeanor, when the defendant is in custody.

3. Prosecutions for felony, when the defendant is on bail.

4. Prosecutions for misdemeanor, when the defendant is on bail.

SEC. 61. Section one thousand and fifty-two of said Code is hereby amended so as to read as follows:

Postponement, when and how ordered.

1052. When an action is called for trial, or at any time previous thereto, the Court may, upon sufficient cause, direct the trial to be postponed to another day.

SEC. 62. Section one thousand and sixty-five of said Code is hereby amended so as to read as follows:

If challenge allowed, jury to be discharged; if disallowed, to be impaneled.

1065. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the Court must discharge the jury so far as the trial in question is concerned. If it is disallowed, the Court must direct the jury to be impaneled.

SEC. 63. Section one thousand and seventy-four of said Code is hereby amended so as to read as follows:

Ground of challenge for actual bias.

1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

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

4. 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 or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

SEC. 64. Section one thousand and ninety-three of said Code is hereby amended so as to read as follows:

1093. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the Court: Order of trial.

1. If the indictment or information be for felony, the Clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the Clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The District Attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. 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 case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the District Attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the Court and jury; the District Attorney, or other counsel for the people, opening the argument and having the right to close.

6. The Judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter.

SEC. 65. Section one thousand and ninety-five of said Code is hereby amended so as to read as follows:

1095. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the Court may, in its discretion, restrict the argument to one counsel on each side. Number of counsel who may argue the case to the jury.

SEC. 66. Section one thousand and ninety-eight of said Code is hereby amended so as to read as follows:

Separate trials.

1098. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly, in the discretion of the Court.

SEC. 67. Section one thousand and ninety-nine of said Code is hereby amended so as to read as follows:

Discharging one of several defendants before verdict, that he may be a witness.

1099. When two or more persons are included in the same charge, the Court may, at any time before the defendants have gone into their defense, on the application of the District Attorney, direct any defendant to be discharged, that he may be a witness for the people.

SEC. 68. Section eleven hundred of said Code is hereby amended so as to read as follows:

Same.

1100. When two or more persons are included in the same indictment or information, and the Court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant.

SEC. 69. Section eleven hundred and three of said Code is hereby amended so as to read as follows:

Evidence on trial for treason.

1103. 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; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

SEC. 70. Section eleven hundred and four of said Code is hereby amended so as to read as follows:

Evidence on trial for conspiracy.

1104. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 71. Section eleven hundred and thirteen of said Code is hereby amended so as to read as follows:

Court may discharge jury when it has not jurisdiction, etc.

1113. The Court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law.

SEC. 72. Section eleven hundred and fourteen of said Code is hereby amended so as to read as follows:

Proceeding if jury discharged for want of jurisdiction of offense committed out of the State.

1114. If the jury be discharged because the Court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this State, the defendant must be discharged.

SEC. 73. Section eleven hundred and fifteen of said Code is hereby amended so as to read as follows:

Proceeding in such case, when offense committed in the State.

1115. If the offense was committed within the exclusive jurisdiction of another county of this State, the Court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his

arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the Court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the Sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the Court may fix, to be mentioned in the undertaking; and the Clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission is chargeable to that county.

SEC. 74. Section eleven hundred and seventeen of said Code is hereby amended so as to read as follows:

1117. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the Court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed upon which the defendant can be legally convicted, in which case it may direct the District Attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; *provided*, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases.

Proceedings if jury discharged because the facts do not constitute an offense.

SEC. 75. Section eleven hundred and twenty-one of said Code is hereby amended so as to read as follows:

1121. The jurors sworn to try an action 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 officer must be sworn to keep the jurors together until the next meeting of the Court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into Court at the next meeting thereof.

Jurors may be permitted to separate during trial.

SEC. 76. Section eleven hundred and twenty-five of said Code is hereby amended so as to read as follows:

1125. On a trial for libel, the jury has the right to determine the law and the fact.

On trial for libel jury to determine law and fact.

SEC. 77. Section eleven hundred and twenty-six of said Code is hereby amended so as to read as follows:

1126. On a trial for any other offense than libel, questions of law are to be decided by the Court, 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 all other cases Court to decide questions of law.

SEC. 78. Section eleven hundred and thirty-one of said Code is hereby amended so as to read as follows:

When allegations of embezzlement sustained.

1131. Upon a trial for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank notes, certificates of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates of stock, or valuable security, be not proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank note, certificate of stock, or valuable security, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

SEC. 79. Section eleven hundred and forty-one of said Code is hereby amended so as to read as follows:

When jury discharged or prevented from giving a verdict, cause to be again tried.

1141. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried.

SEC. 80. Section eleven hundred and forty-eight of said Code is hereby amended so as to read as follows:

Appearance of defendant.

1148. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

SEC. 81. Section eleven hundred and fifty of said Code is hereby amended so as to read as follows:

Verdict may be general or special.

1150. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

SEC. 82. Section eleven hundred and fifty-eight of said Code is hereby amended so as to read as follows:

Jury may find upon charge of previous conviction.

1158. Whenever the fact of a previous conviction of another offense is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction.

SEC. 83. Section eleven hundred and fifty-nine of said Code is hereby amended so as to read as follows:

Jury may convict of a lesser offense or of an attempt.

1159. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

SEC. 84. Section eleven hundred and sixty of said Code is hereby amended so as to read as follows:

1160. On an indictment or information 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 must be entered accordingly, and the case as to the others may be tried by another jury. Verdict as to some defendants and another trial as to others.

SEC. 85. Section eleven hundred and sixty-five of said Code is hereby amended so as to read as follows:

1165. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the Court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in section one thousand one hundred and seventeen. Defendant, when to be discharged or detained after acquittal.

SEC. 86. Section eleven hundred and seventy of said Code is hereby amended so as to read as follows:

1170. On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the Court: Exceptions may be taken, in what cases.

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.

2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

3. In admitting or rejecting 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.

SEC. 87. Section eleven hundred and eighty-five of said Code is hereby amended so as to read as follows:

1185. 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 or information mentioned in section one thousand and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. Motion in arrest of judgment defined.

SEC. 88. Section eleven hundred and eighty-seven of said Code is hereby amended so as to read as follows:

1187. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. Effect of arresting judgment.

SEC. 89. Section eleven hundred and eighty-eight of said Code is hereby amended so as to read as follows:

1188. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the Court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense, he must be committed or held Defendant, when to be held or discharged.

thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded.

SEC. 90. Section twelve hundred of said Code is hereby amended so as to read as follows:

Arraign-
ment of de-
fendant for
judgment.

1200. When the defendant appears for judgment he must be informed by the Court, or by the Clerk, under its direction, of the nature of the charge against him and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

SEC. 91. Section twelve hundred and seven of said Code is hereby amended so as to read as follows:

Entry of
judgment
and judg-
ment roll.

1207. When judgment upon a conviction is rendered, the Clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, (if one), and must, within five days, annex together and file the following papers, which will constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer.

2. A copy of the minutes of the trial.

3. The charges given or refused, and the indorsements thereon. And,

4. A copy of the judgment.

SEC. 92. Section twelve hundred and thirty-eight of said Code is hereby amended so as to read as follows:

In what
cases an ap-
peal may be
taken by the
people.

1238. An appeal may be taken by the people:

1. From a judgment for the defendant on a demurrer to the indictment or information.

2. From an order granting a new trial.

3. From an order arresting judgment.

4. From any order made after judgment, affecting the substantial rights of the people.

5. From an order of the Court directing the jury to find for the defendant.

SEC. 93. Section twelve hundred and eighty-four of said Code is hereby amended so as to read as follows:

When of-
fense is not
capital.

1284. When the offense charged is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

SEC. 94. Section twelve hundred and eighty-five of said Code is hereby amended so as to read as follows:

When of-
fense is cap-
ital.

1285. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant.

SEC. 95. Section twelve hundred and eighty-nine of said Code is hereby amended so as to read as follows:

1289. After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the District Attorney.

Increase or reduction of bail.

SEC. 96. Section thirteen hundred and ten of said Code is hereby amended so as to read as follows:

1310. The Court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon 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:

Recommitment of defendant, in what cases.

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.

2. When it satisfactorily appears to the Court that his bail, or either of them, are dead or insufficient, or have removed from the State.

3. Upon an indictment being found or information filed in the cases provided in section nine hundred and eighty five.

SEC. 97. Section thirteen hundred and twenty-six of said Code is hereby amended so as to read as follows:

1326. The process by which the attendance of a witness before a Court or magistrate is required is a subpoena; it may be signed and issued by:

Subpoena defined, and who may issue.

1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the people or of the defendant.

2. The District Attorney, for witnesses in the State, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The District Attorney, for witnesses in the State, in support of an indictment or information, to appear before the Court in which it is to be tried.

4. The Clerk of the Court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as Clerk, for witnesses in the State, as the defendant may require.

SEC. 98. Section thirteen hundred and thirty-five of said Code is hereby amended so as to read as follows:

1335. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment or information, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise.

Witness to be examined conditionally for the defendant.

SEC. 99. Section thirteen hundred and forty-six of said Code is hereby amended so as to read as follows:

Deposition
of witnesses
who are pris-
oners in
other coun-
ties.

1346. When a material witness for a defendant, under a criminal charge, is a prisoner in the State Prison, or in the County Jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or Notary Public of the county in which the jail or prison is situated; or in case the witness is confined in the State Prison, and the defendant is unable to pay for taking the deposition, before the Warden or Clerk of the Board of Directors of the State Prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth.

SEC. 100. Section thirteen hundred and forty-nine of said Code is hereby amended so as to read as follows:

Witness re-
siding out of
the State,
when to be
examined.

1349. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the State, examined in his behalf, as prescribed in this chapter, and not otherwise.

SEC. 101. Section thirteen hundred and fifty-four of said Code is hereby amended so as to read as follows:

Order of
commission,
when grant-
ed and stay
of proceed-
ings

1354. If the Court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the Court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

SEC. 102. Section thirteen hundred and fifty-eight of said Code is hereby amended so as to read as follows:

Commission
how re-
turned when
delivered to
an agent for
that purpose

1358. 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 action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the Commissioner, and that it has not been opened or altered since he received it.

SEC. 103. Section thirteen hundred and sixty-eight of said Code is hereby amended so as to read as follows:

When
doubts arise
as to sanity
of defend-
ant, how de-
termined.

1368. When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the Court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be dis-

charged or retained, according to the discretion of the Court, during the pendency of the issue of insanity.

SEC. 104. Section thirteen hundred and seventy of said Code is hereby amended so as to read as follows:

1370. If the jury find the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the Court must order that he be in the meantime committed by the Sheriff to the State Insane Asylum, and that upon his becoming sane he be redelivered to the Sheriff.

Verdict of the jury as to sanity, and proceedings thereon.

SEC. 105. Section thirteen hundred and seventy-three of said Code is hereby amended so as to read as follows:

1373. The expenses of sending the defendant to the Asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere.

Expense of sending, etc., defendant to asylum, where chargeable.

SEC. 106. Section thirteen hundred and eighty-two of said Code is hereby amended so as to read as follows:

1382. The Court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

When action may be dismissed.

1. When a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment, or filing of the information.

SEC. 107. Section thirteen hundred and eighty-three of said Code is hereby amended so as to read as follows:

1383. If the defendant is not charged or tried, as provided in the last section, and sufficient reason therefor is shown, the Court may order the action to be continued from time to time, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Court may order action to be continued and discharge defendant from custody, when and how.

SEC. 108. Section thirteen hundred and ninety-five of said Code is hereby amended so as to read as follows:

1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the District Attorney file an information thereon, as in case of a natural person held to answer.

Grand jury to investigate if magistrate certifies there is sufficient cause.

SEC. 109. Section thirteen hundred and ninety-six of said Code is hereby amended so as to read as follows:

1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Appearance and plea.

SEC. 110. Section fourteen hundred and one of said Code is hereby amended so as to read as follows:

Affidavits
defectively
entitled,
valid.

1401. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made.

SEC. 111. Section fourteen hundred and twenty-nine of said Code is hereby amended so as to read as follows:

The plea,
and how put
in.

1429. The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the Court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the Court that a higher offense has been committed than the offense charged in the complaint, the Court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the District Attorney.

SEC. 112. This Act shall take effect immediately.

CHAPTER XLVIII.

An Act to amend sections eight hundred and twenty-five and eight hundred and sixty-nine of the Penal Code, relating to proceedings in criminal actions prosecuted by indictment.

[Approved April 9th, 1880.]

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

SECTION 1. Section eight hundred and twenty-five of said Code is hereby amended so as to read as follows:

Defendant
must be
taken before
magistrate
without
delay.

825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney at law entitled to practice in Courts of record of California, may, at the request of the prisoner after such arrest, visit the person so arrested.

SEC. 2. Section eight hundred and sixty-nine of the said Code is hereby amended so as to read as follows:

Testimony,
how taken
and authen-
ticated.

869. The testimony given by each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate, or under his direction, and in other cases upon the demand of the prosecuting attorney, or of the defendant or his counsel, and authenticated in the following form:

First—It must state the name of the witness, his place of residence, and his business or profession.

Second—It must contain the questions put to the witness,

and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth.

Third—If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

Fourth—The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it.

Fifth—It must be signed and certified by the magistrate.

SEC. 3. This Act shall take effect from and after its passage.

CHAPTER XLIX.

An Act to amend section fifteen hundred and eighty-six of the Penal Code, relating to transportation of convicts to State Prisons.

[Approved April 9th, 1880.]

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

SECTION 1. Section fifteen hundred and eighty-six of the Penal Code is hereby amended to read as follows:

1586. Sheriffs delivering prisoners at the State Prisons must receive all expenses necessary incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the Board of Examiners and paid out of any moneys in the State treasury appropriated for that purpose, and no further compensation shall be received by Sheriffs for such transportation or services.

Compensation of Sheriffs for transportation of convicts.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are repealed.

SEC. 3. This Act shall take effect immediately.

CHAPTER LVI.

An Act to amend Sections 712, 728, 732, 760, 771, 772, 818, 820, 850, 890, 935, 1197, 1330, 1466, 1468, 1469, 1515, 1516, and 1556 of the Penal Code, providing for certain proceedings before the Superior Courts, or the Judges thereof.

[Approved April 12th, 1880.]

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

SECTION 1. Section seven hundred and twelve of the Penal Code is hereby amended so as to read as follows:

Undertak-
ing, when
and how
prosecuted.

712. Upon the District Attorney's producing evidence of such conviction to the Superior Court of the county, the Court must order the undertaking to be prosecuted, and the District Attorney must thereupon commence an action upon it in the name of the people of this State.

SEC. 2. Section seven hundred and twenty-eight of said Code is hereby amended so as to read as follows:

Officers who
may order
out the
military.

728. 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, or of the United States, and the fact is made known to the Governor, by any Justice of the Supreme Court, or the Judge of the Superior Court, or Sheriff of the county, or the Mayor or Chief of Police of a city, or the President of the Board of Supervisors of the Cities and Counties of Sacramento and San Francisco, the Governor may issue an order directed to the commanding officer of a division or brigade of the organized National Guard, or enrolled militia of the State, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein specified to aid the civil authorities in suppressing violence and enforcing the laws.

SEC. 3. Section seven hundred and thirty-two of said Code is hereby amended so as to read as follows:

Governor
may in cer-
tain cases
declare a
county in a
state of
insurrection.

732. When the Governor is 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 officers having the process to execute it, he may, on the application of the officer, or of the District Attorney, or Judge of a Superior Court of the county, by proclamation, published in such papers as he may 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 the organized National Guard, or volunteer uniformed companies, or other militia of the State, as he deems necessary, to serve for such term and under the command of such officer as he may direct.

SEC. 4. Section seven hundred and sixty of said Code is hereby amended so as to read as follows:

Accusation
of impeach-
ment to be
transmitted
to the Dis-
trict Attor-
ney, and
copy served
on the de-
fendant.

760. The accusation must be delivered by the foreman of the grand jury to the District Attorney of the county, except when he is the officer accused, who must 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 Superior Court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the Clerk of the Court.

SEC. 5. Section seven hundred and seventy-one of said Code is hereby amended so as to read as follows:

Proceedings
for the
removal of
a District
Attorney.

771. The same proceedings may be had on like grounds for the removal of a District Attorney, except that the accusation must be delivered by the foreman of the grand jury to the Clerk, and by him to a Judge of the Superior Court of

the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the District Attorney of an adjoining county, and require him to conduct the proceedings.

SEC. 6. Section seven hundred and seventy-two of said Code is hereby amended so as to read as follows:

772. When an accusation in writing, verified by the oath of any person, is presented to a Superior Court, alleging that any officer within the jurisdiction of the Court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the Court must cite the party charged to appear before the Court at a time not more than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the Court must enter a decree that the party accused be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases.

Removal of public officers by summary proceedings before Superior Courts.

SEC. 7. Section eight hundred and eighteen of said Code is hereby amended so as to read as follows:

818. If a warrant is issued by a Justice of the Supreme Court, or Judge of a Superior Court, it may be directed generally to any Sheriff, Constable, Marshal, or Policeman in the State, and may be executed by any of those officers to whom it may be delivered.

To what peace officers warrants are to be directed.

SEC. 8. Section eight hundred and twenty of said Code is hereby amended so as to read as follows:

820. The indorsement mentioned in the last section cannot, however, be made unless the warrant of arrest be accompanied with a certificate of the Clerk of the county where such warrant was issued, under the seal of the Superior Court thereof, as to the official character of the magistrate, or, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued.

Indorsement on the warrant for service in another county, how and upon what proof to be made.

SEC. 9. Section eight hundred and fifty of said Code is hereby amended so as to read as follows:

850. A Justice of the Supreme Court, or a Judge of a Superior Court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement.

Arrest by telegraph.

SEC. 10. Section eight hundred and ninety of said Code is hereby amended so as to read as follows:

Indictments
and accusa-
tions, in
what Court
found.

890. All accusations, informations, or indictments against district, county, municipal, and township officers, must be found or filed in the Superior Court.

SEC. 11. Section nine hundred and thirty-five of said Code is hereby amended so as to read as follows:

Form of
bench
warrant.

935. The bench warrant, upon presentment, must 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 —, eighteen —, to the Superior Court of the County of —, charging C. D. with the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above named C. D., and to take him before E. F., a magistrate of this county; or, in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand, with the seal of said Court affixed, this — day of —, A. D. eighteen —. By order of the Court. [Seal.] G. H., Clerk.

SEC. 12. Section eleven hundred and ninety-seven of said Code is hereby amended so as to read as follows:

Form of
bench
warrant.

1197. The bench warrant must 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. eighteen hundred and —, duly convicted in the Superior Court of the County of —, of the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above named A. B., and bring him before that Court for judgment. Given under my hand, with the seal of said Court affixed, this — day of —, A. D. eighteen hundred and —. By order of the Court. [Seal.] E. F., Clerk.

SEC. 13. Section thirteen hundred and thirty of said Code is hereby amended so as to read as follows:

Witness
residing or
served with
subpoena
out of the
county, how
compelled
to attend.

1330. No person is obliged to attend as a witness before a Court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the Judge of the Court in which the offense is triable, or a Justice of the Supreme Court, or a Judge of a Superior Court, 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 indorse on the subpoena an order for the attendance of the witness.

SEC. 14. Section fourteen hundred and sixty-six of said Code is hereby amended so as to read as follows:

Appeals,
when
allowed.

1466. Either party may appeal to the Superior Court of the county from a judgment of a Justice's or Police Court, in like cases and for like cause as appeals may be taken to the Supreme Court.

SEC. 15. Section fourteen hundred and sixty-eight of said Code is hereby amended so as to read as follows:

1468. The appeal to the Superior Court from the judgment of a Justice's or Police Court is heard upon a statement of the case settled by the Justice or Police Judge, embodying such rulings of the Court as are excepted to, which statement must be filed with and settled by the Court within ten days after filing notice of appeal. Statement on appeals.

SEC. 16. Section fourteen hundred and sixty-nine of said Code is hereby amended so as to read as follows:

1469. If a new trial is granted upon appeal, it must be had in the Superior Court. If new trial granted, in what Court held.

SEC. 17. Section fifteen hundred and fifteen of said Code is hereby amended so as to read as follows:

1515. The testimony of the witnesses examined before the Coroner's jury must be reduced to writing by the Coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the Clerk of the Superior Court of the county. Testimony in writing, where filed.

SEC. 18. Section fifteen hundred and sixteen of said Code is hereby amended so as to read as follows:

1516. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the Coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the Clerk of the Superior Court of the county. Exception.

SEC. 19. Section fifteen hundred and fifty-six of said Code is hereby amended so as to read as follows:

1556. The magistrate must return his proceedings to the Superior Court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking. Magistrate to return his proceedings to Superior Court.

SEC. 20. This Act shall take effect immediately.

CHAPTER LVIII.

An Act to add a new section to the Penal Code, to be known as section three hundred and nine, to prevent the admission of minors to houses of prostitution.

[Approved April 12th, 1880.]

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

SECTION 1. A new section, to be known as section three hundred and nine, is hereby added to the Penal Code, to read as follows:

To prevent
admission of
minors to
houses of
prostitution.

309. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein; or any parent or guardian of any such minor, who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house, or room, shall be guilty of a misdemeanor.

SEC. 2. This Act shall take effect immediately.

CHAPTER LIX.

An Act to amend section six hundred and seven of the Penal Code, relating to malicious mischief.

[Approved April 12th, 1880.]

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

SECTION 1. Section six hundred and seven of the Penal Code is hereby amended so as to read as follows:

Destroying
or injuring
bridges,
dams, levees,
etc.

607. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or sea-walls, or any dock, quay, or jetty, lock, or sea-wall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing such soil within twenty-four hours from such watercourse or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the County Jail not exceeding two years, or by both; *provided*, that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining.

SEC. 2. This Act shall take effect immediately.

CHAPTER LX.

An Act to amend eight hundred and seventy-two and eight hundred and seventy-five, and to repeal section eight hundred and seventy-four of the Penal Code, relating to commitments of persons charged with crime.

[Approved April 15th, 1880.]

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

SECTION 1. Section eight hundred and seventy-two of the Penal Code is hereby amended so as to read as follows:

872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the deposition an order, signed by him, to the following effect: It appearing to me that the offense in the within depositions mentioned (or any offense according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same, and committed to the Sheriff of the County of —.

When and how to be committed for public offense.

SEC. 2. Section eight hundred and seventy-five of said Code is hereby amended so as to read as follows:

875. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order, "and that he be admitted to bail in the sum of — dollars, and is committed to the Sheriff of the County of — until he gives such bail."

Order for bail on commitment.

SEC. 3. Section eight hundred and seventy-four of said Code is hereby repealed.

Repealed.

SEC. 4. This Act shall take effect immediately.

CHAPTER LXV.

An Act to amend the Penal Code, by adding a new section thereto, to be known as section five hundred and thirty-six, relative to cheats.

[Approved April 15th, 1880.]

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

SECTION 1. A new section is hereby added to the Penal Code, to be known as and numbered five hundred and thirty-six:

536. Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such com-

Consignees, etc., making false statement concerning prices of consignments, guilty of misdemeanor.

mission merchant, agent, broker, factor, or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisoned in the County Jail not exceeding six months, or by both such fine and imprisonment.

SEC. 2. This Act shall take effect immediately.

CHAPTER LXVI.

An Act to amend section six hundred and nineteen of the Penal Code, relative to disclosing the contents of a telegraphic message.

[Approved April 15th, 1880.]

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

SECTION 1. Section six hundred and nineteen of said Code is hereby amended so as to read as follows:

Disclosing
contents of
telegraphic
message.

619. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a Court, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

CHAPTER LXXII.

An Act to amend section three hundred and one of the Penal Code, in relation to keeping open places of business on Sunday.

[Approved April 15th, 1880.]

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

SECTION 1. Section three hundred and one of the Penal Code is hereby amended so as to read as follows:

Limiting
places of
business that
shall be
open on
Sundays.

301. The provisions of the preceding section do not apply to persons, who, on Sunday, keep open hotels, boarding houses, barber shops, baths, markets, restaurants, taverns, livery stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation; *provided*, that the pro-

visions of the preceding section shall apply to persons keeping open barber shops, bath houses, and hair-dressing saloons after twelve o'clock M. on Sunday.

SEC. 2. This Act shall take effect and be in force fifteen days after its approval by the Governor.

CHAPTER LXXXVIII.

An Act to amend section four hundred and twenty-four of the Penal Code, relating to embezzlements and falsification of accounts by public officers.

[Approved April 16th, 1880.]

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

SECTION 1. Section four hundred and twenty-four of the Penal Code is hereby amended so as to read as follows:

424. Each officer of this State, or of any county, city, town, or district of this State, and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either:

Embezzlement and falsification of accounts by public officers.

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same, or any portion thereof, or having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin, or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same;

Is punishable by imprisonment in the State Prison for not less than one nor more than ten years, and is disqualified from holding any office in this State.

SEC. 2. This Act shall take effect immediately.

CHAPTER XCIV.

An Act to add a new section to the Penal Code, to be known as section three hundred and eighteen, relating to crimes against good morals, and to punish decoys.

[Approved April 16th, 1880.]

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

SECTION 1. A new section is hereby added to the Penal Code, to be known as section three hundred and eighteen, and to read as follows:

Prevailing
upon any
person to
visit a place
kept for
gambling or
prostitution,
a misde-
meanor.

318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the County Jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment.

SEC. 2. This Act shall take effect and be in force from and after its passage.

CHAPTER XCV.

An Act to amend section three hundred and thirty-two of the Penal Code, in relation to swindling by cards or other means.

[Approved April 16th, 1880.]

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

SECTION 1. Section three hundred and thirty-two of the Penal Code is hereby amended so as to read as follows, viz.:

Winning at
play by
fraudulent
means.

332. Every person who by the game of "three card monte," so-called, or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value.

SEC. 2. This Act shall take effect immediately.

CHAPTER CIV.

An Act to add two new sections to the Penal Code, to be numbered four hundred and four hundred and one, relative to the keeping or sale of animals afflicted with glanders, or other contagious or infectious diseases.

[Approved April 16th, 1880.]

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

SECTION 1. Two new sections are hereby added to the Penal Code, to read as follows:

400. Any person who shall knowingly sell, or offer for sale or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or expose any horse, mule, or other animal having the disease known as glanders, or farcy, shall be guilty of a misdemeanor. Sale or exposure of animals having glanders, a misdemeanor.

401. Every animal having glanders, or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition, and any such owner or person omitting or refusing to comply with the provisions of this section, shall be guilty of a misdemeanor. Such animals to be killed.

SEC. 2. This Act shall take effect immediately.

CHAPTER CVII.

An Act to amend sections six hundred and twenty-six (626) and six hundred and thirty-one (631) of the Penal Code, relating to violations of the laws for the preservation of fish and game.

[Approved April 16th, 1880.]

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

SECTION 1. Section six hundred and twenty-six of the Penal Code of the State of California is hereby amended so as to read as follows:

626. Every person who, in any of the counties of this State, between the fifteenth day of March and the fifteenth day of September, in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or any kind of duck, or rail, or marsh hens, is guilty of a misdemeanor. Every person who, in the State of California, between the first day of January and the first day of July, in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, at any time, takes, gathers, or

Destruction of game, etc., when prohibited.

destroys the eggs of any mallard, wood, or summer duck, red-head, teal, gadwell, or gray duck, or any other species of wild duck, is guilty of a misdemeanor. Every person who shall have any of the aforesaid game, or any male deer or buck, or any female deer or doe, or any antelope, elk, or mountain sheep in his possession at a time when it is unlawful to kill the same, as provided by this section, or by section six hundred and twenty-eight of this Code, is guilty of a misdemeanor, and proof of the possession of any of the aforesaid game at a time when it is unlawful to kill the same within the county wherein the same is found, shall be prima facie evidence, in any prosecution for a violation for any of the provisions of this section, that the person or persons in whose possession the same is found, took, killed, or destroyed the same in the county wherein the same is found, during the period when it was unlawful to take, kill, or destroy the same.

SEC. 2. Section six hundred and thirty-one of said Penal Code of the State of California is hereby amended to read as follows:

Taking
quail,
partridge,
etc., with net,
pound, etc.;

631. Any person or persons who shall, at any time, net, pound, weir, cage, or trap any quail, partridge, or grouse, or who shall take from any net, pound, weir, cage, or trap, any quail, partridge, or grouse, and retain in his possession, or sell, or give away the same, is guilty of a misdemeanor.

SEC. 3. This Act shall take effect from and after its passage.

CHAPTER CVIII.

An Act to amend sections one hundred and five and one hundred and six of the Penal Code, relating to escapes and attempts to escape from State Prison.

[Approved April 16th, 1880.]

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

SECTION 1. Section one hundred and five of the Penal Code is hereby amended so as to read as follows:

Escapes
from State
Prison.

105. Every prisoner confined in the State Prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the State Prison for a term equal in length to the term he was serving at the time of such escape; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

SEC. 2. Section one hundred and six of said Code is hereby amended so as to read as follows:

Attempt to
escape from
State Prison.

106. Every prisoner confined in the State Prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and, on conviction thereof, the

term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison.

SEC. 3. This Act shall take effect immediately.

CHAPTER CIX.

An Act to amend the Penal Code by adding a new section thereto, to be known as section nine hundred and twenty-eight, relating to the duties of the grand jury.

[Approved April 16th, 1880.]

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

SECTION 1. The following is hereby added as a new section to the Penal Code, to be known as section nine hundred and twenty-eight.

928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report thereon, and if, in their judgment, the services of an expert are necessary, they shall have power to employ one at an agreed compensation not to exceed five dollars per day, payable as other county charges. The Judge, upon the impanelment of such grand jury, shall charge them specially as to their duties under this section.

Duties of
grand jury.

SEC. 2. This Act shall take effect immediately.

CHAPTER CXVIII.

An Act to amend section nine hundred and ninety-five, one thousand and sixteen, one thousand and seventeen, one thousand and twenty, one thousand and twenty-three, and one thousand and forty-one of the Penal Code, relative to pleadings and proceedings after indictment and before the commencement of the trial.

[Approved April 26th, 1880.]

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

SECTION 1. Section nine hundred and ninety-five of the Penal Code is hereby amended to read as follows:

995. The indictment or information must be set aside by the Court in which the defendant is arraigned, upon his motion.

Indictment
or informa-
tion, when
set aside on
motion.

motion, in either of the following cases. If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this Code.

2. When 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 indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That it was not subscribed by the District Attorney of the county.

SEC. 2. Section one thousand and sixteen of said Code is hereby amended so as to read as follows:

The different kinds of pleas.

1016. There are four kinds of pleas to an indictment or information. A plea of:

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

4. Once in jeopardy.

SEC. 3. Section one thousand and seventeen of said Code is hereby amended so as to read as follows:

Pleas, how put in, and form.

1017. Every plea must be oral, and entered upon the minutes of the Court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the Court of — (naming it), rendered at — (naming the place), on the — day of —."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged, (specifying the time, place, and Court)."

SEC. 4. Section one thousand and twenty of said Code is hereby amended so as to read as follows:

What may be given in evidence under plea of not guilty.

1020. All matters of fact tending to establish a defense, other than that specified in the third and fourth subdivisions of section one thousand and sixteen, may be given in evidence under the plea of not guilty.

SEC. 5. Section one thousand and twenty-three of said Code is hereby amended so as to read as follows:

1023. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information.

Conviction
or acquittal
on an
indictment,
etc., for a
higher
offense,
effect of.

SEC. 6. Section one thousand and forty-one of said Code is hereby amended so as to read as follows:

1041. An issue of fact arises:

Issue of fact
defined.

1. Upon a plea of not guilty.
2. Upon a plea of a former conviction or acquittal of the same offense.
3. Upon a plea of once in jeopardy.

SEC. 7. This Act shall take effect from and after its passage.



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