

ACTS

AMENDATORY OF THE CODES,

PASSED AT THE

*Twentieth Session of the Legislature,*

1873-74,

BEGAN ON MONDAY, THE FIRST DAY OF DECEMBER, EIGHTEEN HUNDRED  
AND SEVENTY-THREE, AND ENDED ON MONDAY, THE THIRTIETH  
DAY OF MARCH, EIGHTEEN HUNDRED AND SEVENTY-FOUR.



SACRAMENTO:  
G. H. SPRINGER, STATE PRINTER.  
1874.



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# POLITICAL CODE.

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ACTS  
AMENDATORY OF  
THE POLITICAL CODE,

PASSED AT THE  
TWENTIETH SESSION OF THE LEGISLATURE.

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AN ACT TO AMEND THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section nine of the Political Code is amended to read as follows:

Section Nine. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code.

Limita-  
tions,  
running of.

SEC. 2. Section eleven of said Code is amended to read as follows:

**Holidays.** Section Eleven. If the first day of January, the twenty-second day of February, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday.

**SEC. 3.** Section seventeen of said Code is amended to read as follows:

**Words and  
terms  
defined.**

Section Seventeen. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes both real and personal property.

[Two]—The words "real property" are coextensive with lands, tenements, and hereditaments.

Three—The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Four—The word "month" means a calendar month, unless otherwise expressed.

Five—The word "will" includes codicils.

Six—The word "writ" signifies an order or precept in writing, issued in the name of the People, or of a Court or judicial officer; and the word "process," a



writ or summons issued in the course of judicial proceedings. Same.

Seven—The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

Eight—The term "peace officer" signifies any of the officers mentioned in section eight hundred and seventeen of the Penal Code.

Nine—The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of the Penal Code.

Ten—The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories.

SEC. 4. Section one hundred and ninety-four of said Code is amended to read as follows:

Section One Hundred and Ninety-four. From the county seat of Sutter County to Sacramento, fifty miles; to Stockton, ninety-five miles; to San Quentin, one hundred and eighty miles.

Legal  
distances,  
Sutter.

SEC. 5. Section two hundred and thirty-six of said Code is amended to read as follows:

Section Two Hundred and Thirty-six. The certificate of election is prima facie evidence of the right to membership.

Certificate  
of election.

SEC. 6. Section six of said Code is amended to read as follows:

Section Six. All persons who, at the time this Code takes effect, hold office under any of the Acts repealed, continue to hold the same according to the tenure thereof, except those officers which are not continued by one of the Codes adopted at this session

Tenure of  
office.

of the Legislature, and excepting offices filled by appointment.

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

Statement  
of cause of  
contesting  
election.

Section Two Hundred and Seventy-four. The person contesting such election must, within twenty days after the certificate of election is issued, file with the Clerk of the county, or one of the counties in which the alleged cause of contest originated, a statement of the grounds of contest, verified by his oath.

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

Service of  
subpoena.

Section Three Hundred and One. The subpoena may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service.

SEC. 9. Section three hundred and thirty-four of said Code is amended to read as follows:

Number of  
reports to  
be printed.

Section Three Hundred and Thirty-four. There must be printed:

Of the report of the Secretary of State, twelve hundred copies.

Of the report of the State Controller, two thousand six hundred and forty copies.

Of the report of the State Treasurer, two thousand one hundred and sixty copies.

Of the report of the Surveyor General, five thousand two hundred and eighty copies.

Of the report of the Superintendent of Public Instruction, five thousand two hundred and eighty copies.

Of the report of the Attorney General, twelve hundred copies.

Of the report of the Adjutant General, twelve hundred copies.

Of the report of the State Librarian, twelve hundred copies. Same.

Of the report of the Fish Commissioners, twelve hundred copies.

Of the report of the Directors, Resident Physician, Visiting Physician of the Insane Asylum, two thousand four hundred copies.

Of the report of the Directors of the State Prison, two thousand four hundred copies.

Of the report of the State Board of Equalization, two thousand four hundred copies.

Of the report of the State Capitol Commissioners, twelve hundred copies.

Of the report of the State Board of Harbor Commissioners, twelve hundred copies.

Of the report of the Regents of the University of California, two thousand four hundred copies.

Of the report of the Directors of the State Agricultural Society, twelve hundred copies.

Of the report of the Tide Land Commissioners, twelve hundred copies.

Of the report of the Trustees of the Asylum for the Deaf, Dumb, and Blind, twelve hundred copies.

Of the report of the State Board of Health, two thousand four hundred copies.

SEC. 10. Section three hundred and thirty-five of said Code is amended to read as follows:

Section Three Hundred and Thirty-five. The reports printed must be delivered by the State Printer as follows: Distribution of same.

To the Governor, fifty copies of each report.

To the State Treasurer, ten copies of each report.

To the Secretary of State, thirty copies of each report.

To the Superintendent of Public Instruction, two thousand five hundred copies of his report, for distri-

Same.

bution to School Trustees and school teachers throughout the State, and for exchange with other States.

To the Surveyor General, one thousand copies of his report, for distribution to the County Surveyors, Assessors, and County Clerks of the several counties, and for exchange with other States.

To the Adjutant General, five hundred copies of his report, to be distributed at his discretion.

To the Attorney General, one hundred copies of his report, for distribution to the several District Attorneys of the State.

To the Controller, two hundred copies of his report.

To the Secretary of State, two hundred copies of his report.

To the State Treasurer, one hundred copies of his report.

To the State Librarian, two hundred copies of his report.

To the officers of the Insane Asylum, two hundred copies of their report.

To the Directors of the State Prison, one hundred copies of their report.

To the Regents of the University of California, two hundred copies of their report.

To the Trustees of the Asylum for the Deaf, Dumb, and Blind, five hundred copies of their report.

To the Fish Commissioners, two hundred copies of their report.

To the State Board of Equalization, two hundred copies of their report.

To the officers of the State Agricultural Society, two hundred copies of their report.

To the State Board of Health, two hundred copies of their report.

And the remaining copies thereof, one third to the order of the Sergeant-at-Arms of the Senate, and two thirds to the order of the Sergeant-at-Arms of the

Assembly, to be by them distributed pro rata to the members of the Senate and Assembly next to convene.

SEC. 11. The following is added as a new section to said Code, and must be inserted in said Code after section three hundred and thirty-six, and designated section three hundred and thirty-seven:

Section Three Hundred and Thirty-seven. Of the report of the Insurance Commissioner, the Commissioner must have printed, at the expense of his office, one thousand copies, and must deliver of the same as follows:

Insurance  
Commissioner's  
report.

To the Governor, twenty copies.

To the State Librarian, ten copies.

To the Secretary of State, thirty copies.

To the Sergeant-at-Arms of the Senate, eighty copies.

To the Sergeant-at-Arms of the Assembly, one hundred and sixty copies.

And the residue must be distributed by the Commissioner in furtherance of the interest of insurance.

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

Section Four Hundred and Thirty-seven. Whenever any person has received moneys, or has money or other personal property which belongs to the State by escheat or otherwise, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the State, and fails to render an account thereof to and make settlement with the Controller within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the State Treasury any moneys belonging to the State upon being required so to do by the Controller, within twenty days after such requisition, the Controller must

Proceed-  
ings against  
defaulters.

state an account with such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from [the] time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the Controller cannot for want of information state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the State.

SEC. 13. Section five hundred and ninety-five of said Code is amended to read as follows:

Duties of  
Insurance  
Commis-  
sioner.

Section Five Hundred and Ninety-five. The Insurance Commissioner must receive all bonds and securities of persons engaged in the transaction of insurance business in this State, and file and safely keep the same in his office, or deposit them as provided in this Article. He must examine and inspect the financial condition of all persons engaged or who desire to engage in the business of insurance; issue a certificate of authority to transact insurance business in this State to any persons in a solvent condition who have fully complied with the laws of this State; determine the sufficiency and validity of all bonds, and other securities, required to be given by persons engaged or to be engaged in insurance business, and cause the same to be renewed in case of the insufficiency or invalidity thereof; and perform all other duties imposed upon him by the laws regulating the business of insurance in this State, and enforce the execution of such laws; prepare and furnish on demand, to all persons engaged in the insurance business, blank forms for such statements or reports as may by law be required of them; make, on or before the first day of August, in each year, a report to the Governor of this State, containing a tabular statement and synopsis of the reports which have been

filed in his office, showing generally the condition of the insurance business and interests in this State, and other matters concerning insurance, and a detailed statement, verified by oath, of the moneys and fees of office received by him, and for what purpose. And whenever any insurance company doing business in this State shall voluntarily surrender to the Insurance Commissioner its certificate of authority previously granted, thereby withdrawing from business in the State, the Commissioner must make due publication of such surrender and withdrawal, daily, for the period of one month, in some newspaper published in the City of San Francisco.

SEC. 14. Section five hundred and ninety-six of said Code is amended to read as follows:

Section Five Hundred and Ninety-six. No person 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 insurance taken before the issuing of such certificate, are null and void; and any person issuing or renewing a policy without such certificate, shall forfeit to the people of the State of California the sum of one hundred dollars for each policy so issued or renewed, to be collected in the manner prescribed in section five hundred and ninety-eight of this Code.

Insuring  
without  
certificate.

SEC. 15. Section six hundred and two of said Code is amended to read as follows:

Section Six Hundred and Two. Whenever provision for the liabilities of any person engaged in the insurance business in this State, for losses reported, expenses, taxes, and reinsurance of all outstanding risks estimated at fifty per cent of the premiums received

What  
constitutes  
insolvency.

Same.

and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all other marine risks, and at rates for life risks, based upon the rate of mortality established by the American Experience Life Table, and interest at four and one half per cent per annum, and such rates for accident and other kinds of insurance as are accepted by the insurance authorities of the State of New York, would so far impair his capital stock paid in as to reduce the same below two hundred thousand dollars in gold coin of the United States, or below twenty per cent of said capital stock paid in, such person is insolvent. And in the case of a person thus engaged in the insurance business in this State, on the mutual plan, if his available cash assets shall not exceed his liabilities, as heretofore enumerated, in the full sum of two hundred thousand dollars in United States gold coin, such person is insolvent.

SEC. 16. Section six hundred and ten of said Code is amended to read as follows:

Statements  
by  
insurance  
companies.

Section Six Hundred and Ten. The Commissioner must require from every corporation or person doing the business of insurance in this State a statement, verified as follows:

One—If it be made by a corporation organized under the laws of this State, by the oaths of the President and Secretary, or of the Vice President and Secretary thereof.

Two—If made by a foreign insurance company or person, by the oath of the principal executive officer thereof.

Three—If it be made by an individual or firm, by the oath of such individual or a member of the firm.

SEC. 17. Section six hundred and eleven of said Code is amended to read as follows:

Section Six Hundred and Eleven. The statement



mentioned in the preceding section must exhibit the condition and affairs of every corporation, person, firm, or individual, on the thirty-first day of December then next preceding, and must be published in a daily newspaper in the city where the principal office is located, for the period of one week; and must be filed with the Insurance Commissioner, as follows:

Contents,  
and when  
made.

One—If made by a person residing in, or by a company organized under the laws of this State, on or before the first day of February of each year.

Two—If made by a person resident of, or by a company organized under the laws of any other State, or Territory, or district of the United States, on or before the first day of March of each year.

Three—If made by a person resident of, or by a company organized under the laws of any country foreign to the United States, on or before the first day of April of each year.

SEC. 18. Section six hundred and twenty-two of said Code is amended to read as follows:

Section Six Hundred and Twenty-two. Whenever the laws of any State or count[r]y require of insurance companies, incorporated under the laws of this State, and having agencies in such other State or count[r]y, or of the agents thereof, any further or greater license, fees, charges, impositions, taxes, deposit of securities, statements, publications, or certificates of authority, or inflict any greater fines or penalties upon such corporations or agents than are required from similar companies or agents belonging to such State or count[r]y respectively, then and in every such case, from every company, person, or corporation of such State or count[r]y, which has or is about to establish agencies in this State, the Commissioner must, before it continues or commences to do business in this State, collect the same licenses, fees, charges, impositions, and taxes

Retaliatory  
clause.

Same. "as are imposed by such State upon agents, companies, corporations, or persons of this State doing business in such State, in excess of the licenses, fees, charges, impositions, and taxes upon agents, companies, corporations, or persons of that State," and require the same statements, publications, certificates of authority, and the same deposit of securities, as are required by the laws of such State or country of companies, persons, or corporations and agents of this State doing business in such other State or country; and the same fines and penalties must be inflicted upon companies, persons, or corporations of such other State or country, and their agents, as are inflicted by the laws of such State or country upon companies, persons, or corporations of this State, and their agents, in excess of such fines and penalties inflicted upon companies, persons, or corporations belonging to such State or country respectively which may be recovered by the Insurance Commissioner in the manner provided in section five hundred and ninety-eight of this Code.

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

Salary of  
District  
Judges.

Section Seven Hundred and Thirty-seven. The annual salaries of the Judges of the Third, Fourth, Sixth, Twelfth, Fifteenth, and Nineteenth Judicial Districts are six thousand dollars each.

SEC. 20. Section seven hundred and seventy-seven of said Code is amended to read as follows:

Style and  
copyright  
of reports.

Section Seven Hundred and Seventy-seven. The reports must be published in well bound volumes, and must be printed on good book paper, in long primer leaded, except the title page, the table of cases, the synopsis, and index. The Reporter must copyright each volume of the reports in his own name, but such copyright shall be the property of the State.

SEC. 21. Section seven hundred and eighty-one of said Code is amended to read as follows:

Section Seven Hundred and Eighty-one. The Secretary of State must keep on sale, at three dollars per volume, the copies of the edition not distributed under the provisions of section four hundred and ten, and must, at the end of each month, pay into the State Treasury the proceeds of all sales made by him.

Disposition  
of reports.

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

Section Seven Hundred and Ninety-one. The Governor must appoint and commission Notaries Public as follows:

Number of  
Notaries.

For the County of San Francisco, twenty-two.

For the Counties of Alameda, Sacramento, San Joaquin, Santa Clara, Amador, Butte, Calaveras, Contra Costa, El Dorado, Los Angeles, Monterey, Nevada, Placer, Santa Cruz, Solano, Sonoma, Tuolumne, Yolo, and Yuba, twenty each.

For each of the other counties, fifteen.

SEC. 23. Section seven hundred and ninety-five of said Code is amended to read as follows:

Section Seven Hundred and Ninety-five. The protest of a Notary, under his hand and official seal, of a bill of exchange, or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the Post Office nearest thereto, is prima facie evidence of the facts contained therein.

Protests  
prima facie  
evidence.

SEC. 25. The following is added as a new section to said Code, and must be inserted in said Code after section eight hundred and forty-two, and designated section eight hundred and forty-three:

Deputies. Section Eight Hundred and Forty-three. No county officer must be appointed or act as the deputy of another officer of the same county.

SEC. 26. Section nine hundred and twenty-six of said Code is amended to read as follows:

Settle-  
ments,  
when  
withheld;

Section Nine Hundred and Twenty-six. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this Article, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation, by the District Attorney of the county. In case there be judgment for the defendant upon such prosecution, the respective officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

SEC. 27. Section one thousand and thirty-two of said Code is amended to read as follows:

Inspection  
of records.

Section One Thousand and Thirty-two. The public records and other matters in the office of any officer, are at all times, during office hours, open to the inspection of any citizen of this State. In all actions for divorce, the pleadings, and the testimony taken and filed in said actions, shall not be by the Clerk with whom the same is filed, or the referee before whom the testimony is taken, made public, nor shall the same be allowed to be inspected by any person except the parties that may be interested, or the attorneys to the action, or by an order of the Court in which the action is pending; a copy of said order

must be filed with the Clerk. In cases of attachment, the Clerk of the Court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment.

*This provision is bad and shall be repealed.*

Sec. 28. Section one thousand and ninety-seven of said Code is amended to read as follows:

Section One Thousand and Ninety-seven. No person's name must be entered by the Clerk, unless:

*Rules for registration*

One—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.

Two—Upon the returns of the Assessor of the county.

Three—If a naturalized citizen, upon the production of his certificate of naturalization, 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 of his naturalization, together with his affidavit that he has resided in the United States for five years, and in this State for six months next preceding the time of application, and that he is an elector of the county.

Four—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, whilst he was residing in the United States, and under the age of twenty-one years, and that he is an elector of the county.

Five—Upon the production and filing of a certified copy of the judgment of a District Court directing such entry to be made.

Six—In other cases, upon the affidavit of the party that he is an elector of the county.

Seven—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. 29. Section eleven hundred and six of said Code is amended to read as follows:

Rules for  
cancellation.

Section Eleven Hundred and Six. The Clerk must cancel the entry in the following cases:

One—At the request of the party registered.

Two—When he knows of the death or of the removal of the person registered.

Three—When the insanity of the person registered is legally established.

Four—Upon the production of a certified copy of a judgment of felony, in full force against the person registered, or upon information of such conviction, obtained as hereinafter provided.

Five—Upon the production of a certified copy of a judgment directing the cancellation to be made.

Six—Upon the 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.

Seven—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 three years at any general or judicial election.

Eight—The Clerk shall cancel upon the Great Register every name found thereon which is also found upon the Register of Deaths, provided for in section three thousand and seventy-nine of this Code.

Nine—Every Judge before whom proceedings are 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. Same.

Ten—The County Clerk shall, also, in the first week of July in each year, examine the records of the Courts having jurisdiction in cases of felony, within his county, and cancel upon the Great Register the names of all persons appearing thereon who shall have been convicted of felony in any of such Courts, and which conviction shall have been carried into effect.

SEC. 30. Section one thousand one hundred and nine of said Code is amended to read as follows:

Section One Thousand One Hundred and Nine. Any person may proceed, by action in the District 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. 31. Section one thousand one hundred and thirteen of said Code is amended to read as follows:

Section One Thousand One Hundred and Thirteen. Before the fifth day of August, in each year in which there shall be a general or Presidential election, each County Clerk must make out a copy of the uncanceled entries existing on the Great Register on the preceding first day of August. In lieu of such copy, for the City and County of San Francisco, the County Clerk Copies of Great Register.

Ward  
Registers,  
San  
Francisco.

must, from the poll lists of the general and judicial elections held in September and October, eighteen hundred and seventy-three, and from similar poll lists of the general and judicial elections held in every second year thereafter, make out Ward Registers, one for each ward in said city and county, and upon each such Ward Register he must enter the names of the qualified electors of the ward appearing on the last general and judicial poll lists of the ward, alphabetically arranged, together with the entries respectively appearing on the Great Register opposite such names. He shall not enter the name of the same person on more than one Ward Register. He must, however, enter upon the proper Ward Register the name of any person who, being duly sworn, shall make satisfactory proof that he is an elector of such ward, and that his name is uncanceled on the Great Register of said city and county. He must, upon satisfactory proof, obtained in like manner, transfer any name from one Ward Register to another, at the same time canceling the name on the Ward Register from which the transfer is made, noting such transfer on each such Ward Register, opposite the name. For the purposes of registration and preparation of Ward Registers, and copies thereof, required by law, the County Clerk must employ such assistants, and for such times and at such compensation, as shall from time to time be authorized by the Board of Supervisors. All fees received for registration and transfers must be paid into the Treasury of the city and county, and out of such Treasury must be paid the compensation of such assistants, and all necessary expenses of registration, preparation of Registers, and of transfers, upon the proper orders of the Board of Supervisors. The Board of Supervisors of any county may, by order, provide for the preparation, printing, and distribution of Township Registers for each township, instead of copies of

Township  
Registers.



the Great Register, in the same manner as is herein Same.  
above provided respecting Ward Registers in the City  
and County of San Francisco. When so ordered, the  
provisions of law applicable to the City and County of  
San Francisco, in respect to the preparation, correction,  
issue, distribution, posting, use, and return of Ward  
Registers, shall apply to such county, the word "town-  
ship" being substituted for "ward" for that pur-  
pose, wherever it occurs; except that the number of  
additional copies to be printed of such registers, shall  
not exceed fifty for each one thousand votes cast in  
the respective townships at the next preceding elec-  
tion. The Board of Supervisors shall fix the compen-  
sation of the County Clerk for his services in preparing  
the Township Registers, which shall be paid out of  
the County Treasury. Such order may be repealed  
and reenacted as often as the Board of Supervisors  
may deem it expedient to do so.

SEC. 32. Section one thousand one hundred and  
fourteen of said Code is amended to read as follows:

Section One Thousand One Hundred and Fourteen. Arrange-  
ment of  
names.  
In such copy and registers the names must be arranged  
alphabetically, according to surnames, and must be  
numbered consecutively, from the first to the last  
name, inclusive.

SEC. 33. Section one thousand one hundred and  
fifteen of said Code is amended to read as follows:

Section One Thousand One Hundred and Fifteen. Printing  
Registers.  
Within fifteen days after making such lists, the Clerk  
must have printed a sufficient number of copies thereof  
to supply each election precinct in the county with not  
less than ten copies thereof, and fifty additional for  
every one thousand votes cast in the county at the  
next preceding general election; except that in the  
City and County of San Francisco the County Clerk  
must have printed a sufficient number of copies of

each Ward Register to supply two hundred and fifty copies thereof for the first one thousand votes or fraction thereof, cast in the ward at the next preceding general election, and fifty additional copies for each additional one thousand votes or fraction thereof above five hundred.

SEC. 34. Section one thousand one hundred and sixteen of said Code is amended to read as follows:

Distribu-  
tion of  
copies.

Section One Thousand One Hundred and Sixteen. The Clerk must, as soon as such copies of the Great Register, or Ward, or Township Registers are printed:

First—Post one copy in some public place in the Court House.

Second—Deliver, upon demand, one copy to each county and township officer in the county.

Third—Transmit and cause to be delivered not less than ten copies to each Board of Election in the county; but in cases where Ward Registers are printed, ten copies shall be delivered to each Board of Election in the respective wards, and one copy of all the registers to each Board of Election in the county.

Fourth—Preserve five copies in the office for the inspection of the public.

Fifth—Transmit to the State Library, Mercantile Library, Mechanics' Institute, and Odd Fellows' Library, of San Francisco, one copy each.

Sixth—Deliver one copy to each elector of the county, or respective ward, applying therefor, until the remainder of the edition printed is exhausted.

SEC. 35. Section one thousand one hundred and seventeen of said Code is amended to read as follows:

Register  
prima facie  
evidence.

Section One Thousand One Hundred and Seventeen. A certified copy of an uncanceled entry upon the Great Register is prima facie evidence that the person named in the entry is an elector of the county.

SEC. 36. Section one thousand one hundred and thirty-one of said Code is amended to read as follows:

Section One Thousand One Hundred and Thirty-one. The Board must, at least fifteen days prior to an election, issue its order appointing Boards of Election, designating the house or place within the precinct where the election must be held, and the offices to be filled, naming and numbering, in numerical order, commencing with number one, the offices to be filled, unexpired terms being lastly designated.

Appoint-  
ment of  
Election  
Boards and  
precincts.

SEC. 37. Section one thousand one hundred and thirty-two of said Code is amended to read as follows:

Section One Thousand One Hundred and Thirty-two. If the Board fail to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the Justices of the Peace residing in the precinct must meet two days before the election, and by an order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place. In the City and County of San Francisco, any three of the Justices of the Peace may discharge the duties imposed by this section, at least eighteen hours prior to the opening of the polls.

Same.

SEC. 38. Section one thousand one hundred and forty-two of said Code is amended to read as follows:

Section One Thousand One Hundred and Forty-two. When an election is ordered, the Board of Supervisors must appoint, for each precinct, from the electors thereof, one Inspector and two Judges, who constitute a Board of Election for such precinct; and in the City and County of San Francisco the Board of Supervisors must also, prior to the election day, appoint for each precinct, from the electors thereof, an additional Inspector and two additional Judges, who,

Appoint-  
ment of  
Boards of  
Election.

Same.

with the original Inspector and Judges, shall canvass the votes for such precinct, and who must be present at the closing of the polls, otherwise the Board of Election must appoint the additional Inspector and Judges, or supply the place of an absent member thereof. The original and additional Inspectors and Judges shall thenceforth constitute the Board of Election, the members relieving each other in the duties of canvassing the ballots, which may be conducted by at least half of the whole number; but the final certificates shall be signed by a majority of the whole.

SEC. 39. Section one thousand one hundred and forty-four of said Code is amended to read as follows:

Same.

Section Eleven Hundred and Forty-four. If the Board of Supervisors fail to appoint the Board of Election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint the Board, or supply the place of an absent member thereof.

SEC. 40. Section eleven hundred and forty-nine of said Code is amended to read as follows:

Posting  
copies of  
Great  
Register.

Section Eleven Hundred and Forty-nine. Before opening the polls the Board must post, in some separate convenient places, easy of access, not less than four printed copies of the Great Register of the county, as last printed, except in the City and County of San Francisco, wherein not less than four printed copies of the Register of the Ward shall be so posted.

SEC. 41. Section eleven hundred and sixty of said Code is amended to read as follows:

Time of  
opening  
and closing  
polls.

Section Eleven Hundred and Sixty. The polls must be opened at one hour after sunrise on the

morning of the election, and must be kept open until sunset, when the same must be closed.

SEC. 42. Section eleven hundred and sixty-one of <sup>Repealed.</sup> said Code is repealed.

SEC. 43. Section one thousand one hundred and seventy-four of said Code is amended to read as follows:

Section Eleven Hundred and Seventy-four. The following is the form of poll lists and tally lists to be kept by Boards and Clerks of Election: <sup>Form of poll lists.</sup>

#### POLL LISTS.

Of the election held in the Precinct of —, in the County of —, on the — day of —, in the year A. D. one thousand eight hundred and —. A. B., C. D., and E. F., Judges, and G. H. and J. K., Clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

#### NUMBER AND NAME OF ELECTORS VOTING.

No.	Name.	No.	Name.
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the numbers of electors voting at this election amounts to —.

Attest:

G. H.,  
J. K.,  
Clerks.

A. B.,  
C. D.,  
E. F.,  
Board of Election.

## TALLY LISTS.

Tally lists. Names of persons voted for, and for what office, containing the number of votes given for each candidate:

Governor.	Representative in Congress.	Members of the Legislature.	
		Senate.	Assembly.

We hereby certify that A. B. had — votes for Governor, and C. D. had — votes for Governor; that E. F. had — votes for Representative in Congress, etc.

G. H.,

A. B.,

J. K.,

C. D.,

Clerks.

E. F.,

Board of Election.

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

Form of  
ballot.

Section Eleven Hundred and Ninety-one. No ticket must be used at any election, or circulated on the day of election, unless:

One—It is written or printed on paper furnished by the Secretary of State, or upon paper in every respect precisely like such paper.

Two—It is five inches in width, or within one fourth of an inch of such width. If not more than

fifty offices are designated to be filled, it is twelve Same.  
inches in length, or within one half of an inch of such length. If more than fifty offices, and not more than eighty offices, are designated to be filled, it is eighteen inches in length, or within one half of an inch of such length. If more than eighty offices are designated to be filled, it is twenty-four inches in length, or within one half of an inch of such length.

Three—If printed, the names of the persons voted for, and the offices designated, are printed in black ink, and in long primer capitals—the names of the offices in small capitals, and of the persons in large capitals—and both without spaces, except between the different words or initials in each line, and between the numbers and initials.

Four—If printed, the same margin is left above the printed matter as below it.

Five—If printed, the lines are straight, and the matter double leaded with six to pica leads. The word "For" comprises the top line, the margins both sides of it being equal in size. The line after the top one commences with the figure one, then follows immediately on the same line the name of the first office designated by the Board of Supervisors in its order, issued under section one thousand one hundred and thirty-one, and lastly, on the same line, the name of the person voted for. Each subsequent line commences with the figure next in numerical order, and such number is in like manner immediately followed by the name of the office designated, and the person voted for; so that the offices shall appear upon the ticket in the order designated by the Board of Supervisors, and be numbered in numerical order, commencing with the number one. The numbers are in a straight line from top to bottom, and are within one quarter of an inch of the left hand edge of the ticket;

Same. so that the blank space for substituted names shall be on the right hand side of the ticket. The ticket shall be substantially in the following form:

For—

One—STATE SENATOR, FRANK COWPER.

Two—STATE SENATOR, PHILIP ROSS.

Third—MEMBER OF ASSEMBLY, A. S. WARDEN.

Fourth—MEMBER OF ASSEMBLY, WASHINGTON SWIFT.

Five—MEMBER OF ASSEMBLY, CALEB T. HOLLIDAY.

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

Tickets,  
how  
folded.

Section One Thousand One Hundred and Ninety-eight. Every ticket, when used as a ballot, must be folded crosswise from the center, and as follows: if twelve inches long, four times; if eighteen inches long, five times; and if twenty-four inches long, five times, and must be pressed flat.

SEC. 46. Section one thousand two hundred and twenty-seven of said Code is amended to read as follows:

When  
ballot to be  
received.

Section One Thousand Two Hundred and Twenty-seven. If the name be found on the copy of the Great Register, or Ward Register, or if the party produce and file with the Board an uncanceled certificate of registration on the Great Register of the county, and the vote is not rejected upon a challenge taken, the Inspector, or Judge, acting as such, must, in the presence of the Board of Election, place the ballot, without being opened or examined, in the ballot box.

SEC. 47. Section one thousand two hundred and thirty-nine of said Code is amended to read as follows:



Section One Thousand Two Hundred and Thirtynine. The Board of Election, in determining the place of residence of any person, must be governed by the following rules, as far as they are applicable:

Rules for  
determin-  
ing  
residence.

One—That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Two—A person must not be held to have gained or lost residence by reason of his presence or absence from a place while employed in the service of the United States, or of this State, nor while engaged in navigation, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison.

Third—A person must not be held, by reason of having moved from one precinct to another, in the same county, within thirty days prior to the election, to have lost his residence in the precinct so moved from, provided he was an elector therein on the thirtieth day prior to such election.

Four—A person must not be considered to have lost his residence who leaves his home to go into another State, or precinct in this State, for temporary purposes merely, with the intention of returning.

Five—A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home.

Six—If a person removes to another State with the intention of making it his residence, he loses his residence in this State.

Seven—If a person remove to another State with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this State, notwithstanding he entertains an intention of returning at some future period.

Same.

Eight—The place where a man's family resides must be held to be his residence; but if it be a place of temporary establishment for his family, or for transient objects, it is otherwise.

Nine—If a man have a family fixed in one place, and he does business in another, the former must be considered his place of residence; but any man having a family, and who has taken up his abode with the intention of remaining, and whose family does not so reside with him, must be regarded as a resident where he has so taken up his abode.

Ten—The mere intention to acquire a new residence, without the fact of removal, avails nothing; neither does the fact of removal, without the intention.

SEC. 48. Section one thousand two hundred and fifty-three of said Code is amended to read as follows:

Canvass,  
how com-  
menced.

Section One Thousand Two Hundred and Fifty-three. The canvass must be commenced by taking out of the box the ballots unopened (except so far as to ascertain whether each ballot is single), and counting the same to ascertain whether the number of ballots corresponds with the number of names on the list of voters kept by the clerks. In the City and County of San Francisco, at the closing of the polls, the Inspector must administer to the additional members of the Board of Canvassers the oath prescribed in section one thousand one hundred and forty-eight, and likewise to two clerks appointed by such additional members. He must then proceed to take out of the box the ballots, unopened, one at a time, numbering them on the backs in numerical order, commencing with number one, and writing with ink the initials of his own name upon the back of each ballot as taken out. He shall pass each ballot, as soon as thus indorsed, to the additional Inspector, who must, in like manner, write thereon the initials

of his own name, so that each ballot can be subsequently identified by either or both such Inspectors.

SEC. 49. Section one thousand two hundred and fifty-four of said Code is amended to read as follows:

Section One Thousand Two Hundred and Fifty-four. Ballots folded together.  
If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon a comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus folded together were cast by one elector, they must be rejected.

SEC. 50. Section one thousand two hundred and fifty-five of said Code is amended to read as follows:

Section One Thousand Two Hundred and Fifty-five. Number of names and ballots to agree.  
The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the Judges must publicly, and without looking in the box, draw out therefrom singly, and destroy, unopened, a number of ballots equal to such excess; and the Board of Election must make a record, upon the poll list, of the number of ballots so drawn and destroyed. In the City and County of San Francisco the numbers appearing on the backs of the ballots so drawn must likewise be recorded.

SEC. 51. Section one thousand two hundred and sixty-one of said Code is amended to read as follows:

Section One Thousand Two Hundred and Sixty-one. Documents to be sealed up.  
The Board must, before it adjourns, inclose in a cover and seal up and direct to the County Clerk, the copy of the Register upon which one of the Judges marked the word "Voted" as the ballots were received, all certificates of registration received by it, one of the

lists of the persons challenged, one copy of the list of voters, and one of the tally lists and list attached thereto.

SEC. 52. Section one thousand two hundred and sixty-two of said Code is amended to read as follows:

Inspector  
to keep  
what.

Section One Thousand Two Hundred and Sixty-two. The Inspector must retain, open to the inspection of all electors, for at least six months, the other list of voters, tally list, and list attached thereto.

SEC. 53. Section one thousand two hundred and sixty-four of said Code is amended to read as follows:

Delivery of  
packages.

Section One Thousand Two Hundred and Sixty-four. The member to whom such packages are delivered, must, without delay, deliver such packages without their having been opened, to the County Clerk, nearest Postmaster, or sworn express agent, who shall indorse on such packages the name of the party delivering them, and date of such delivery. If delivered to a Postmaster or express agent, such Postmaster or express agent shall forward the packages by the first mail or express to the county seat. In the City and County of San Francisco, such packages must be delivered to the County Clerk within eighteen hours from the time of adjournment of the Board, which time of adjournment must be indorsed upon such package, and upon each poll list, in ink, and signed by a majority of the members of such Board. In the City and County of San Francisco, the packages must be put up and sealed in the following manner, by an Inspector, and at least three others of the Board, and be signed with their respective signatures, across the same, written: One package to contain the ballots only; one package to contain one tally list and list attached, only; one package to contain the Ward Register and certificates of registration issued by the

In San  
Francisco.

County Clerk after making up the Ward Register, and received at the polls.

SEC. 54. Section thirteen hundred and eighty-six is amended to read as follows: Colleges to be maintained

There must be maintained in the University:

One—A College of Letters.

Two—A College or Colleges of Science, including Agriculture, Mechanics, Mining, Engineering, Chemistry, and such other specialities as the Board of Regents may determine.

Third—College of Medicine and Law.

Four—Such other Colleges as the Board of Regents may establish.

SEC. 55. Section one thousand three hundred and eighty-eight of said Code is amended to read as follows:

Section One Thousand Three Hundred and Eighty-eight. Each full course of instruction consists of its appropriate studies and courses, to be determined by the Board of Regents. Course of instruction.

SEC. 56. Section one thousand three hundred and ninety-eight of said Code is amended to read as follows:

Section One Thousand Three Hundred and Ninety-eight. All students of the University who have been residents thereat for not less than one year, and all graduates thereof, may present themselves for examination in any course at the annual examinations, and, on passing such examination, may receive the degree and diploma of that course. Examinations and degrees.

SEC. 57. Section one thousand four hundred and fifteen of said Code is amended to read as follows:

Section One Thousand Four Hundred and Fifteen. The endowment [endowment] of the University is: Endowment.

One—The proceeds of the sale of the seventy-two

Same.

sections of land granted to the State for a seminary of learning.

Two—The proceeds of the ten sections of land granted to the State for public buildings.

Three—The income derived from the investments of the proceeds of the sale of the lands or of the scrip therefor, or of any part thereof, granted to this State for the endowment, support, and maintenance of at least one college where the leading object shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to agriculture and the mechanic arts.

Four—The income of the Fund set apart by "An Act for the endowment of the University of California," approved April second, eighteen hundred and seventy, which is continued in force.

Six—The State of California, in its corporate capacity, may take by grant, gift, devise, or bequest, any property for the use of the University, and hold the same, and apply the funds arising therefrom, through the Regents of the University, to the support of the University, as provided in Article Nine, section four, of the Constitution.

Seven—The Regents of the University, in their corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the University, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, greenhouses, apparatus, a Students' Loan Fund, or any other purpose appropriate to the University; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said Regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest.

Eight—The Regents of the University may invest Sama. any of the permanent funds of the University, which are now or hereafter may be in their custody, in productive, unincumbered real estate in this State, subject to the power of the Legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested.

Nine—If, by the terms of any grant, gift, devise, or bequest, such as are described in the preceding sixth and seventh subdivisions, conditions are imposed which are impracticable under the provisions of the Civil Code, such grant, gift, devise, or bequest, shall not thereby fail, but such conditions shall be rejected, and the intent of the donor carried out as near as may be.

SEC. 58. Section one thousand four hundred and twenty-five of said Code is amended to read as follows:

The University is under the control of a Board of Regents, consisting of twenty-two members; but the President of the University, for the time being, shall be a member of the Board of Regents, by virtue of his office. Board of Regents.

SEC. 59. Section one thousand four hundred and thirty-two of said Code is amended to read as follows:

Section One Thousand Four Hundred and Thirty-two. The powers and duties of the Board of Regents are as follows: Their powers and duties.

One—To meet at such times and places as their rules may prescribe, or at the call of the President of the Board.

Two—To control and manage the University and its property.

Three—To prescribe rules for their own government and for the government of the University.

Same.

Four—To adopt and prescribe rules for the government and discipline of the cadets.

Five—To receive, in the name of the State, or of the Board of Regents, as the case may be, all property donated to the University.

Six—To choose a President of the University, the Professors, and other officers and employés of the University, prescribe their duties, fix and provide for the payment of their salaries.

Seven—To fix the qualifications for admission to the benefits of the University.

Eight—To fix the admission fee and rates of tuition.

Nine—To appoint a Secretary and Treasurer, prescribe their duties, and fix and provide for the payment of their compensation.

Ten—To remove, at pleasure, any officer, professor, or employé of the University.

Eleven—To supervise the general courses of instruction, and, on the recommendation of the several Faculties, prescribe the authorities and text books to be used in the several colleges.

Twelve—To confer such degrees, and grant such diplomas, as are usual in Universities, or as they deem appropriate.

Thirteen—To establish and maintain a museum.

Fourteen—To establish and maintain a library.

Fifteen—To take immediate measures for the permanent improvement and planting of the University grounds.

Sixteen—To keep a record of all their proceedings.

Seventeen—Through the President of the University, to report to the Governor the progress, condition, and wants of each of the colleges embraced in the University, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost, and results of all important investigations and experi-



ments, and such other information as they may deem important.

SEC. 60. Section one thousand four hundred and thirty-five of said Code is amended to read as follows:

Section One Thousand Four Hundred and Thirty-five. All moneys which may at any time be in the State Treasury, subject to the use of the Board of Regents, may be drawn therefrom by the President of the Board, upon the order of the Board, in favor of the Treasurer of the University.

Moneys,  
how drawn

SEC. 61. Section one thousand four hundred and seventy-four of said Code is amended to read as follows:

Section One Thousand Four Hundred and Seventy-four. The officers of cadets, between and including the ranks of Second Lieutenant and Colonel, must be selected by the chief military instructor, with the assent of the President of the University, and must be commissioned by the Governor.

Officers of  
Cadets.

SEC. 62. Section one thousand four hundred and seventy-five of said Code is amended to read as follows:

Section One Thousand Four Hundred and Seventy-five. The Adjutant General of the State must issue such arms, munitions, accouterments, and equipments to the University Cadets as the Board of Regents may require and the Governor approve.

Equip-  
ments.

SEC. 63. Section nineteen hundred and thirty-five of said Code is to read as follows:

Section Nineteen Hundred and Thirty-five. All fines and penalties for non-attendance upon drills, parades, and inspections, legally determined and imposed under the provisions of such rules and by-laws, may be collected by action in Justice's Court, in the

Collection  
of fines and  
penalties.

name of the people of the State of California; and the books and records of regiments, battalions, and companies, and the proceedings under which delinquents are fined, are prima facie evidence of the facts therein stated.

SEC. 64. Section nineteen hundred and thirty-six of said Code is to read as follows:

Exemptions.

Section Nineteen Hundred and Thirty-six. All officers, musicians, and privates of the National Guard, who comply with all military duties as provided in this Chapter, are entitled to the following privileges and exemptions, viz: Exemption from payment of poll tax, road tax, and head tax of every description. All officers, non-commissioned officers, musicians, and privates who have faithfully served in the military service of this State, for the space of seven consecutive years, and received the certificate of the Adjutant General certifying the same, are thereafter exempted from further military service, except in time of war. And the Adjutant General must issue such certificate of exemption, when it appears that the party applying is entitled to the same.

SEC. 65. Section twenty-two hundred and fifty-five of said Code is amended to read as follows:

Directors  
of Deaf,  
Dumb, and  
Blind  
Asylum.

Section Twenty-two Hundred and Fifty-five. The powers and duties of the Board are as follows:

One—To make by-laws, not inconsistent with the laws of the State, for their own government, and the government of the asylum.

Two—To elect the principal teacher.

Three—To elect a Treasurer, who shall not be a member of the Board of Directors.

Four—To elect a physician for the asylum, for the term of two years, who shall not be a member of the Board of Directors.

Five—To remove, at pleasure, any teacher or em- Same.  
ployé.

Six—To fix the compensation of teachers and em-  
ployés.

Seven—To make diligent inquiry into the depart-  
ments of labor and expense, the condition of the  
asylum, and its prosperity.

Eight—To hold stated meetings at the asylum at  
least once in every three months.

Nine—To keep a record of their proceedings.

Ten—To report to the Governor a statement of the  
receipts and expenditures, the condition of the asylum,  
the number of pupils, and of such other matters touch-  
ing the duties of the Board as they deem advisable.

SEC. 66. Section twenty-two hundred and ninety-  
five of said Code is amended to read as follows:

Section Twenty-two Hundred and Ninety-five. It Duties of  
State  
Librarian.  
is the duty of the Librarian:

One—To be in attendance at the library during office  
hours.

Two—To act as Secretary of the Board of Trustees,  
and keep a record of their proceedings.

Three—To purchase books, maps, engravings, paint-  
ings, and furniture for the library.

Four—To number and stamp all books and maps  
belonging to the library, and to keep a catalogue  
thereof.

Five—To have bound all books and papers that  
require binding.

Six—To keep a register of all books and property  
added to the library, and of the cost thereof.

Seven—To keep a register of all books taken from  
the library.

Eight—To establish and maintain a system of  
domestic and foreign exchange of books, and to  
obtain from the Secretary of State such numbers of

all State publications as may be sufficient to meet the demands of the system established.

SEC. 67. Section twenty-three hundred of said Code is amended to read as follows:

Library  
Fund.

Section Twenty-three Hundred. The State Library Fund consists of the fees collected and paid into the State Treasury by the Secretary of State and Surveyor General.

SEC. 68. The following is added as a new section to said Code, and must be inserted in said Code after section two thousand six hundred and fifty-three, and designated as section two thousand six hundred and fifty-four:

Bonds to  
macadam-  
ize roads.

Section Twenty-six Hundred and Fifty-four. Upon a petition signed by a majority of persons liable to pay a road tax of any kind, and also of those owning a majority of the taxable property in any road district, the Board of Supervisors, for the purpose of macadamizing the roads of such district (but for no other purpose), may issue bonds of the road district not exceeding in the aggregate five per cent of the taxable property thereof. The bonds so issued shall bear interest at the rate of eight per cent per annum, payable annually, and must be redeemed within five years from date of issuance. The Board must also levy a tax annually, not exceeding one and one eighth of one per cent, for the payment of interest and a part of the principal of such bonds, until the entire amount of bonds issued are redeemed. The provisions of this section shall apply to any bonds heretofore issued for the purposes therein mentioned.

SEC. 69. Section twenty-nine hundred and fifty of said Code is amended to read as follows:

Section Twenty-nine Hundred and Fifty. The report must state:

One—The name, place of birth, last residence, age, and occupation of all such passengers who are not citizens, or who shall have, within the last preceding twelve months, arrived from any country out of the United States, and who have not been bonded or paid commutation money, as provided in this Chapter, as have been landed from any such vessel at any place during her last voyage, or who have gone on board of any vessel with the intention of coming into this State, or who may have died during the last voyage of such vessel; and,

Reports of  
masters of  
vessels.

Two—Whether any of the passengers so reported are lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and not accompanied by any relatives able to support them, or are lewd or abandoned women.

Three—The name and residence of the owner of such vessel.

SEC. 70. Section[s] twenty-nine hundred and fifty-two and twenty-nine hundred and fifty-three of said Code are hereby repealed, and the following section is substituted in their place:

Section Twenty-nine Hundred and Fifty-two. The Commissioner of Immigration, to satisfy himself whether or not any passenger who shall arrive in this State by vessels from any foreign port or place (who is not a citizen of the United States), is lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country (or is likely to become permanently a public charge, or has been a pauper in any other country), or is, from sickness or disease, existing either at the time of sailing from the port of departure, or at the time of his arrival in this State, a public charge, or likely soon to become so, or is a convicted

Bond upon  
landing  
lunatics,  
idiots, etc.

Commis-  
sioners  
fees.

criminal, or a lewd or debauched woman; no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this State, unless the master, owner, or consignee of said vessel shall give a joint and several bond to the people of the State of California, in the penal sum of five hundred dollars in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town, and city of this State, against all costs and expenses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever, resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; and the Commissioner of Immigration shall receive from the master, owner, or consignee of every vessel which shall bring any passengers (who are of foreign birth and not naturalized) from any foreign port or place, the sum of seventy cents for every passenger examined by him as aforesaid, which said sum shall be appropriated by said Commissioner as fees and compensation for said services; and if such sum shall not be paid within three days after the arrival of said vessel, the Commissioner may bring suit at law to recover the same against the master, owner, consignee, and vessel, or either of them, jointly or severally, for the recovery of said sum, and every judgment thus obtained against said parties shall be a lien upon said vessel; and if the master, owner, or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such person on board of said vessel until said vessel shall leave the port, and then convey said passengers from this State; and if said master, owner, or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said pas-

sengers to escape from said vessel and land in this State, they shall forfeit to the State the sum of five hundred dollars in gold coin of the United States for each passenger so escaped, to be recovered by suit at law.

SEC. 71. Section twenty-nine hundred and fifty-four of said Code is amended to read as follows:

Section Twenty-nine Hundred and Fifty-four. The bond required by the next preceding section, must be a separate bond for each passenger, and the same sureties must not be upon more than one bond. Each bond must be secured by two or more sufficient sureties, residents of the State, each of whom must prove, before the Commissioner of Immigration, by oath or otherwise, indorsed in writing on such bond, that he is a freeholder and resident of the State, and is worth double the amount of, the penalty of the bond in real estate, over and above all his debts and liabilities. The bond may, at the option of the party, be secured by mortgage on real estate, or by the pledge and transfer of United States bonds, or Controller's warrants of this State, in any amount sufficient to secure the same.

Nature of  
bond.

SEC. 72. Section twenty-nine hundred and fifty-five of said Code is repealed.

Repealed.

SEC. 73. Section twenty-nine hundred and sixty-one of said Code is amended to read as follows:

Section Twenty-nine Hundred and Sixty-one. The Commissioner receiving any commutation money, or any moneys from fines or penalties, under this Chapter, must account for and pay the same, less twenty per cent, which he may retain as his compensation, on the first Tuesday of every month, to the Treasurer of State, in the same manner in which County Treas-

Commu-  
tation  
moneys.

urers account. He must specify in his account the names of the parties paying each sum of money, the date of such payment, for what paid, or the name of the vessel and the number of passengers on account of whom it was paid, or annex thereto an affidavit of its correctness. The Commissioner must also furnish to the parties paying any commutation money, or any money from other sources, receipts in duplicate, specifying the amount paid, the name of the vessel, and the number of passengers on account of whom or for what it was paid.

Repealed. SEC. 74. Section twenty-nine hundred and sixty-seven of said Code is repealed.

SEC. 75. Section thirty hundred and seventy-six of said Code is amended to read as follows:

Registry of  
deaths.

Section Thirty Hundred and Seventy-six. Physicians, who attend deceased persons in their last sickness; clergymen, who officiate at a funeral; Coroners, who hold inquests; sextons and undertakers, who bury deceased persons; must each keep a registry of the name, age, residence, and time of death of such person.

SEC. 76. Section thirty-one hundred and thirty-six of said Code is amended to read as follows:

Duties of  
persons  
finding  
valuables,  
etc.

Section Thirty-one Hundred and Thirty-six. If any person find any money, goods, things in action, or other personal property, or shall save any domestic animal from drowning or from starvation, when such property shall be of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some Justice of the Peace of the county, stating when and where he found or saved



such property, particularly describing it; and if the property was saved, particularly stating from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property.

SEC. 77. Section three thousand one hundred and seventy-two of said Code is amended to read as follows:

Section Three Thousand One Hundred and Seventy-two. Every person must mark or brand his horses and mules before they are eight months old, and cattle before they are twelve months old, on the hip or hinder part, and mark or brand his sheep, goats, and hogs, before they are six months old. On the trial of any action to recover the possession of any animal which is marked or branded, the mark or brand is prima facie evidence that the animal belongs to the owner of the mark or brand. When a dispute occurs in regard to a mark or brand, the person first recording the same is entitled thereto.

Branding  
animals.

SEC. 79. Section three thousand three hundred and forty-one of said Code is amended to read as follows:

Section Three Thousand Three Hundred and Forty-one. The Secretary of the Fire Department, or fire company, must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain County Clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated.

Secretary  
of Fire  
Depart-  
ment.

SEC. 80. Section three thousand three hundred and sixty-four of said Code is amended to read as follows:

Fees for  
licenses.

Section Three Thousand Three Hundred and Sixty-four. For each license issued, the Collector must collect a fee of one dollar, which must be paid into the Salary Fund of the county, unless the Auditor and Collector are paid by fees instead of salaries, in which case the dollar must be equally divided between them. The license issued must be for a term designated by the person taking it, not to exceed twelve months, and not less than the shortest term fixed in this Chapter.

SEC. 81. Section three thousand three hundred and eighty of said Code is amended to read as follows:

Licenses.

Section Three Thousand Three Hundred and Eighty. Licenses must be obtained for the purposes herein-after named, for which the Tax Collector must require payment as follows:

Billiards.

First—From each proprietor of a billiard table not kept exclusively for family use, for each table five (5) dollars per quarter; and for a bowling alley, five (5) dollars per quarter for each alley; but no license must be granted for a term less than three months.

Theaters.

Two—Theaters are divided into two classes; those seating nine hundred and seventy-five or more, are of the first class; those seating less than nine hundred and seventy-five are of the second class; one seat is twenty-two inches. Licenses shall be granted to theaters and other places of amusement according to the following schedule:

If for less than one month—	If for one month and less than three months—	If for three months and less than one year—	If for one year—
1st class, \$5 per day. 2d class, \$5 per day.	\$100 per month. \$75 per month.	\$300 per quarter. \$200 per quarter.	\$600. \$400.

again amended  
1873-4.  
p. 137.

Third—For each exhibition, for pay, for a caravan or menagerie, or any collection of animals, circus or other acrobatic performance, ten dollars; and for each show, for pay, of any figures, jugglers, necromancers, magicians, wire or rope dancing, or sleight of hand exhibition, five (5) dollars each day. Circus, etc.

Four—From each pawnbroker, thirty (30) dollars per quarter. Pawn-broker.

Five—From each keeper of all intelligence offices, fifteen (15) dollars per quarter. Intelligence offices.

SEC. 82. Section thirty-four hundred and forty-six of said Code is amended to read as follows:

Section Thirty-four Hundred and Forty-six. Whenever the holders of title or evidence of title representing one half or more of any body of swamp and overflowed, salt marsh, or tide lands, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the Board of Supervisors of the county in which the lands or the greater part thereof are situated, at a regular meeting of the Board, a petition, setting forth that they propose to form a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district, and in each tract, with the names (if known), of the owners thereof, and designating as unsold any lands not reduced to private ownership. Formation of reclamation districts.

SEC. 83. Section thirty-four hundred and forty-nine of said Code is amended to read as follows:

Section Thirty-four Hundred and Forty-nine. If the Board of Supervisors find, on the hearing of the petition, that its statements are correct, they must make an order approving the same. If it be shown that any land has been improperly included in or excepted from the proposed district, they must re-form Approval of petition, etc.

the district in, such respects in their order. The order of approval must be indorsed on or attached to the petition, and be signed by the President and attested by the Clerk of the Board.

SEC. 84. Section thirty-four hundred and fifty-one of said Code is amended to read as follows:

Register's  
duties.

Section Thirty-four Hundred and Fifty-one. The Register must thereupon forward to the County Treasurer a statement showing the names of purchasers of land in the district, who have paid in full therefor.

SEC. 85. Section thirty-four hundred and fifty-two of said Code is amended to read as follows:

By-laws  
and  
Trustees.

Section Thirty-four Hundred and Fifty-two. After the approval of the petition, the petitioners, or a majority of them, may make by-laws for the management of the district, and must elect three persons owning land in the district, to act as a Board of Trustees thereof, who shall keep their office in the district, or as near as practicable for the transaction of all business pertaining to the reclamation of the district, and their books and papers shall be open to inspection by any one person interested, at all times.

SEC. 86. Section thirty-four hundred and fifty-six of said Code is amended to read as follows:

Commis-  
sioners and  
duties.

Section Thirty-four Hundred and Fifty-six. The Board by which the district was formed must appoint three Commissioners, disinterested persons, residents of the county in which the district, or some part thereof, is situated, who must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits of which will result from such works, and estimate it in gold and silver coin of the United States. The same must be collected and paid into the County Treasury

as hereinafter provided, and be placed by the Treasurer to the credit of the district, and paid out for the works of reclamation upon the warrants of the Trustees, approved by the Board of Supervisors of the county.

SEC. 87. Section thirty-four hundred and fifty-seven of said Code is amended to read as follows:

Section Thirty-four Hundred and Fifty-seven. The warrants drawn by the Trustees must, after they are approved by the Board of Supervisors, be presented to the Treasurer of the county, and if they are not paid on presentation, such indorsement must be made thereon, and they must be registered and bear interest from date of presentation; *provided*, warrants heretofore issued shall bear no interest.

Warrants,  
presenta-  
tion, etc.

SEC. 88. Section thirty-four hundred and fifty-nine of said Code is amended to read as follows:

Section Thirty-four Hundred and Fifty-nine. If the original assessment is insufficient to provide for the complete reclamation of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the reclamation works, the Trustees must present to the Board of Supervisors by which the district was formed, a statement of the work done, or to be done, and its estimated cost, and the Board must make an order directing the Commissioners who made the original assessment, or other Commissioners, to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment.

Additional  
assess-  
ments.

SEC. 89. Section thirty-four hundred and sixty-two of said Code is amended to read as follows:

Section Thirty-four Hundred and Sixty-two. The list

**Filing lists.** so made, must be filed with the Treasurer of the county, or if the district is situated in different counties, then the original list must be filed in the county where the petition was filed, and copies thereof, certified by the Commissioners, must be filed with the Treasurer of each of the other counties.

**SEC. 90.** Section thirty-four hundred and sixty-four of said Code is amended to read as follows:

**Credits on lists.**

Section Thirty-four Hundred and Sixty-four. When the list, or a certified copy thereof, is filed, the Treasurer must credit thereon, to each purchaser who has paid in full for his land, eighty cents per acre, less any amount chargeable against him, and must transfer the amount to the credit of the district.

**SEC. 91.** Section thirty-four hundred and sixty-six of said Code is amended to read as follows:

**Delinquent assessments, how collected.**

Section Thirty-four Hundred and Sixty-six. 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 District Attorney, 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 District 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, 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 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, 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 District Attorney. 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 the tracts assessed, and 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 District Attorney must pay the moneys collected to the County Treasurer, who must place the same to the credit of the district.

SEC. 92. Sections thirty-four hundred and seventy-five and thirty-four hundred and sixty-one of said Code are amended to read as follows:

Section Thirty-four Hundred and Seventy-five. The Supervisors shall have power, on application of the Trustees or owners of any swamp land district, to approve and let any contract to the lowest responsible bidder, and order the County Treasurer to pay for the same out of the funds of the district. Letting contracts.

Section Thirty-four Hundred and Sixty-one. The list must contain: Contents of list.

One—A description by legal subdivisions, swamp land surveys, or natural boundaries of each tract assessed.

Two—The number of acres in each tract.

Three—The names of the owners of each tract, if known; and if unknown, that fact.

Four—The amount of the charge assessed against each tract.

SEC. 93. Section thirty-four hundred and seventy-six of said Code is amended to read as follows:

Certificate  
of  
completion  
of work.

Section Thirty-four Hundred and Seventy-six. Whenever the Trustees, or owners of land, if there be no Trustees, certify under oath to the Board of Supervisors who formed the district, and show to their satisfaction that the works of reclamation are completed, or that two dollars per acre, in gold coin, has been expended on the works of reclamation, the Board of Supervisors must thereupon certify such facts to the Register.

SEC. 94. Section thirty-four hundred and seventy-seven of the Code is amended to read as follows:

Payment  
in full, etc.

Section Thirty-four Hundred and Seventy-seven. The Register must thereupon credit each purchaser in the district with payment in full for such lands, and the purchasers are entitled to patents therefor; and the Register must forward to the Treasurer of the county in which any part of the district is situated, a statement, showing the amount paid by each purchaser in the district, including interest; and the County Treasurer, after deducting all amounts chargeable against the lands in said district, by reason of moneys drawn from the "Swamp Land Fund" of the county, must divide the balance pro rata amongst the original purchasers of land in the district, or their assigns, and must pay to each purchaser, or his assigns, on demand, the amount found to be due him from such computation, out of the moneys in his hands to the credit of the "Swamp Land Fund" of the county. Neither this nor the preceding section applies to districts having outstanding indebtedness



represented by Controller's warrants drawn on the State Treasury, until all such warrants are fully paid.

SEC. 95. The following are added as new sections to said Code, and must be inserted therein after section thirty-four hundred and eighty-eight, and be known as sections thirty-four hundred and eighty-nine, thirty-four hundred and ninety:

Section Thirty-four Hundred and Eighty-nine. Two or more contiguous districts may be consolidated by the written concurrence of a majority in acreage of the land owners of each district; an agreement stating the terms of such consolidation and the names of the Trustees of the consolidated district, must be signed by the Trustees of each district, or a majority of them, and be recorded in the Recorder's office of the county in which the districts are situated. A certified copy shall be sent to the Register of the Land Office, and he must number such district as "Consolidated District Number —," and send the number to the County Recorders in which the districts are situated; and the consolidated district must thereafter be known and designated thereby.

Consolidation of districts.

Section Thirty-four Hundred and Ninety. 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 District 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 works.

SEC. 96. The following is added as a new section to said Code, and must be inserted in said Code after section thirty-five hundred and two, and designated section thirty-five hundred and three:

School  
lands;  
State relin-  
quishes  
title when.

Section Thirty-five Hundred and Three. In all cases where any person has purchased any part of a sixteenth or thirty-sixth section from the United States, or shall hereafter make such purchase, or shall be an actual settler on any sixteenth or thirty-sixth section, and entitled to a preëmption thereto under the laws of the United States, for which lands this State has received indemnity, or will or would be entitled to indemnity under the laws of the United States, the right of the State to such sixteenth and thirty-sixth sections, or parts thereof, are relinquished to the United States for the use of such purchasers and their assignees, and of such preëmtors. When any person who is in good faith a settler upon any such lands, fails to acquire a title thereto from the United States, he may, within six months after such failure, apply to the State to purchase the same, and his application shall have preference over all other applications for the purchase of such lands.

SEC. 97. Section thirty-five hundred and fourteen of said Code is amended to read as follows:

Certificate  
of  
purchase.

Section Thirty-five Hundred and Fourteen. Whenever the Register receives from a County Treasurer a statement showing that an applicant for State lands has made the first payment, he must issue to the person entitled thereto a certificate of purchase, showing the class of land purchased, the number of acres, the price per acre, the date of payment, the date from which interest is to be computed, the amount paid, and the amount remaining unpaid, which certificate is prima facie evidence of title.

SEC. 98. Section thirty-five hundred and eighteen of said Code is amended to read as follows:

Section Thirty-five Hundred and Eighteen. If the owner of a certificate of purchase claims that it has been lost, destroyed, or is beyond his control, the Register must take testimony concerning the loss, destruction, or reason why the same is beyond his control. But the party must, before the hearing, make affidavit that he has not sold the said certificate of purchase or the land described therein, and must publish a notice in some newspaper in the county where the land is situated, or if there is no newspaper published in the county, then in some newspaper of general circulation in the county, for at least four weeks, describing the certificate and the lands for which the same was issued, stating the name of the person to whom the same was issued and the person then claiming to own it, together with the time and place of the hearing. If the Register is satisfied of the loss or destruction of the certificate, or that it is beyond the control of the person owning the same, he must issue to the owner thereof a duplicate with the word "Duplicate" written across the face thereof in red ink. Such duplicate shall have the same force and effect as the original. If there is a contest as to the issuing of a duplicate certificate, the Register may hear and determine the same, or may refer it to the proper Court as provided in section thirty-four hundred and fourteen.

Lost  
certificates  
and  
duplicates.

SEC. 99. Section thirty-five hundred and seventy-four of said Code is amended to read as follows:

Section Thirty-five Hundred and Seventy-four. Each application for lands must be accompanied by a fee of five dollars. The Surveyor General may charge the same fees as are allowed the Register for like services, and fees collected by the Surveyor General

Fees, appli-  
cation of.

or Register may be used in defraying the expenses of procuring maps, records, and documents, and extra assistance in the office of either; the balance thereof, if any, to be paid into the State Treasury quarterly, on the first Monday in January, April, July, and October. The Surveyor General must, in his biennial report, include a statement of the amount of fees received by both, and how the same were disposed of.

SEC. 100. Section thirty-seven hundred and eighty-eight of said Code is amended to read as follows:

Tax deed,  
effect of.

Section Thirty-seven Hundred and Eighty-eight. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by the United States or this State, in which case it is prima facie evidence of the right of cession.

SEC. 101. Section thirty-nine hundred and seventy-three of said Code is amended to read as follows:

Surveys  
validated.

Section Thirty-nine Hundred and Seventy-three. All surveys and maps of boundary lines heretofore legally made and approved, are declared valid, and they are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this Code.

SEC. 102. Section thirty-nine hundred and seventy-seven of said Code is amended to read as follows:

County  
seat,  
removal,  
elections.

Section Thirty-nine Hundred and Seventy-seven. If the petition is signed by qualified electors of the county, whose names appear on the preceding assessment roll, equal in number to at least one half of all the votes cast in the county at the last preceding general election, the Board must, within five days after receiving such petition, order an election, naming the day on which it must be held, not more than sixty

nor less than thirty-five days from the time of calling it, specifying its object.

SEC. 103. Section thirty-nine hundred and seventy-eight of said Code is amended to read as follows:

Section Thirty-nine Hundred and Seventy-eight. Notice.  
Notice of not less than twenty-five days must be given of the election, by posting notices thereof in each election precinct within the county.

SEC. 104. Section thirty-nine hundred and eighty-one of said Code is amended to read as follows:

Section Thirty-nine Hundred and Eighty-one. When Notice of result.  
the returns have been received and compared, and the results ascertained by the Board, if a majority of all the votes cast 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. 105. Section thirty-nine hundred and eighty-five of said Code is amended to read as follows:

Section Thirty-nine Hundred and Eighty-five. When Subsequent removals.  
the county seat of a county has once been removed, it may be again removed from time to time in the manner prescribed in this Chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by two thirds of all the qualified electors whose names appear on the preceding assessment roll of the county, and are registered on the Great Register thereof; nor unless at such election, when ordered, a majority of all the votes cast are in favor of some other place as the county seat of the county; nor must two elections to effect such removal be held within any three consecutive years.

SEC. 106. The following is added as a new section to said Code, and must be inserted in said Code after

section four thousand and forty-six, and designated section forty hundred and forty-seven:

Contracts,  
and how  
let.

Section Forty Hundred and Forty-seven. All contracts for:

One—County printing;

Two—Books and stationery; and,

Three—Supplies for county institutions;

—Must be made with the lowest bidder; and after ten days public notice that such contract will be let, the bidding must be by sealed proposals.

SEC. 107. Section forty hundred and seventy-nine of said Code is amended to read as follows:

Notices,  
how given.

Section Forty Hundred and Seventy-nine. All public notices of proceedings of or to be had before the Board, not otherwise specially provided for, must be posted at the Court House door, and in each election precinct in the county.

SEC. 108. Section four thousand one hundred and twenty-two of said Code is amended to read as follows:

Official  
bonds  
classified.

Section Four Thousand One Hundred and Twenty-two. County officers must execute official bonds corresponding to the class of the county of which they are officers, in the following amounts:

First—Sheriffs, first class, sixty thousand dollars; second class, twenty-five thousand dollars; third class, ten thousand dollars.

Second—Clerks, first class, twenty-five thousand dollars; second class, fifteen thousand dollars; third class, six thousand dollars.

Third—Auditors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Fourth—Treasurers, first class, one hundred thousand dollars; second class, eighty thousand dollars; third class, sixty thousand dollars.

Fifth—Recorders, first class, ten thousand dollars; *Same.* second class, five thousand dollars; third class, two thousand dollars.

Sixth—District Attorneys, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Seventh—Assessors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, three thousand dollars.

Eighth—Tax Collectors, first class, fifty thousand dollars; second class, thirty thousand dollars; third class, fifteen thousand dollars.

Ninth—Surveyors, first class, ten thousand dollars; second class, five thousand dollars; third class, one thousand dollars.

Tenth—School Superintendents, first class, five thousand dollars; second class, three thousand dollars; third class, one thousand dollars.

Eleventh—Coroners, first class, five thousand dollars; second class, two thousand dollars; third class, one thousand dollars.

Twelfth—Public Administrators, first class, thirty thousand dollars; second class, twenty thousand dollars; third class, ten thousand dollars.

Thirteenth—Supervisors, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

SEC. 109. Section four thousand one hundred and seventy-eight is amended to read as follows:

Section Four Thousand One Hundred and Seventy-eight. The return of the Sheriff, upon process or notices, is *prima facie* evidence of the facts in such return stated.

Sheriff's  
return  
*prima facie*  
evidence.

SEC. 111. Section four thousand three hundred and sixty-nine of said Code is amended to read as follows:

Common  
Council;  
cities.

Section Four Thousand Three Hundred and Sixty-nine. The Common Council must, during the first year, by ordinance, fix the term of office of all elective officers and the time when they must be elected, and provide for the appointment of other necessary officers, including City Clerk, City Attorney, and Treasurer, and fix their terms and amount of their bonds.

SEC. 112. Section four thousand three hundred and seventy of said Code is amended to read as follows:

Elective  
officers.

Section Four Thousand Three Hundred and Seventy. The elective officers of cities are: A Mayor, a Marshal, a Police Judge, Assessor and Collector of taxes, and a Common Council consisting of not less than three members. They must be electors of the city, and qualify by taking the statutory oath of office, and, except the first officers elected, hold office for a term to be fixed by the Common Council, not exceeding two years.

SEC. 113. Section four thousand three hundred and seventy-four of said Code is amended to read as follows:

Official  
oath and  
bonds.

Section Four Thousand Three Hundred and Seventy-four. All city officers, before entering upon their duties, must take the oath of office. The Marshal, Attorney, Clerk, Assessor, Collector, and Treasurer must also give a bond, with sureties to be approved by the Mayor, payable to the corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and a like bond may be required of any officer whose office is created by an ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and, upon his failure so to do, his office must be deemed vacant.



SEC. 114. Section four thousand three hundred and eighty-six of said Code is amended to read as follows:

Section Four Thousand Three Hundred and Eighty-six. The Mayor has power: Powers of Mayor.

First—To nominate, and with the consent of the Common Council, to appoint all non-elective officers of the city provided for by the Common Council, including City Attorney, Secretary of the Council, and City Treasurer.

Second—To suspend, and with the consent of the Common Council, to remove any non-elected officer, stating in the suspension or removal the cause thereof.

Third—To cause the ordinances of the city to be executed, and to supervise the discharge of official duty by all subordinate officers.

Fourth—To communicate to the Common Council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city, with such recommendations as he may deem proper.

Fifth—To recommend to the Common Council such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he deems expedient.

Sixth—To approve all ordinances of the Common Council adopted by it, and in case the same do not meet his approbation, to return the same, with his objections, within five days after he receives the same.

SEC. 115. The following is added as a new section to said Code, and must be inserted in said Code after section four thousand four hundred and fifty-six, and designated as section four thousand four hundred and fifty-seven:

Section Four Thousand Four Hundred and Fifty-seven. The provisions of this Title and Chapter are applicable to cases where the levees and other works Damages to levees, etc., by mobs.

of reclamation of any district are injured or destroyed by mobs or riots; and the actions brought for damages therefor must be prosecuted by the Attorney General of the State in the name of the people of the State of California, and the amount recovered in such actions must be paid to the Treasurer of the county, who must place the same to the credit of the district.

Repealed.  
Rights  
maintained

Limita-  
tions.

SEC. 116. All provisions of law inconsistent with the provisions of this Act are hereby repealed; but no rights acquired or proceedings taken under the provisions repealed shall be impaired or in any manner affected by this repeal; and whenever a limitation or period of time prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Act takes effect, and the same or any other limitation is prescribed by this Act, the time which shall have run when this Act takes effect shall be deemed part of the time prescribed by this Act.

Construc-  
tion of  
Act.

SEC. 117. With relation to the laws passed at the present session of the Legislature, this Act must be construed as though it had been passed on the first day of the present session; and if any of the provisions of this Act contravene or are inconsistent with the provisions of any law passed at the present session of the Legislature, then the provisions of such law must prevail.

To take  
effect.

SEC. 118. This Act shall take effect on the first Monday of July, one thousand eight hundred and seventy-four, except so much thereof as relates to immigration, and the authority and duties of the Commissioner of Immigration, and the enforcement of the duties and penalties therein prescribed, which shall take effect immediately after its enactment.

AN ACT TO AMEND SECTION ONE HUNDRED AND SIXTY-TWO OF THE POLITICAL CODE.

[Approved February 4th, 1874.]

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

SECTION 1. Section one hundred and sixty-two is hereby amended so as to read as follows:

Section One Hundred and Sixty-two. From the county seat of Inyo County to Sacramento, four hundred and sixty-five miles; to Stockton, four hundred and seventeen miles; to San Quentin, five hundred and forty-seven miles.

Legal  
distances,  
Inyo.

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

[Chap. 61.]

AN ACT TO AMEND SECTION FIVE HUNDRED AND NINETY-SIX OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

Section five hundred and ninety-six of the Political Code is amended to read as follows:

Section Five Hundred and Ninety-six. No person 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 issuing or renewing a policy without such certificate shall forfeit to the people of the State of California the sum of one hundred dollars for each policy so issued or renewed, to

Insurance  
and  
certificates.

Same.

be collected by the Insurance Commissioner in the manner prescribed in section five hundred and ninety-eight of this Code. But any company or corporation belonging to any other State or count[r]y, having policies of life insurance outstanding in this State, and that were issued in accordance with the laws of the State, shall have the right to maintain an 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 agent of such company or corporation a certificate authorizing him to collect such premiums. But the company or corporation must satisfy the Commissioner that it is authorized to transact insurance business in the State to which it belongs. The agent must, on or before the tenth day of January in each year, file with the Commissioner a statement, under oath, showing the gross amount of premiums collected by him during the year ending on the thirty-first day of December next preceding; and upon filing such statement he must pay into the office of the Commissioner the sum of twenty dollars, in gold coin of the United States.

[Chap. 621.]

## AN ACT TO AMEND THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section six hundred and two of the Political Code is amended to read as follows:

Insurance  
insolvency.

Section Six Hundred and Two. Whenever provision for the liabilities of any person engaged in the insurance business in this State for losses reported, expenses, taxes, and reinsurance of all outstanding risks

estimated at fifty per cent of the premiums received Same. and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all the marine risks, and at rates for life risks based upon the rates of mortality established by the American Experience Life Table, and interest at four and one half per cent per annum, and such rates for accident and other kinds of insurance as are accepted by the insurance authorities of the State of New York, would so far impair his capital stock paid in to reduce the same below two hundred thousand dollars in gold coin of the United States, or below sixty per cent of said capital stock paid in, such person is insolvent; and in the case of a person thus engaged in the insurance business in this State on the mutual plan, if his available cash assets shall not exceed his liabilities as hereinbefore enumerated, in the full sum of two hundred thousand dollars in United States gold coin, such person is insolvent.

SEC. 2. This Act shall take effect on the second day of July, eighteen hundred and seventy-four.

[Chap. 668.]

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AN ACT TO AMEND SECTIONS SIX HUNDRED AND SIXTEEN AND SIX HUNDRED AND SEVENTEEN OF THE POLITICAL CODE.

[Approved March 28th, 1874.]

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

SECTION 1. Section six hundred and sixteen of the Political Code of the State of California is amended so as to read as follows:

Section Six Hundred and Sixteen. The Insurance Commissioner must require, as a condition precedent

Foreign insurance companies, conditions precedent.

Same.

to the transaction of insurance business in this State by any foreign corporation or company, that such corporation or company 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 and designated, shall be deemed in law a general agent, and must be the principal agent or chief manager of the business of such corporation or company in this State. Any act, statement, representation, or agreement, done or made by an agent so appointed and designated, which in any manner pertains to the business of such corporation or company, shall be deemed the act, statement, representation, or agreement of the principal, and shall have the same force and effect as if done or made by the principal. 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:

Form of  
agreement.

"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 that State, that in all litigation between (giving name of corporation or company), and any citizen of the State of California, the Courts of said State shall have and maintain exclusive jurisdiction of such litigation. And it is further agreed that no action hereafter commenced in any District Court of said State of California against (insert name), shall be removed or transferred there-

from to the United States Circuit Court." If in any action hereafter commenced in any District Court of this State, by a citizen thereof, against a foreign corporation or company doing insurance business in said State, such corporation or company shall transfer, or cause to be transferred, such action, to the United States Circuit Court, the right of such corporation or company to transact insurance business in said State shall thereupon and thereby cease and determine; and the Insurance Commissioner shall immediately revoke the certificate of such corporation or company, authorizing it to do business in said State of California.

Penalty for violation.

SEC. 2. Section six hundred and seventeen of the Political Code of the State of California is amended so as to read as follows:

Section Six Hundred and Seventeen. The Commissioner must collect the sum of one thousand dollars from any corporation or company engaged in the business of insurance, for a failure to make and deposit in his office, within ninety days after being thereto requested by said Commissioner, the statements and stipulations provided for in the eighth preceding section and the last preceding section; and an additional penalty of two thousand dollars for each and every month thereafter that such corporation or company continues to transact the business of insurance, until such certificate, statement, and stipulations are filed; and for that purpose suit may be instituted in the name of the people of the State of California, in any Court of competent jurisdiction. The Insurance Commissioner shall, immediately after the passage of this Act, give due notice of its provisions to all foreign insurance corporations or companies doing or proposing to do business in this State.

Commissioner's duties when companies make no statement.

SEC. 3. All Acts or parts of Acts, inconsistent with the provisions of this Act, are hereby repealed. This Act shall take effect and be in force from and after its passage.

[Chap. 519.]

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AN ACT TO AMEND THE POLITICAL CODE OF THE  
STATE OF CALIFORNIA.

[Approved March 12th, 1874.]

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

SECTION 1. The Political Code of the State of California is hereby amended by adding thereto an additional section, to be called section six hundred and thirty-three, and which shall read as follows:

Licensing  
insurance  
agents.

Section Six Hundred and Thirty-three. 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 for 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 license shall be issued, with the date of the license and renewal, and the name of the company for which such person is working. If any person shall fraudulently assume to be an authorized agent or solicitor of any life insurance company, and thus procure or attempt to procure applications, or receive or attempt to obtain money for premiums, he shall be guilty of a misdemeanor. 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.

Commissioner's  
fees and  
list.

[Chap. 256.]

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AN ACT TO AMEND SECTION SIX HUNDRED AND FIFTY-SIX OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section six hundred and fifty-six of the Political Code shall be amended so as to read as follows:

Section Six Hundred and Fifty-six. The Board must keep a record of all their proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such

Records of  
Board of  
Examiners

record. And all claims must be entered on the minutes of the Board before the same shall be acted upon.

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

[Chap. 625.]

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AN ACT TO AMEND CERTAIN SECTIONS OF AN ACT ENTITLED "AN ACT TO ESTABLISH A POLITICAL CODE," APPROVED MARCH TWELFTH, EIGHTEEN HUNDRED AND SEVENTY-TWO, CONCERNING THE PUBLICATION OF THE REPORTS OF THE SUPREME COURT OF THE STATE OF CALIFORNIA.

[Approved March 24th, 1874.]

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

SECTION 1. Section seven hundred and seventy-seven of an Act of the Legislature of the State of California, approved March twelfth, eighteen hundred and seventy-two, entitled "An Act to establish a Political Code," is hereby amended so as to read as follows:

Style of  
Supreme  
Court  
Reports.

Section Seven Hundred and Seventy-seven. The Reports must be published in well-bound volumes, and must be printed on good book paper, in small pica leaded, and brevier, equal in quality of paper and binding to Volumes Thirty-three to Thirty-nine, inclusive, of California Reports.

SEC. 2. Section seven hundred and seventy-eight of said Act is hereby amended so as to read as follows:

Contract  
for  
publishing.

Section Seven Hundred and Seventy-eight. The Reporter shall have no pecuniary interest in the volumes of Reports, but they must be published under the supervision of the Court and Reporter, by contract, to be entered into by the Reporter, Secretary

of State, and Attorney General, with the person or persons who shall agree to publish and sell the said Reports, for a period of ten years, on the terms most advantageous to the State and the public, and at a rate not to exceed four dollars per volume of seven hundred pages.

SEC. 3. Section seven hundred and seventy-nine of said Act is hereby repealed, and the following words are substituted therefor, to constitute a new section, to be also numbered seven hundred and seventy-nine:

Section Seven Hundred and Seventy-nine. Before entering into said contract, it shall be the duty of the Secretary of State to advertise for proposals for the publication of said Reports, for thirty days, in one daily paper in Sacramento, and one daily paper in San Francisco. It shall be the duty of said Reporter, Secretary of State, and Attorney General, to consider all proposals for the publication of said Reports which may be made to them, and to award the contract to the person or persons who may agree to publish and sell the same on the terms most advantageous to the State and public.

Proposals  
and  
award.

SEC. 4. Section seven hundred and eighty of said Act is hereby repealed, and the following words are substituted therefor, to constitute a new section, to be also numbered seven hundred and eighty:

Section Seven Hundred and Eighty. The contract must require the publisher to print and publish each volume in the style required by section seven hundred and seventy-seven, within sixty days from the time at which the manuscript is delivered by the Reporter, to sell three hundred copies to the State at the price fixed in the contract, and to keep on hand and for sale, at the price stipulated in the contract, a sufficient number of copies of each volume to supply all demands for six years from the publication thereof, and to give

Essentials  
of contract.

bonds for the fulfillment of the terms of the contract, in the sum of ten thousand dollars.

SEC. 5. Section seven hundred and eighty-one of said Act is hereby amended so as to read as follows:

State  
copies.

Section Seven Hundred and Eighty-one. On the publication of each volume of Reports, the Secretary of State must purchase, for the use of the State, three hundred copies of said volume, at the price named in the contract, not exceeding four dollars per volume, and after having distributed the same, as required by section four hundred and ten, shall deposit the surplus copies, if any there be, in the State Library.

SEC. 6. Section seven hundred and eighty-two is hereby added to said Act, and shall read as follows:

Proceed-  
ings if no  
contract  
made.

Section Seven Hundred and Eighty-two. If, after advertising as required by section seven hundred and seventy-nine, no proposals are received by the Secretary of State, agreeing to print, publish, and sell said volumes at a price not exceeding four dollars per volume, then the State Printer must print and bind twelve hundred copies of each volume, and deliver to the Secretary of State all the copies printed by him; and the Secretary of State must keep the copies of the edition not distributed under the provisions of section four hundred and ten on sale at four dollars per volume, at retail, and at such wholesale price as may be fixed by the Governor, Controller, and Secretary of State, and must, at the end of each month, pay into the State Treasury the proceeds of all sales made by him. This Act shall not apply to any volume of Reports, the printing of which may have been commenced by the State Printer at the time the contract herein provided for is made.

SEC. 7. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 8. This Act shall be in force from and after its passage.

[Chap. 393.]

AN ACT TO AMEND SECTION SEVEN HUNDRED AND NINETY-EIGHT OF THE POLITICAL CODE.

[Approved March 16th, 1874.]

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

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

Section Seven Hundred and Ninety-eight. The fees of Notaries are as follows: For drawing and copying every protest for the non-payment of a promissory note or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, thirty cents.

For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents.

For administering an oath or affirmation, fifty cents.

For every certificate, to include writing the same, and the seal, one dollar.

SEC. 2. This Act shall take effect on and after its passage.

[Chap. 276.]

## AN ACT TO AMEND SECTION NINE HUNDRED AND FIFTY-FIVE OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

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

Justifica-  
tion of  
sureties.

Section Nine Hundred and Fifty-five. The officer whose duty it is to approve official bonds required of State, county, or township officers, must not accept or approve any such bond, unless each of the sureties severally justify before an officer authorized to administer oaths, as follows:

First—On a bond given by a State officer, that such surety is a resident and freeholder, or householder within this State; and on a bond given by a county or township officer, that such surety is a resident and freeholder, or householder within such county, or within an adjoining county.

Second—That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities, in unincumbered property, situated within this State, exclusive of property exempt from execution and forced sale.

Third—A member of the Board of Supervisors shall not be accepted as surety upon the official bond of any county or township officer of his county; nor shall the Sheriff, Clerk, Tax Collector, Treasurer, Recorder, Auditor, Assessor, or District Attorney of the same county become sureties upon official bonds for each other.

[Chap. 590.]

AN ACT TO ADD A SECTION TO THE POLITICAL CODE OF THE STATE OF CALIFORNIA, PROVIDING OFFICIAL CUSTODY FOR THE BONDS OF COUNTY CLERKS.

[Approved March 27th, 1874.]

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

SECTION 1. There is hereby added to the Political Code of the State of California, a section, to be inserted immediately after section nine hundred and eighty-five, and be numbered nine hundred and eighty-six, to read as follows:

Nine Hundred and Eighty-six. The official bond of the County Clerk shall, after being recorded, be filed in the office of the County Treasurer, and the safekeeping of the same is hereby made the duty of the County Treasurer.

Filing  
County  
Clerk's  
bond.

[Chap. 489.]

AN ACT IN RELATION TO THE POLITICAL CODE.

[Approved March 26th, 1874.]

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

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

Section Eleven Hundred and Ninety-seven. No ballot or ticket must be used or circulated on the day of any election, having any mark or thing thereon by or from which it can be ascertained what persons, or what class of persons, used or voted it, or at what time in the day such ballot was voted or used.

Marking  
ballots.

SEC. 2. Section thirteen hundred and fifty-seven of said Code is amended to read as follows:

Primary  
elections.

Section Thirteen Hundred and Fifty-seven. Any committee or body authorized by the rules or customs of a voluntary political association or organization, to call elections of or for such association or organization, for any purpose, may, by resolution adopted at the time of making the call, elect to have such elections conducted in accordance with the rules prescribed in sections ten hundred and eighty-three, ten hundred and eighty-four, eleven hundred and forty-four, eleven hundred and forty-five, eleven hundred and forty-six, eleven hundred and forty-seven, eleven hundred and forty-eight, eleven hundred and sixty-two, eleven hundred and sixty-three, eleven hundred and sixty-four, eleven hundred and seventy-four, eleven hundred and seventy-five, eleven hundred and ninety-two, eleven hundred and ninety-three, eleven hundred and ninety-four, eleven hundred and ninety-five, eleven hundred and ninety-six, eleven hundred and ninety-nine, twelve hundred, twelve hundred and one, twelve hundred and two, twelve hundred and three, twelve hundred and twenty-four, twelve hundred and twenty-seven, twelve hundred and twenty-nine, twelve hundred and thirty, twelve hundred and thirty-one, twelve hundred and thirty-two, twelve hundred and thirty-three, twelve hundred and thirty-four, twelve hundred and thirty-five, twelve hundred and thirty-six, twelve hundred and thirty-seven, twelve hundred and thirty-eight, twelve hundred and thirty-nine, twelve hundred and forty, twelve hundred and forty-one, twelve hundred and forty-two, twelve hundred and fifty-two, twelve hundred and fifty-three, twelve hundred and fifty-four, twelve hundred and fifty-five, twelve hundred and fifty-six, twelve hundred and fifty-seven, twelve hundred and fifty-eight, twelve hundred and fifty-nine, and twelve hundred and sixty.



SEC. 3. This Act shall take effect on the first Monday in July, eighteen hundred and seventy-four.

[Chap. 456.]

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AN ACT TO AMEND CERTAIN SECTIONS, AND TO REPEAL CERTAIN SECTIONS, OF THE POLITICAL CODE, RELATING TO THE GOVERNMENT OF THE STATE NORMAL SCHOOL.

[Approved March 30th, 1874.]

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

SECTION 1. Section one thousand four hundred and eighty-nine of an Act entitled "An Act to establish a Political Code," approved March the twelfth, one thousand eight hundred and seventy-two, is hereby amended to read as follows:

Section One Thousand Four Hundred and Eighty-nine. The powers and duties of the Board of Trustees are as follows:

State  
Normal  
School  
Board.

First—To prescribe rules for their own government, and for the government of the school.

Second—To prescribe rules for the reports of officers and teachers of the school, and for visiting other schools and institutes.

Third—To prescribe the course of study, and the time and standard of graduation.

Fourth—To prescribe the text books, apparatus, and furniture, and provide the same, together with all stationery, for the use of the pupils.

\*

Fifth—To establish and maintain training or model schools, and require the pupils of the Normal School to teach and instruct classes therein.

Sixth—To elect a Principal and other necessary teachers, fix their salaries and prescribe their duties.

Same.

Seventh—To issue diplomas of graduation upon the recommendation of the Faculty of the school.

Eighth—To control and expend all moneys appropriated for the support and maintenance of the school, and all money received for tuition, or from donations. In no event shall any moneys appropriated for the support of the school, or received from tuition or donations, be paid or used for compensation or traveling expenses of the Trustees of the school.

Ninth—To keep a record of their proceedings.

Tenth—To keep open to public inspection an account of receipts and expenditures.

Eleventh—To annually report to the Governor a statement of all their transactions, and of all matters pertaining to the school.

Twelfth—To transmit with such report a copy of the principal teacher's annual report.

Thirteenth—To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his dealings; *provided*, that such person shall have at least thirty days previous notice of such contemplated action, and shall, if he asks it, be heard in his own defense.

Qualifica-  
tions for  
admission.

SEC. 2. Section one thousand four hundred and ninety-four of said Act is hereby amended so as to read as follows:

Section One Thousand Four Hundred and Ninety-four. Every person admitted as a pupil to the Normal School course must be:

First—Of good moral character.

Second—Of sixteen years of age.

Third—Of that class of persons who, if of a proper age, would be admitted in the public schools of this State without restriction.

SEC. 3. Section one thousand four hundred and ninety-six of said Act is hereby amended so as to read as follows: Pupils from other States.

Section One Thousand Four Hundred and Ninety-six. Persons resident of another State may be admitted upon letters of recommendation from the Governor or Superintendent of Schools thereof.

SEC. 4. Section one thousand four hundred and ninety-seven of said Act is hereby amended so as to read as follows:

Section One Thousand Four Hundred and Ninety-seven. Every person making application for admission as a pupil to the Normal School, must, at the time of making such application, file with the Principal of the school a declaration that he enters the school to fit himself for teaching, and that it is his intention to engage in teaching in the public schools of this State, or in the State or Territory where the applicant resides. Declarations of pupils.

SEC. 5. Section one thousand five hundred and three of said Act is hereby amended so as to read as follows:

Section One Thousand Five Hundred and Three. Upon the recommendation of the Faculty of the school, the Board of Trustees may issue to those who worthily complete the full course of study and training prescribed, a diploma of graduation. To the persons receiving this diploma, the State Board of Examination shall grant a first grade State certificate. In like manner, they shall issue to those who worthily complete the past graduate course, a professional diploma. To the persons receiving this diploma, the State Board of Examination shall grant an educational diploma; and they may, at their discretion, issue an elementary diploma to those who worthily Diplomas and certificates.

complete such part of the course of study and training as may be prescribed. To the persons receiving this diploma, the State Board of Education shall grant a second grade State certificate.

SEC. 6. Section one thousand five hundred and four of said Act is hereby amended so as to read as follows:

Secretary  
of Board.

Section One Thousand Five Hundred and Four. The Board of Trustees shall have power to appoint a Secretary, who shall receive no compensation. A full record of all the proceedings of the Board of Trustees shall be kept at the school, and shall be open to public inspection.

SEC. 7. Section one thousand five hundred and five of said Act is hereby amended so as to read as follows:

Duties of  
State  
Superin-  
tendent.

Section One Thousand Five Hundred and Five. The Superintendent of Public Instruction must visit the school from time to time, inquire into its condition and management, enforce the rules and regulations made by the Board, require such reports as he deems proper from the teachers of the school, and exercise a general supervision over the same.

SEC. 8. Section one thousand five hundred and seven of said Act is hereby amended so as to read as follows:

Orders for  
moneys.

Section One Thousand Five Hundred and Seven. All orders upon the Controller of State by the Board of Trustees, must be signed by the President of the Board, and countersigned by the Secretary. Upon presentation of the order aforesaid, signed and countersigned as aforesaid, the Controller of State must draw his warrant on the State Treasurer in favor of the Board of Trustees for the moneys, or any part thereof, appropriated and set apart for the support of

the Normal School, and the Treasurer must pay such warrant on presentation.

SEC. 9. Sections one thousand four hundred and ninety-three, one thousand four hundred and ninety-eight, one thousand four hundred and ninety-nine, and one thousand five hundred of said Act are hereby repealed. Repealed.

SEC. 10. This Act shall take effect immediately.

[Chap. 620.]

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AN ACT TO AMEND CERTAIN SECTIONS, TO REPEAL CERTAIN SECTIONS, AND TO ADD CERTAIN NEW SECTIONS TO THE POLITICAL CODE OF THE STATE OF CALIFORNIA.

[Approved March 13th, 1874.]

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

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

Section One Thousand Five Hundred and Twenty-one. The powers and duties of the Board are as follows:

State  
Board of  
Education.  
Powers and  
duties.

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 prescribe and enforce rules for the examination of teachers.

Third—To prescribe a standard of proficiency before a County Board of Examination, which will entitle a person examined by such Board to a State certificate.

Same.

Fourth—To prescribe and enforce the course of study in the public schools.

Fifth—To prescribe and enforce the use of a uniform series of text books in the public schools, except in the City and County of San Francisco.

Sixth—To adopt a list of books for district school libraries.

Seventh—To grant, or to revoke, for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, life diplomas.

Eighth—To review, on appeal, an order revoking a State certificate or diploma.

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

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

Eleventh—To keep a record of its proceedings.

SEC. 2. Section one thousand five hundred and ninety-three of the Political Code is hereby amended so as to read as follows:

School  
Trustees,  
election.

Section One Thousand Five Hundred and Ninety-three. An election for School Trustees must be held in each district, on the last Saturday of June 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:

First—The number of School Trustees for any school district, except where City Boards are otherwise authorized by law, shall be three.

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. 3. Section one thousand six hundred and seventeen of the Political Code is hereby amended to read as follows:

Section One Thousand Six Hundred and Seventeen. The powers of Boards of Trustees of school districts, and of Boards of Education in cities, are as follows:

General  
powers of  
Boards of  
Trustees  
and of  
Education.

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.

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 State Board of Education.

Same.

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.

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 text books 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.

SEC. 4. Section eighteen hundred and forty-two of



the Political Code is hereby amended to read as follows:

Section Eighteen Hundred and Forty-two. In case an Assessor or Collector of district taxes refuses or neglects to qualify within ten days after his election, or having qualified, refuses or neglects to act, or in case of any vacancy from any other cause, in either or both of said offices, the Board of Trustees shall call a special election, giving at least ten days' notice, to fill the place.

Vacancy in  
office of  
Assessor  
or  
Collector.

SEC. 5. Section eighteen hundred and fifty-eight is amended to read as follows:

Section Eighteen Hundred and Fifty-eight. 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 for 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:

Apportion-  
ment of  
school  
moneys.

First—He must ascertain the number of teachers each district is entitled to, by calculating one teacher for every one hundred census children, or fraction thereof of 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.

Fourth—All school moneys remaining on hand after apportioning five hundred dollars to each district for

114.

every teacher assigned it, must be apportioned to the several districts having not less than fifty census children, in proportion to the number of census children in each of said districts.

**Repealed.** SEC. 6. The following numbered sections of the Political Code are hereby repealed, viz: one thousand seven hundred and fifty-six, 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 five hundred and forty-two.

SEC. 7. The following new sections are hereby added to the Political Code of the State of California:

Control-  
ler's  
estimate of  
school tax.

Section Four Hundred and Forty-three. The State Controller must, between the tenth day of August and the first day of September of each year, estimate the amount necessary to raise the sum of seven dollars for each census child, between the ages of five and seventeen years, in this State, which shall be the amount necessary to be raised by ad valorem tax, for school purposes, during the year, which amount the Controller must immediately certify to the State Board of Equalization.

✓  
Levy of  
State  
school tax.

Section Thirty-seven Hundred and Nineteen. The State Board of Equalization must levy, annually, at the time other State taxes are levied, a tax of such number of cents on each one hundred dollars value of taxable property in the State, as will produce a net sum equal to the amount reported to them by the Controller as being necessary to be raised by an ad valorem tax for school purposes; and the assessment and collection of said tax shall be performed in the same manner, and at the same time, as other State taxes are assessed and collected.

Section Fifteen Hundred and Thirty-three. The

Superintendent of Public Instruction must report to the Controller, on or before the tenth day of August of each year, the total number of children in the State, between the ages of five and seventeen years, as shown by the latest reports of the School Superintendents, on file in his office.

Report,  
Superin-  
tendent of  
Public In-  
struction.

Section Fifteen Hundred and Fifty-one. 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 Marshal, on file in their office.

Reports of  
School  
Superin-  
tendents.

Section Sixteen Hundred and Forty. If the Census Marshal neglect or refuses to make his report at the time and in the manner herein required, or to perform any other duty devolved upon him, he must be deemed guilty of a misdemeanor, and on conviction be punished by fine or imprisonment.

Failure to  
report by  
Census  
Marshals.!

Section Eighteen Hundred and Seventy. No officer named in this Title, or teacher in any public school held under the provisions of this Title, must act as agent for any author, publisher, bookseller, or other person, to introduce any book, apparatus, furniture, or any other article whatever, in the common schools of this State, or any one or more of them, or directly or indirectly contract for, or receive any gift or reward for so introducing or recommending the same; and any officer so acting or receiving, must be deemed guilty of a misdemeanor, and on conviction be punished by fine or imprisonment, and be removed from office.

School  
officers  
acting as  
agents.

Section Fifteen Hundred and Fifty-two. No School Superintendent who receives a salary of fifteen hun-

School  
Superin-  
tendents'  
teaching,  
etc.

dred dollars or more, per annum, must follow the profession of teaching, or any other avocation that can conflict with his duties as Superintendent.

SEC. 8. This Act shall take effect from and after its passage.

[Chap. 263.]

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AN ACT TO AMEND THE PROVISIONS OF THE POLITICAL CODE RELATIVE TO PUBLIC SCHOOLS.

[Approved March 28th, 1874.]

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

SECTION 1. Section fifteen hundred and thirty-two is amended so as to read as follows:

General  
duties of  
State  
Superin-  
tendent.

Section Fifteen Hundred and Thirty-two. It is the duty of the Superintendent of Public Instruction:

One—To superintend the public schools in this State.

Two—To report to the Governor, on or before the fifteenth day of November, of the years on which the regular sessions of the Legislature are held, a statement of the condition of the State Normal School and other educational institutions supported by the State, and of the public schools.

Three—To accompany his report [with] tabular statements, showing the number of school children in the 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.

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

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

Six—To prepare, have printed, and furnish to 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.

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

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

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

Ten—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, shall be allowed, audited, and paid out of the General Fund, in the same manner as other claims are audited and paid.

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

Twelve—To have bound, at an annual expense of not more than one hundred and fifty dollars, all valuable school reports, journals, and documents, in his

office, or hereafter received by him, payable out of the State School Fund.

Thirteen—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.

General  
duties of  
School  
Superin-  
tendents.

SEC. 2. Section fifteen hundred and forty-three is amended so as to read as follows:

Section Fifteen Hundred and Forty-three. It is the duty of the County Superintendent of each county:

One—To apportion the school moneys of each school district quarterly.

Two—On the order of the Board of Trustees, or Board of Education, to draw his warrant upon the County Treasurer against the School Fund of any city, town, or district; he must draw his warrants in the order in which they are ordered by the proper authority; each warrant must specify the purpose for which the money is required, and must be paid in the order in which it is drawn, but no warrant must be drawn unless there is sufficient money in the Fund to pay it.

Three—To keep open to the inspection of the public a register of warrants, showing the Fund upon which the warrants have been drawn, the number thereof, in whose favor, and for what service drawn, and also a receipt from the person to whom the warrant was delivered.

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

Five—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 the text books,

and the rules and regulations for the examination of <sup>Same.</sup> teachers prescribed by the proper authority.

Six—To issue temporary certificates, valid until the next regular meeting of the County Board of Examination, to persons holding certificates of like grade granted in other counties.

Seven—To certify to the State Board of Examination the names of persons examined before County Boards of Examination.

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

Nine—To keep in his office the reports of the Superintendent of Public Instruction, and a file of the educational journal.

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

Eleven—To keep in his office such works on school architecture and education as may be prescribed by the State Board of Education, and pay for them out of the unapportioned County School Fund.

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

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

Fourteen—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.

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

Sixteen—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.

SEC. 3. Section fifteen hundred and forty-four is amended so as to read as follows:

Forfeiture  
for failure  
to report.

Section Fifteen Hundred and Forty-four. If he fails to make a full and correct report, required under the provisions of subdivision fourteen of section fifteen hundred and forty-three, at the time fixed by the Superintendent of Public Instruction, he forfeits one hundred dollars of his salary, and the Board of Supervisors, upon receiving from the Superintendent of Public Instruction notice of such failure, must deduct the amount forfeited from his salary.

SEC. 4. Section fifteen hundred and forty-eight is amended so as to read as follows:

Must draw  
warrants.

Section Fifteen Hundred and Forty-eight. He must draw his warrant on the unapportioned County School Fund for the payment of members of the County Board of Examination, and 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 any other incidental expenses as may be authorized by law.

SEC. 5. Section fifteen hundred and forty-nine is amended so as to read as follows:

Deputies.

Section Fifteen Hundred and Forty-nine. Each County Superintendent may appoint a deputy, but no salary payable out of the School Fund must be allowed such deputy.



SEC. 6. Two new sections, to be numbered section fifteen hundred and fifty-one and section fifteen hundred and fifty-two, respectively, are added to the Political Code, and read as follows:

Section Fifteen Hundred and Fifty-one. It shall be the duty of every County Superintendent to inquire and ascertain whether the boundaries of 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 of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall 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. For searching and transcribing such records and equalizing district boundaries, he may be allowed five dollars per day for each day's labor, to be paid out of the County School Fund. The County Superintendent, if he deem it necessary for the guidance of School Census Marshals, may order the descriptions of the district boundaries to be printed in pamphlet form, and pay for the same out of the County School Fund.

Section Fifteen Hundred and Fifty-two. Each County Superintendent, except when otherwise provided by statute, shall receive such salary and his reasonable traveling expenses, to be estimated by the Board of Supervisors, and as may be allowed by the Board of Supervisors, which shall be paid out of the County General Fund, in the same manner as other salaried county officers are paid; *provided*, that such compensation shall not be less than a sum equal to twenty dollars for each school district in his county, exclusive of traveling expenses, and that he shall be

School  
district  
boundaries

Salaries,  
etc.

allowed, in addition to his salary, a sum for postage and expressage, payable out of the County School Fund, equal to one dollar for each school district; *provided*, that in incorporated cities, each school containing three hundred pupils shall be considered equal to one school district.

SEC. 7. Section fifteen hundred and sixty is amended so as to read as follows:

Teachers'  
Institutes,  
when to be  
held.

Section Fifteen Hundred and Sixty. Whenever the number of school districts in any county is twenty or more, the County Superintendent must hold at least one Teachers' Institute in each year; and every teacher employed in a public school in the county must attend such Institute and participate in its proceedings.

SEC. 8. Section fifteen hundred and sixty-one is amended so as to read as follows:

When dis-  
cretionary.

Section Fifteen Hundred and Sixty-one. In any county in which there are less than twenty school districts, the County Superintendent may, in his discretion, hold an Institute.

SEC. 9. Section fifteen hundred and sixty-four is amended so as to read as follows:

Expenses  
of  
Institute,  
how paid.

Section Fifteen Hundred and Sixty-four. The County Superintendent must keep an accurate account of the actual expenses of said Institute, with vouchers for the same, and 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. 10. Section fifteen hundred and seventy-seven is amended so as to read as follows:

Section Fifteen Hundred and Seventy-seven. No new district can be formed unless the parents or guard-

ians of at least fifteen census children, resident of such proposed new district, 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 at a greater distance than two miles from any district school house, present a petition to the County Superintendent, setting forth the change of boundaries desired, and the reasons for the same.

Formation  
of new  
districts,  
etc.

SEC. 11. Section fifteen hundred and seventy-eight is amended so as to read as follows:

Section Fifteen Hundred and Seventy-eight. After giving due notice to all parties interested, by posting, notices in three public places in the district, one of which shall be at the door of the school house for at least one week, the County Superintendent must transmit the petition to the Board of Supervisors, with his approval or disapproval. If he approves the petition, he may note such changes in the boundaries as he may think desirable.

Duties on  
receipt of  
petition.

SEC. 12. Section fifteen hundred and seventy-nine is amended so as to read as follows:

Section Fifteen Hundred and Seventy-nine. The Board of Supervisors must, at their first meeting after the receipt of the petition, act upon the same. If the Board establishes the district, they may do so in accordance with the original prayer of the petition, or with such modifications as they choose to make.

Supervis-  
ors' duties.

SEC. 13. Section fifteen hundred and ninety-five is amended so as to read as follows:

Section Fifteen Hundred and Ninety-five. Not less than ten days before the election required under section fifteen hundred and ninety-three, the Trustees must post notices in three public places in the district,

Notices of  
election.

which notices must specify the time and place of election, and the hours during which the polls will be kept open; if within five days of the election the Trustees have failed to post the notices required under this section, then any three electors of the district may give notice of such election.

SEC. 14. Section fifteen hundred and ninety-nine is amended so as to read as follows:

Manner of  
voting.

Section Fifteen Hundred and Ninety-nine. The voting must be by ballot; *provided*, that the provisions of sections eleven hundred and eighty-seven and eleven hundred and ninety-one may be dispensed with.

SEC. 15. Section sixteen hundred is amended so as to read as follows:

Challenges.

Section Sixteen Hundred. 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 six months next preceding this election, and in this school district thirty days, and that you have not before voted this day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected.

SEC. 16. Section sixteen hundred and two is amended so as to read as follows:

Certificates  
of election.

Section Sixteen Hundred and Two. The officers of election must, after counting the votes, make and deliver certificates of election to the persons elected, a copy of which, with the oath of office attached, must be forwarded to the County Superintendent.

SEC. 17. The following new sections, to be num-

bered section sixteen hundred and eleven and section sixteen hundred and twelve, respectively, are to be added to the Political Code, and are to read as follows:

Section Sixteen Hundred and Eleven. Except when otherwise authorized by special statute, every school district shall be under the control of a Board of School Trustees, consisting of three members.

School district government.

Section Sixteen Hundred and Twelve. In school districts newly organized, or in case of vacancies, for any cause, in an old one, three School Trustees must be elected, to hold office for one, two, and three years, respectively, from the first Saturday in July next succeeding their election.

Trustees, terms of.

SEC. 18. Section sixteen hundred and twenty is amended so as to read as follows:

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

Stationery, etc., to be furnished.

SEC. 19. Section sixteen hundred and twenty-one is amended so as to read as follows:

Section Sixteen Hundred and Twenty-one. The Board of Trustees and Board of Education must use the school moneys received from the State or county apportionment, exclusively, for the support of schools for that school year, until at least an eight months school shall have 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.

School moneys, how used.

SEC. 20. Section sixteen hundred and twenty-three is amended so as to read as follows:

Liabilities  
of Trustees.

Section Sixteen Hundred and Twenty-three. Boards of Trustees are liable as such, in the name of the district, for any judgment against the district for salary due any teacher on contract, and for all debts contracted under the provisions of this Chapter, and they must pay such judgment or liabilities out of the school moneys to the credit of such district; *provided*, that the contracts mentioned in this section are not in excess of the school moneys accruing to the district for the school year for which the contracts are made, otherwise the district shall not be held liable.

SEC. 21. Section sixteen hundred and thirty-four is amended so as to read as follows:

Duty of  
Census  
Marshals.

Section Sixteen Hundred and Thirty-four. It is the duty of the Census Marshal:

One—To annually, in the month of June, take a census of all children in his district under seventeen years of age.

Two—To report the result of his labors to the County Superintendent (or to the Board of Education, in cities), before the first day of July, in each year.

Three—He shall visit each habitation, house, residence, domicile, or other place of abode, in his district, and by actual observation and interrogation, enumerate the census children of the same.

SEC. 22. Section sixteen hundred and thirty-five is amended so as to read as follows:

Same.

Section Sixteen Hundred and Thirty-five. Whenever a district is formed, lying partly in two adjoining counties, the Census Marshal must report to each County Superintendent the number of children in each county.

SEC. 23. Section sixteen hundred and thirty-six is amended so as to read as follows:

[Section] Sixteen Hundred and Thirty-six. His re-  
 port must be made under oath, upon blanks furnished  
 by the Superintendent of Public Instruction, and must  
 show:

One—The number, age, sex, color, and nationality  
 of children listed.

Two—The names of the parents of such children.

Three—Such other facts as the Superintendent of  
 Public Instruction may designate.

SEC. 24. Section sixteen hundred and thirty-eight  
 is amended to read as follows:

Section Sixteen Hundred and Thirty-eight. He  
 must not include in his report children who are attend-  
 ing institutions of learning, or such benevolent institu-  
 tions as deaf and dumb, blind and orphan asylums, in  
 his district, but whose parents or guardian do not re-  
 side therein.

Who not  
 included.

SEC. 25. Section sixteen hundred and sixty-three is  
 amended so as to read as follows:

Section Sixteen Hundred and Sixty-three. All  
 schools, unless otherwise provided by special statute,  
 must be divided in first, second, and third grade.  
 Each County Superintendent must, under instructions  
 from the State Board of Education, determine the  
 respective grade or class of schools in his county.

Schools to  
 be graded.

SEC. 26. Section sixteen hundred and sixty-nine is  
 amended so as to read as follows:

Section Sixteen Hundred and Sixty-nine. The edu-  
 cation of children of African descent, and Indian  
 children, must be provided for in separate schools;  
*provided*, that if the Directors or Trustees fail to pro-  
 vide such separate schools, then such children must be  
 admitted into the schools for white children.

Negro and  
 Indian  
 schools.

SEC. 27. Section sixteen hundred and ninety-six is amended so as to read as follows:

Duties of  
teachers.

Section Sixteen Hundred and Ninety-six. Every teacher in the public schools must:

One—Before assuming charge of a school, file his certificate with the County Superintendent.

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

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

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

Five—Keep a State school register.

Six—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.

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



SEC. 28. Section seventeen hundred is amended so as to read as follows:

Section Seventeen Hundred. No warrant must be drawn in favor of any teacher, unless the officer whose duty it is to draw such warrant is satisfied that the teacher has faithfully performed all the duties prescribed in section sixteen hundred and ninety-six. Warrants to teachers.

SEC. 29. Section seventeen hundred and one is amended so as to read as follows:

Section Seventeen Hundred and One. No 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 warrant is drawn, nor unless he was employed by the Board of Trustees or Education; *provided*, that nothing in this section interfere with any special school law now in existence for the Counties of Trinity, Shasta, or Inyo. Same.

SEC. 30. A new section, to be numbered section seventeen hundred and two, is to be added to the Political Code, and reads as follows:

Section Seventeen Hundred and Two. It shall be the duty of all teachers to endeavor to impress on the minds of the pupils the principles of morality, (the) truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship. Teachers' special duties.

SEC. 31. Section seventeen hundred and twelve is amended so as to read as follows:

Section Seventeen Hundred and Twelve. The Boards of Trustees and 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. Library Fund, how expended.

SEC. 32. A new section, to be numbered section seventeen hundred and seventeen, is added to the Political Code, and reads as follows:

Special  
powers of  
Trustees.

Section Seventeen Hundred and Seventeen. The Trustees shall be held accountable for the proper care and preservation of the library, and shall have power to assess and collect all fines, penalties, and fees of membership, and to make all needful rules and regulations not provided for by the State Board of Education, and not inconsistent therewith, and they shall report annually to the County Superintendent, all library statistics which may be required by the blanks furnished for the purpose by the Superintendent of Public Instruction.

SEC. 33. Section seventeen hundred and forty-four is amended so as to read as follows:

State  
Board of  
Examina-  
tion.  
Powers of.

Section Seventeen Hundred and Forty-four. The Board has power to grant:

One—Recommendations for life diplomas.

Two—State educational diplomas, valid for six years.

Three—State certificates of the first grade, valid for four years.

Four—Certificates of the second grade, valid for three years.

Five—State certificates of the third grade, valid for two years, to be granted only to females.

Six—To review on appeal an order revoking a county or city certificate.

SEC. 34. Section seventeen hundred and forty-six is amended so as to read as follows:

Educa-  
tional  
diplomas.

Section Seventeen Hundred and Forty-six. State educational diplomas must be issued to such persons only as have been employed in teaching for five years, and who have held a first grade State certificate for at least a year.

SEC. 35. Section seventeen hundred and forty-seven is amended so as to read as follows:

Section Seventeen Hundred and Forty-seven. Applicants for life diplomas must file with the State Board of Examination certificates of their success in teaching; and the Board, after examination, must present the application to the State Board of Education, with its recommendation.

SEC. 36. Section seventeen hundred and forty-eight is amended so as to read as follows:

Section Seventeen Hundred and Forty-eight. Every applicant for a State certificate shall be examined by written and oral questions in algebra, geography, history of the United States, Constitution of the United States and California, physiology, natural philosophy, natural history, orthography, defining, penmanship, reading, method of teaching, vocal music, drawing, and School Law of California.

SEC. 37. Section seventeen hundred and forty-nine is amended so as to read as follows:

Section Seventeen Hundred and Forty-nine. The standing in each study must be indorsed upon the educational diploma or certificate, or otherwise it is not a valid certificate.

SEC. 38. Section seventeen hundred and fifty is amended so as to read as follows:

Section Seventeen Hundred and Fifty. Normal School diplomas, from any State Normal School in the United States, and life diplomas by the State Board of Examination or Education in any of the United States, must be recognized by this State as primary evidence of fitness for teaching; and the Board may, on application of the holders thereof, issue, without examination, State certificates, and fix the grade thereof.

SEC. 39. Section seventeen hundred and fifty-one is amended so as to read as follows:

Same. Section Seventeen Hundred and Fifty-one. The Board may grant State certificates to those who, in examinations before County Boards, have attained the standard of proficiency prescribed by the State Board of Education; *provided*, that the original examination papers be forwarded to the State Board of Examination within fifteen days after the close of the examination.

SEC. 40. Section seventeen hundred and fifty-two is amended so as to read as follows:

Revocation of certificates. Section Seventeen Hundred and Fifty-two. The Board may, for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, revoke any educational diploma, or certificate granted by it.

SEC. 41. Section seventeen hundred and fifty-three is amended so as to read as follows:

Renewals. Section Seventeen Hundred and Fifty-three. The Board may, at the expiration of the time for which they are granted, renew diplomas or certificates, except of the third grade, for a like period for which they were originally granted.

SEC. 42. Section seventeen hundred and seventy is amended so as to read as follows:

Meetings. Section Seventeen Hundred and Seventy. The County Board must meet and hold examinations as follows: Commencing on the first Wednesday in the months of December, March, June, and September. The place of meeting must be designated by the Chairman.

SEC. 43. Section seventeen hundred and seventy-two is amended so as to read as follows:

Section Seventeen Hundred and Seventy-two. Certificates Certificates must be granted to those only who have passed a satisfactory examination in all the studies required for a State certificate of corresponding grade, and upon the questions prepared by the State Board of Examination, and reached the percentage prescribed by the State Board of Education.

SEC. 44. Section seventeen hundred and seventy-three is amended so as to read as follows:

Section Seventeen Hundred and Seventy-three. All Examinations, how made. examinations must be conducted partly in writing and in part orally.

SEC. 45. Section seventeen hundred and seventy-five is amended so as to read as follows:

Section Seventeen Hundred and Seventy-five. The Renewal and revocation of certificates. Board may, without examination, renew certificates, and may revoke any county certificate for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching.

SEC. 46. Section seventeen hundred and seventy-seven is amended so as to read as follows:

Section Seventeen Hundred and Seventy-seven. Compensation of Board. Members must each receive for their services a sum not exceeding three dollars per day, in addition to actual traveling expenses, for each quarterly session of the Board, payable out of the unapportioned County School Fund, on the warrant of the County Superintendent.

SEC. 47. Section seventeen hundred and ninety is amended so as to read as follows:

Section Seventeen Hundred and Ninety. The City Boards of Examination, meetings. Board must meet and hold examinations as follows: Commencing on the first Wednesday in the months of

December, March, June, and September. The place of meeting must be designated by the Chairman.

SEC. 48. Section seventeen hundred and ninety-one is amended so as to read as follows:

**Powers.** Section Seventeen Hundred and Ninety-one. The Board has power to grant:

One—Certificates of the same grade and for the same time as the State Board of Examination has power to grant.

Two—High school certificates, valid for six years.

Three—Special certificates of the first grade, valid for four years, upon such special studies as may be authorized by the State Board of Education or Board of Education in any city, or city and county.

Four—High school and special certificates must be granted upon such examinations as may be authorized by the State Board of Education or Board of Education of any city, or city and county. All other certificates must be granted upon examinations in all the studies required for a State certificate of corresponding grade, and upon questions prepared by the State Board of Examination, and upon the percentage prescribed by the State Board of Education.

SEC. 49. Section seventeen hundred and ninety-two is amended so as to read as follows:

**Certificates  
without ex-  
amination.**

Section Seventeen Hundred and Ninety-two. The Board may, without examination, grant certificates of like grade to holders of certificates granted in other cities, and renew all certificates, except of the third grade, granted by it, and revoke any certificate for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching.

SEC. 50. A new section, to be numbered section eighteen hundred and seventeen, is added to the Political Code, to read as follows:

Section Eighteen Hundred and Seventeen. The County Superintendent in each county, except in the City and County of San Francisco, 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 Funds needed for the ensuing year. This amount he must compute as follows:

Estimate of  
county  
school  
funds.

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

Two—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. 51. Section eighteen hundred and eighteen is amended so as to read as follows:

Section Eighteen Hundred and Eighteen. The Board of Supervisors, except of the City and County of San Francisco, of each county, 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 the

Levy  
of county  
school tax.

Same. 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:

One—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 hundred dollars.

SEC. 52. Section eighteen hundred and thirty-eight is amended so as to read as follows:

District  
school tax,  
how levied.

Section Eighteen Hundred and Thirty-eight. The Trustees, upon receiving the roll, must deduct fifteen per cent therefrom for anticipated delinquencies, and then, by dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent required, and the rate so ascertained (using the full cent on each hundred dollars in place of any fraction) is hereby levied and assessed to, on, or against the persons or property named or described in the roll, and is a lien on all such property until the tax is paid; and the tax, if not paid within the time limited by the next succeeding section for its payment, shall be delinquent, and must be collected in the manner prescribed in sections eighteen hundred and forty-five, eighteen hundred and forty-six, eighteen hundred and forty-seven, eighteen hundred and forty-eight, eighteen hundred and forty-nine, eighteen hundred and fifty, eighteen hundred and fifty-one, and eighteen hundred and fifty-two of this Code.

SEC. 53. A new section, to be numbered section eighteen hundred and forty-five, is substituted for section eighteen hundred and forty-five, to read as follows:



Section Eighteen Hundred and Forty-five. When any school tax shall have become delinquent, the delinquent tax list, duly certified by the District Tax Collector of the school district in which the school tax has become delinquent, shall be delivered to the District Attorney of the county in which the district is situated.

Delinquent  
tax list.

SEC. 54. A new section, to be numbered section eighteen hundred and forty-six, is substituted for section eighteen hundred and forty-six, and is to read as follows:

Section Eighteen Hundred and Forty-six. It shall be the duty of the District Attorney of the county to commence a civil action, in the name of the people of the State of California, in any Courts of the county, to recover the delinquent taxes.

Action to  
recover.

SEC. 55. A new section, to be numbered section eighteen hundred and forty-seven, is substituted for section eighteen hundred and forty-seven, and is to read as follows:

Section Eighteen Hundred and Forty-seven. In such action, a complaint substantially in the following form shall be sufficient:

Form of  
complaint.

(Title of Court.)

The People of the State of California

vs.

(Naming the defendant.)

Plaintiff avers that the defendant is indebted to the plaintiff in the sum of \$—, district school tax for — School District, in the County —, State of California, for the year 18—, and \$—, costs of collection to date.

Plaintiff demands judgment in the sum of \$—.

SEC. 56. A new section, to be numbered section eighteen hundred and forty-eight, is substituted for

section eighteen hundred and forty-eight, and is to read as follows:

Attorney's  
fee.

Section Eighteen Hundred and Forty-eight. If in such action the amount is paid, or the plaintiff recover judgment, there shall be included in such judgment the sum of ten dollars as attorney's fees.

SEC. 57. A new section, to be numbered section eighteen hundred and forty-nine, is added to the Political Code, and is to read as follows:

Proceed-  
ings in rem.

Section Eighteen Hundred and Forty-nine. In any action to enforce the collection of said tax, wherein any part of the tax is charged in the complaint to have been levied or assessed against, or to be a lien upon any real estate, or improvements on real estate, it shall be competent to proceed in rem against such real estate or improvements, or against both, such real estate being described in the summons in such manner as to designate the particular tract or tracts of land sought to be charged, and in case of improvements, designating the tract of land on which the improvements are situated; and the description shall be sufficient, if it can be ascertained what land is intended, the summons also stating the amount of taxes claimed as a lien, and the year in which the taxes were assessed. Such summons need not name any particular defendant, but may be directed to all owners, known and unknown, of the property described; and such action may, at the option of the District Attorney, also proceed against any or all persons or corporations who are under obligations to pay the tax.

SEC. 58. A new section, to be numbered section eighteen hundred and fifty, is to be added to the Political Code, to read as follows:

Section Eighteen Hundred and Fifty. Service of

summons, whether issued by the District Court or a Justice's Court, may be made by publication of a copy of the summons once a week for four successive weeks, in a newspaper published in the county in which the action is commenced. The service of the summons shall be complete at the expiration of the time of such publication.

Service of  
summons  
by publica-  
tion

SEC. 59. A new section, to be numbered section eighteen hundred and fifty-one, is to be added to the Political Code, and is to read as follows:

Section Eighteen Hundred and Fifty-one. Judgments rendered in such cases in the District Court shall be docketed and become liens upon all property of the defendant liable to taxation, and may be enforced against the same; and the District Attorney may file transcripts of judgments rendered in Justices' Courts, under this Article, with the County Clerk, who shall, thereupon, docket such judgments, and they shall become liens from and after such docket entry, in like manner as judgments rendered in the District Court under this Article, and the County Clerk may issue execution on such docketed Justice's judgment as on judgments rendered in the District Court.

Docketing  
judgments,  
etc.

SEC. 60. A new section, to be numbered section eighteen hundred and fifty-two, is to be added to the Political Code, to read as follows:

Section Eighteen Hundred and Fifty-two. The law regulating proceedings in civil cases in the Courts of justice in this State, so far as the same is not inconsistent with the provisions of this Article, is hereby made applicable to proceedings under this Article; and any deed derived from a sale of real property, under this Act, shall be conclusive evidence of title, except as against actual frauds or prepayment of taxes, and shall entitle the holder thereof to a writ of assist-

Law of  
sale, etc.

Same.

ance from the District Court to obtain possession of such property; *provided*, that the Sheriff, in selling said property, shall only sell the smallest quantity that any purchaser will take, and pay the judgment and costs; *and, provided further*, that when property is sold belonging to minors, or persons under legal disability, they shall have until one year after said disability is removed, to redeem said property, by paying the whole bid and all subsequent taxes and interest. All moneys collected in this behalf, except costs and charges, shall, without delay, be paid to the Treasurer of the county, for the use of the district in which the tax was levied; and the date thereof shall be entered opposite the proper name or property in the delinquent list, which shall be open to public inspection.

SEC. 61. Section eighteen hundred and fifty-nine is amended so as to read as follows:

Apportion-  
ment of  
State and  
county  
school  
moneys.

Section Eighteen Hundred and Fifty-nine. On or after the first day of July, eighteen hundred and seventy-five, 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 the time that school, maintained in the old district before division, and in the new district after division, is equal to at least eight months. Any school district which neglects or refuses to adopt and use the State series of text books, and State course of studies required by law, is not a school district within the meaning of this Article.

SEC. 62. The following new sections, to be numbered section eighteen hundred and sixty-seven, section eighteen hundred and sixty-eight, and section

eighteen hundred and sixty-nine, respectively, are added to the Political Code:

Section Eighteen Hundred and Sixty-seven. Any parent, or guardian, or other person, who shall insult or abuse any teacher, in the presence of the school, shall be guilty of a misdemeanor, and be liable to a fine of not less than ten nor exceeding one hundred dollars. Insulting teachers.

Section Eighteen Hundred and Sixty-eight. Any person who shall willfully disturb any public school, or any public school meeting, shall be guilty of a misdemeanor, and liable to a fine on [of] not less than ten nor more than one hundred dollars. Disturbing schools, etc.

Section Eighteen Hundred and Sixty-nine. Any State, County, or City, or City and County Superintendent, or any State, County, or City and County Board of Examinations, who shall issue a certificate or diploma, except as provided for in this Title, shall be guilty of misdemeanor. Issuing irregular certificates.

SEC. 63. Section eighteen hundred and seventy-one is amended so as to read as follows:

Section Eighteen Hundred and Seventy-one. Diplomas or certificates shall be issued by any State, County, City, or City and County Board of Examination, to such persons only as shall have given evidence of good moral character. Moral qualifications.

SEC. 64. Sections fifteen hundred and forty-seven, sixteen hundred and eighteen, and seventeen hundred and seventy-six of the Political Code are hereby repealed. Repealed.

SEC. 65. Section sixteen hundred and sixty-five is amended so as to read as follows:

Section Sixteen Hundred and Sixty-five. Instruction must be given in the following branches in the several grades in which each may be required, viz: Course of instruction.

Reading, writing, orthography, arithmetic, geography, grammar, history of the United States, physiology, natural philosophy, natural history, elements of form, vocal music, and industrial drawing.

SEC. 66. Section sixteen hundred and eighty-six is amended so as to read as follows:

Injuring  
school  
property.

Section Sixteen Hundred and Eighty-six. Any pupil who cuts, defaces, or otherwise injures any school house, fences, or outbuildings thereof, is liable to suspension or expulsion, and on the complaint of the teacher or Trustees the parents or guardians of such pupil shall be liable for all damages.

SEC. 67. Section eighteen hundred and forty-two is amended so as to read as follows:

Vacancy in  
office of  
Assessor or  
Collector.

Section Eighteen Hundred and Forty-two. In case any Assessor or Collector of district taxes refuses or neglects to qualify within ten days after his election or appointment, or having qualified refuses or neglects to act, or in case of any vacancy from any other cause in either or both of said offices, the Board of Trustees must call a special election, giving at least five days' notice, to fill such vacancy.

SEC. 68. Section eighteen hundred and seventy-four is amended so as to read as follows:

Books  
adopted.  
Continua-  
tion of.

Section Eighteen Hundred and Seventy-four. Any books once adopted as part of a uniform series of text books, must be continued in use for not less than four years; *provided*, that if at any time after their adoption the retail price of such books is raised above the first introduction price, some other books may be substituted for such books; *provided, further*, that such substitution, or the adoption of new books in place of books which have been in use not less than four years, must be in the following manner:

Substitu-  
tion, how  
made.

One—At least six months' notice must be given of Same. any proposed change of text books.

Two—Publishers of text books must be invited to submit proposals for the supplying of the required text books; said proposals must be accompanied by sample copies of the books proposed to be furnished, together with a statement of the retail price at which the books will be sold in this State for the full time for which the books are adopted.

Three—If no proposals are received as required in the preceding subdivision, or if the books proposed to be furnished are inferior in contents, or in binding, paper, typography, or press work, or are to be sold at higher retail price than the books already in use, then the books already in use must be continued in use.

SEC. 69. This Act shall be in force from and after its passage.

[Chap. 543.]

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AN ACT TO REPEAL SECTION FIFTEEN HUNDRED AND FORTY-TWO OF THE POLITICAL CODE.

[Approved February 27th, 1874.]

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

SECTION 1. Section fifteen hundred and forty-two of the Political Code is hereby repealed.

[Chap. 132.]

AN ACT TO AMEND AN ACT ENTITLED AN ACT TO AMEND CERTAIN SECTIONS, TO REPEAL CERTAIN SECTIONS, AND TO ADD CERTAIN NEW SECTIONS TO THE POLITICAL CODE OF THE STATE OF CALIFORNIA, APPROVED MARCH THIRTEENTH, EIGHTEEN HUNDRED AND SEVENTY-FOUR.

[Approved March 28th, 1874.]

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

SECTION 1. Section five of said Act is hereby amended so as to read as follows:

Apportion-  
ment of  
State  
school  
moneys.

Section Five. Section eighteen hundred and fifty-eight is amended to read as follows: Section Eighteen Hundred and Fifty-eight. 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 Marshal 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 one hundred census children, or fraction thereof of 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 <sup>same</sup> children, shall be apportioned three 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 three hundred dollars to districts having less than fifteen census children, must be apportioned to the several districts having not less than fifty census children, in proportion to the number of census children in each district.

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

[Chap. 549.]

AN ACT TO AMEND SECTION TWO THOUSAND TWO HUNDRED AND FORTY OF THE POLITICAL CODE.

[Approved March 18th, 1874.]

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

SECTION 1. Section two thousand two hundred and forty of the Political Code is hereby amended to read as follows:

Section Two Thousand Two Hundred and Forty. 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 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 sup-

Deaf,  
dumb, and  
blind  
pupils,  
clothing,  
etc.

port of the asylum. All pupils in the asylum shall be maintained at the expense of the State.

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

[Chap. 330.]

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AN ACT TO AMEND THE POLITICAL CODE IN RELATION TO HIGHWAYS.

[Approved March 30, 1874.]

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

SECTION 1. Section twenty-six hundred and nineteen of said Code is amended to read as follows:

Highways,  
what are,

Section Twenty-six Hundred and Nineteen. Roads laid out and recorded as highways by order of the Board of Supervisors, are highways. Whenever any corporation owning a toll bridge, or a turnpike, plank, or common wagon road, is dissolved, or has expired by limitation or non-user, the bridge or road becomes a highway.

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

When  
vacated.

Section Twenty-six Hundred and Twenty. Roads laid out as provided in section twenty-six hundred and nineteen of this Act, shall not be vacated or cease to be a highway until so ordered by the Board of Supervisors.

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

Public  
easement.

Section Twenty-six Hundred and Thirty-one. By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it, subject to the regulations in this and the Civil Code provided.

SEC. 4. Sections twenty-six hundred and forty-five and twenty-six hundred and forty-six of said Code are repealed. Repealed.

SEC. 5. Section twenty-six hundred and forty-seven of said Code is amended to read as follows:

Section Twenty-six Hundred and Forty-seven. The Board of Supervisors of each county, by proper ordinance, must: Duties of  
Boards of  
Supervisors

One—Divide the county into a suitable and convenient number of road districts, and appoint therefor annually, or whenever vacancies occur, Overseers, upon petition of a majority of property taxpayers of the road district, with power to remove for cause;

Two—Cause to be surveyed, viewed, laid out, recorded, opened, and worked, such highways as are necessary for public convenience, as in this Chapter provided;

Three—Abolish or abandon such as are unnecessary;

Four—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 VII, Part III, of the Code of Civil Procedure, and to pay therefor from the District Road Fund of the particular district;

Five—Let out by contract the improvement of highways and the construction and repair of bridges, or other adjuncts to highways, when the amount of work to be done by contract exceeds three hundred dollars;

Six—Levy a property road tax;

Seven—Order and direct Overseers, specially in regard to work to be done on particular roads in their districts;

Eight—Cause to be erected and maintained on the

Same. highways they may designate, milestones or posts, and guide-posts, properly inscribed;

Nine—Cause the road tax collected each year to be apportioned to the road districts entitled thereto, and kept by the Treasurer in separate Funds;

Ten—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;

Eleven—Furnish to each Road Overseer a copy of this Chapter.

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

Road  
districts  
defined and  
altered.

Section Twenty-six Hundred and Forty-eight. The road districts must be carefully and distinctly defined and described, and designated by the municipal towns or townships or precinct lines; until such division is made, the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created, or modified by the Board of Supervisors, as occasion requires, and, upon petition of a majority of the land owners in any precinct or school district, they shall constitute such precinct or school district a road district.

SEC. 7. Section twenty-six hundred and forty-nine of said Code is amended to read as follows:

Road  
Overseers,  
qualifica-  
tions, etc.

Section Twenty-six Hundred and Forty-nine. Overseers of road districts receive notice of their appointment from the Clerk of the Board of Supervisors, and within ten days thereafter must give the official bond required by the Board of Supervisors in the order of appointment or confirmation, and take the usual oath of office. The notice and certificate that the bond has been filed, and the oath taken and indorsed thereon, or a certified copy thereof, constitutes a commission, and authorizes the person named in and hold-

ing the same to discharge the duties of Overseer until superseded.

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

Section Twenty-six Hundred and Fifty. Road Overseers, under the direction and supervision, and pursuant to orders of the Board of Supervisors appointing them, must:

One—Take charge of the public highways within their respective districts;

Two—Keep them clear from obstructions, and in good repair;

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

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

Five—Collect from each inhabitant notified to work, and who fails to work or prefers to pay it, the commutation fee;

Six—Make semi-annual reports of all labor performed in his district, and how all road poll tax and commutation moneys were expended, to the Board of Supervisors, under oath;

Seven—Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out;

Eight—Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same;

Nine—Pay over to his successor, or into the Fund of his road district in the County Treasury, all road moneys in his hands and unexpended;

Ten—Receive for his services, from money coming into his hands belonging to his road district, the sum

of three dollars for each day's service performed by him, not to exceed three hundred dollars per annum, to be audited and ordered paid by the Board of Supervisors; *provided*, that each Road Overseer in the County of Sierra shall receive four dollars per day for each day's service performed by him.

Repealed. SEC. 9. Sections twenty-six hundred and fifty-one and twenty-six hundred and fifty-two are repealed.

SEC. 10. Section twenty-six hundred and fifty-three of said Code is amended to read as follows:

General  
Road  
Fund, etc.

Section Twenty-six Hundred and Fifty-three. From the property road tax collected from all sources, the Board of Supervisors may annually set apart a sum not exceeding twenty per cent of the aggregate for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes in which the inhabitants of all the districts are more or less interested. The object of the appropriation must be specified in each order made therefor. The Board shall have no power to create a debt on any road district in excess of ten per cent on the estimated amount of the tax receipts from said district for the next ensuing year.

SEC. 11. Section twenty-six hundred and fifty-seven of said Code is amended to read as follows:

Road poll  
tax, who to  
pay.

Section Twenty-six Hundred and Fifty-seven. Every male inhabitant of a road district, over twenty-one and under fifty years of age, must perform two days labor, annually, to be known as the road poll tax, upon the roads and highways of the district, under the demand and direction of the Road Overseer thereof, or pay such Overseer a commutation fee of four dollars.

SEC. 12. Section twenty-six hundred and fifty-eight of said Code is amended to read as follows:

Section Twenty-six Hundred and Fifty-eight. Each Road Overseer must, within twenty days after being notified of his appointment and qualification, deliver to the Clerk of the Board of Supervisors a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the Board of Supervisors at their first meeting held thereafter. Lists thereof.

SEC. 13. Section twenty-six hundred and fifty-nine of said Code is amended to read as follows:

Section Twenty-six Hundred and Fifty-nine. 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 poll tax, and must regulate and fix the amount of property highway tax, and levy the same thereby. Levy thereof.

SEC. 14. Section twenty-six hundred and sixty of said Code is amended to read as follows:

Section Twenty-six Hundred and Sixty. The Board of Supervisors must provide proper blank road poll tax receipts, to be signed by the Clerk of the Board; and must deliver to each Road Overseer a number to each equal to the number of inhabitants of their respective districts liable for road poll tax, take receipt therefor, and charge the Road Office receiving the same therewith; but credit must be given to each Road Overseer for all unsold blank road poll tax receipts returned to the Clerk of the Board of Supervisors. Receipts thereof.

SEC. 15. Section twenty-six hundred and sixty-one of said Code is amended to read as follows:

Section Twenty-six Hundred and Sixty-one. Road Overseers must make out lists of the inhabitants of Collection and application.

the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation, and apply such labor and commutation money in the opening, maintenance, and repair of the highways and adjuncts in their respective road districts.

SEC. 16. Section twenty-six hundred and sixty-two of said Code is amended to read as follows:

Additions  
to lists.

Section Twenty-six Hundred and Sixty-two. The Road Overseers must, from time to time, add to the lists the names of persons liable for road poll tax, who were omitted, or who have become inhabitants of his district since the original list was made, and enforce the road poll tax, or collect the commutation fee therefor, and apply the same as hereinbefore provided.

SEC. 17. Section twenty-six hundred and sixty-four of said Code is amended to read as follows:

Line  
bridges.

Section Twenty-six Hundred and Sixty-four. 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 said bridges reach, proportionally; *provided*, that the Board of Supervisors may order the whole expense of constructing or repairing said bridges out of the General Road Fund of the county.

SEC. 18. Section twenty-six hundred and eighty-five of said Code is amended to read as follows:

Overseers'  
reports.

Section Twenty-six Hundred and Eighty-five. Every Overseer must make to the Board of Supervisors, semi-annually, a written account, under oath, containing:

One—The names of all persons assessed to work in his district;

Two—The names of all who have actually worked, and the number of days;

Three—The names of all who have commuted, and the amount received from them;



Four—The names of all delinquents, and the amount Same. collected from them;

Five—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;

Six—The number of road poll tax receipts sold, and those returned unsold;

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

SEC. 19. Section twenty-six hundred and eighty-six of said Code is repealed. Repealed.

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

Section Twenty-six Hundred and Eighty-seven. Unexpended moneys. Road Overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of their report.

SEC. 21. Section twenty-six hundred and eighty-eight of said Code is amended to read as follows:

Section Twenty-six Hundred and Eighty-eight. A Penalty for failure to report, etc. 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, 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.

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

Section Twenty-six Hundred and Ninety-eight. Changing roads, etc. 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.

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

Approving  
Overseer's  
report.

Section Twenty-seven Hundred and Four. No report of Viewers must, by the Board of Supervisors, be approved, which, without the consent of the owner and occupant, would have the effect to open a road:

One—Through an orchard of four years growth;

Two—Through a garden or yard four years cultivated;

Three—Through buildings or fixtures, or erections for the purposes of residence, trade, or manufacture;

Four—Through inclosures necessary for the use or enjoyment of the buildings, fixtures, or erections; or,

Five—Through inclosed or improved lands;

—Unless the Board of Supervisors are satisfied, from personal examination and observation, or from the sworn statement of at least five residents of the road district, that the opening of such road through such premises is a necessity, a great public benefit, or a great convenience to a moiety of the inhabitants of the district.

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

Hearing of  
report.

Section Twenty-seven Hundred and Six. 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, or to which it may be postponed or adjourned, hear evi-

dence 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.

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

Section Twenty-seven Hundred and Seven. 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 ex[ac]cepted the road must be declared a public highway and be opened as before provided.

Approval,  
damages,  
etc.

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

Section Twenty-seven Hundred and Eight. 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.

Proceed-  
ings to  
procure  
right of  
way.

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

Removal of  
fences, etc.

Section Twenty-seven Hundred and Fourteen. 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. 28. Section twenty-seven hundred and twenty-four of said Code is amended to read as follows:

Bridges  
main-  
tained, etc.

Section Twenty-seven Hundred and Twenty-four. 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 poll taxes.

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

Construc-  
tion and  
repairs.

Section Twenty-seven Hundred and Twenty-six. No bridge, the cost of the construction and repair of which will exceed the sum of three 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. The bids to be sealed, 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.

SEC. 30. Section twenty-seven hundred and twenty-nine of said Code is amended to read as follows:

Section Twenty-seven Hundred and Twenty-nine. Applica-  
tion. etc.,  
to construct  
When a bridge, the cost of which will exceed three hundred dollars, is necessary, any five or more freeholders of the road districts 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.

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

Section Twenty-seven Hundred and Thirty-one. Overseer's  
report as to.  
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.

SEC. 32. Section twenty-seven hundred and thirty-two of said Code is amended to read as follows:

Semi-  
annual  
meetings.

Section Twenty-seven Hundred and Thirty-two. The county is responsible for providing, and keeping passable and in good repair, bridges on all public highways; and the Supervisors must appoint semi-annually a special meeting, at which the Road Overseers, on days set apart for their respective districts, to hear highway and bridge reports, and complaints from officers and citizens, when such orders must be made, and such action had regarding the same, as the public welfare demands.

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

Highway  
encroach-  
ments.

Section Twenty-seven Hundred and Forty-three. 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. 34. Section twenty-seven hundred and forty-six of said Code is amended to read as follows:

Actions as  
to, when  
brought.

Section Twenty-seven Hundred and Forty-six. 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 to 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 said action.

SEC. 35. Section twenty-seven hundred and forty-seven of said Code is amended to read as follows:

Section Twenty-seven Hundred and Forty-seven. 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.

Removal of same.

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

Section Twenty-seven Hundred and Fifty-four. 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.

Notices, etc., on bridges.

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

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

Destroying trees.

SEC. 38. This Act shall apply only to the following named counties: Calaveras, Santa Barbara, San Luis Obispo, Ventura, Fresno, Kern, Tehama, Contra Costa, Marin, Lake, Sierra, Plumas, Sacramento, Sutter, Mendocino, Mariposa, Alameda, and Lassen; *provided*, that this Act shall not be in force and effect in Solano, Los Angeles, San Joaquin, and Yuba Counties, until the first Monday of March, eighteen hundred and seventy-six (1876).

Where Act to apply.

AN ACT TO AMEND SECTION TWO THOUSAND SEVEN  
HUNDRED AND TWENTY-FIVE OF POLITICAL CODE.

[Approved March 30th, 1874.]

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

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

When  
county may  
help build  
bridge.

Section Two Thousand Seven Hundred and Twenty-five. Whenever it appears to the Board of Supervisors that any road district is or would be unreasonably burdened by the expense of constructing or 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. In the County of Tehama the amount raised for any one bridge shall not exceed the sum of ten thousand dollars for any one year, unless the proposition to raise the amount is first submitted to a vote of the people of the county in the manner and at the time and under such rules as the Board may prescribe, and a majority of the votes are in favor of the proposition.

SEC. 2. This Act shall take effect immediately.

[Chap. 664.]



AN ACT TO AMEND AN ACT ENTITLED AN ACT TO ESTABLISH A POLITICAL CODE, APPROVED MARCH TWELFTH, EIGHTEEN HUNDRED AND SEVENTY-TWO, TO ADD A NEW SECTION, TO BE KNOWN AS SECTION TWENTY-EIGHT HUNDRED AND THIRTY-TWO.

[Approved March 30th, 1874.]

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

SECTION 1. The Act entitled an Act to establish a Political Code, approved March twelfth, eighteen hundred and seventy-two, is hereby amended by the addition of a new section, to be known as section two thousand eight hundred and thirty-two, to read as follows:

Section Two Thousand Eight Hundred and Thirty-two. The Boards of Supervisors of the several counties of this State are hereby authorized to permit the toll road companies heretofore or which may hereafter be organized under the provisions of this Code, for the purpose of constructing toll roads within the mountain districts of this State, to first construct on the line of their proposed toll road a pack trail for the accommodation of pack trains and horsemen and to collect tolls thereon. The Board of Supervisors shall fix the amount of license to be paid and tolls to be collected on such pack trail, and that no such permit or franchise shall be granted for a longer period than two years.

Pack trails,  
etc.

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

[Chap. 589.]

AN ACT TO AMEND SECTION TWO THOUSAND NINE HUNDRED AND FIFTY-EIGHT OF THE POLITICAL CODE.

[Approved March 7th, 1874.]

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

SECTION 1. Section two thousand nine hundred and fifty-eight is hereby amended so as to read as follows:

Commuta-  
tion  
moneys.

Section Two Thousand Nine Hundred and Fifty-eight. All moneys received in commutation of bonds, and paid into the State Treasury, must be placed to the credit of the General Fund.

SEC. 2. This Act shall take effect immediately.

[Chap. 201.]

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AN ACT TO AMEND SECTIONS THREE THOUSAND AND NINE, AND THREE THOUSAND AND TEN, OF THE POLITICAL CODE.

[Approved March 23d, 1874.]

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

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

Appointees  
of Board of  
Health.

Section Three Thousand and Nine. The Board of Health must appoint a Deputy Health Officer, who shall be a physician in good standing, a Secretary, two Health Inspectors, one Market Inspector, and one Messenger, whose duties must be fixed by the Health Officer. They must also appoint one Resident Physician, one Assistant Resident Physician, one Steward, one Matron, one First Apothecary, one Second Apothecary, two Visiting Physicians, two Visiting Surgeons, as officers of the City and County Hospital in and for

the City and County of San Francisco; one each of said Visiting Physicians and Surgeons to be nominated by the Faculty of the Medical Department of the University of California, and one each of said Visiting Physicians and Surgeons to be nominated by the Medical College of the Pacific. The said Board shall also have the power to appoint one Superintendent, one Resident Physician, one Matron, and such other employés as are now authorized by law to be employed in and for the Almshouse in said city and county. The appointing power aforesaid is vested solely in said Board of Health, and said Board shall have power to prescribe the duties of said appointees, and to remove the same at pleasure.

SEC. 2. Section three thousand and ten is hereby amended so as to read as follows:

Section Three Thousand and Ten. The following annual salaries are hereby allowed to the officers of the Health Department, and such other officers as are mentioned in section one of this Act, viz: Health Officer, twenty-four hundred dollars; Deputy Health Officer, eighteen hundred dollars; Secretary, two thousand one hundred dollars; Health Inspectors, one thousand and two hundred dollars each; Market Inspector, one thousand and two hundred dollars; Messenger, nine hundred dollars. All of said salaries must be paid in equal monthly installments out of the General Fund of the City and County of San Francisco, in the same manner as the salaries of the other officers of the said city and county are paid. There shall be paid to the officers and employés of the City and County Hospital and Almshouse the following annual salaries, viz: Resident Physician, two thousand and four hundred dollars; Assistant Resident Physician, fifteen hundred dollars; Steward, fifteen hundred dollars; Matron, seven hundred and twenty

Salaries of  
appointees.

Same.

dollars; First Apothecary, twelve hundred dollars; Second Apothecary, six hundred dollars; Visiting Physicians and Surgeons, twelve hundred dollars each; Superintendent of Almshouse, eighteen hundred dollars; Resident Physician of Almshouse, fifteen hundred dollars; Matron of the Almshouse, six hundred dollars; and all other employes of said institutions are to be paid such sums as are now authorized by law, all to be paid in equal monthly installments out of the Hospital and Almshouse Fund of said City and County of San Francisco, and the Auditor of said city and county is hereby directed to audit the said demands, payable out of the Funds aforesaid, upon the approval of the same by the said Board of Health, and also to audit all demands for salaries of medical attendants and employes appointed by the Board of Health, in accordance with this Chapter, for the amounts authorized by law to be paid when the same shall have been approved by said Board.

SEC. 3. All Acts and parts of Acts, so far as they conflict with the provisions of this Act, are hereby repealed.

SEC. 4. This Act shall take effect and be in force from and after its passage.

[Chap. 364.]

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO AMEND SECTIONS THREE THOUSAND AND NINE AND THREE THOUSAND AND TEN OF THE POLITICAL CODE," APPROVED MARCH TWENTY-THIRD, EIGHTEEN HUNDRED AND SEVENTY-FOUR.

[Approved March 30th, 1874.]

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

SECTION 1. The Board of Health of the City and County of San Francisco shall alone have the power to appoint one City Physician, who shall receive an annual salary of nine hundred dollars, which must be paid in equal monthly installments out of the General Fund of the City and County of San Francisco, in the same manner as the salaries of the other officers of said city and county are paid.

San Francisco, City Physician.

SEC. 2. The said Board of Health of the City and County of San Francisco may, in their discretion, appoint one engineer and plumber, one first cook, one second cook, one third cook, one baker, one butcher, one clerk and interpreter, one ambulance driver, one gate-keeper, one dresser, and sixteen nurses, as employés and medical attendants of the City and County Hospital of San Francisco.

Board of Health, appointments by.

SEC. 3. The following monthly salaries are hereby allowed to said employés and medical attendants mentioned in section two of this Act: Engineer and plumber, one hundred dollars per month; first cook, seventy dollars per month; second cook, forty dollars per month; third cook, thirty-five dollars per month; baker, seventy-five dollars per month; butcher, forty dollars per month; clerk and interpreter, forty dollars per month; ambulance driver, forty dollars per month; dresser, fifty dollars per month; nurses, forty dollars per month each. All of said sums must be paid

Salary of employés.

monthly out of the Hospital and Almshouse Fund of said City and County of San Francisco, and the Auditor of said city and county is hereby directed to audit the said demands, payable out of the Fund aforesaid, upon the approval of the same by the said Board of Health.

SEC. 4. This Act shall take effect and be in force from and after its passage.

[Chap. 596.]

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AN ACT TO AMEND SECTION THREE THOUSAND TWO HUNDRED AND NINETY-TWO OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section three thousand two hundred and ninety-two of the Political Code is amended to read as follows:

Auction-  
eers,  
employés,  
etc.

Section Three Thousand Two Hundred and Ninety-two. Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf, such employé to take and file with the Clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

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

[Chap. 635.]

AN ACT TO AMEND SECTION THREE THOUSAND THREE HUNDRED AND SIXTY-FOUR OF THE POLITICAL CODE.

[Approved March 24th, 1874.]

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

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

Section Three Thousand Three Hundred and Sixty-four. For each license issued the Collector must collect a fee of one dollar, which must be paid into the Salary Fund of the county, unless the Auditor and Collector are paid by fees instead of salaries, in which case the dollar must be equally divided between them; *provided*, that in the County of Sierra the fees so collected shall belong to the Collector.

Fees for  
licenses.

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

[Chap. 408.]

AN ACT TO AMEND SECTION THREE THOUSAND THREE HUNDRED AND EIGHTY-TWO OF THE POLITICAL CODE.

[Approved March 10th, 1874.]

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

SECTION 1. Section three thousand three hundred and eighty-two is hereby amended so as to read as follows:

Every person who, at a fixed place of business, sells any goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry or wares of pre-

Licenses of  
merchants,  
etc.

Same.

cious metals, whether on commission or otherwise (except agricultural or vinicultural productions, or the productions of any stock, dairy, or poultry farm of this State, when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license), and all persons who keep horses or carriages for hire (except such as are used in the transportation of goods), must obtain from the Tax Collector of the county in which the business is transacted, and for each branch of such business, license, and pay quarterly therefor an amount of money to be determined by the class in which such person is placed by the Tax Collector; such business to be classified and regulated by the amount of the average monthly sales made or hiring done, and at the rates following:

First—Those who are estimated to make average monthly sales or hiring to the amount of one hundred thousand dollars or more, constitute the first class, and must pay fifty dollars per month.

Second—Of seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay thirty-seven dollars and fifty cents per month.

Third—Of fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay twenty-five dollars per month.

Fourth—Of forty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay twenty dollars per month.

Fifth—Of thirty thousand dollars, and less than forty thousand dollars, constitute the fifth class, and must pay fifteen dollars per month.

Sixth—Of twenty thousand dollars, and less than thirty thousand dollars, constitute the sixth class, and must pay ten dollars per month.

Seventh—Of ten thousand dollars, and less than



twenty thousand dollars, constitute the seventh class, *Same.* and must pay seven dollars and fifty cents per month.

Eighth—Of five thousand dollars, and less than ten thousand dollars, constitute the eighth class, and must pay five dollars per month.

Ninth—Of two thousand five hundred dollars, and less than five thousand dollars, constitute the ninth class, and must pay three dollars per month.

Tenth—Of all amounts over twelve hundred and fifty dollars, and under two thousand five hundred dollars per month, constitute the tenth class, and must pay one dollar and fifty cents per month.

Eleventh—Of all amounts less than twelve hundred and fifty dollars per month, constitute the eleventh class, and must pay one dollar per month.

SEC. 2. This Act shall take effect immediately upon its passage.

[Chap. 223.]

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AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH A POLITICAL CODE," APPROVED MARCH TWELVTH, A. D. EIGHTEEN HUNDRED AND SEVENTY-TWO, AND FOR OTHER PURPOSES.

[Approved January 19th, 1874.]

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

SECTION 1. Section number three thousand three hundred and ninety-nine, three thousand four hundred, three thousand four hundred and one, three thousand four hundred and two, three thousand four hundred and three, and three thousand four hundred and four are hereby repealed. *Repealed.*

SEC. 2. The person who has been acting as Land Agent under the sections hereby repealed, is hereby

ordered and directed to return to the Surveyor General of this State, all maps, documents, and papers now in his possession or under his control, touching the lands of this State, furnished him by the officers of this State or of the United States, at his earliest convenience.

SEC. 3. This Act shall be in force from and after its passage.

[Chap. 32.]

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AN ACT TO AMEND CERTAIN SECTIONS AND REPEAL CERTAIN SECTIONS OF THE POLITICAL CODE.

[Approved March 28th, 1874.]

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

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

Affidavit  
for  
purchase of  
swamp,  
etc., lands.

Section Three Thousand Four Hundred and Forty-three. Any person desiring to purchase swamp and overflowed, or tide lands, above low tide, must make an affidavit and file the same in the office of the Surveyor General of the State, 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 lands (describing them) under the law providing for the sale of swamp and overflowed and tide lands; that he does not know of any valid claim to the same, other than his own; and, if the land is swamp and overflowed, that he knows the land applied for and the exterior bounds thereof, and knows, of his own knowledge, that there are no settlers thereon; or, if there are, that the land has been segregated more than six months by authority of the United States,

and that the land which he now owns (swamp and overflowed), together with that sought to be purchased, does not exceed six hundred and forty acres.

SEC. 2. Section three thousand four hundred and forty-one of the Political Code is hereby amended so as to read as follows:

Section Three Thousand Four Hundred and Forty-one. The Surveyor General of the State must not approve any application, nor must the Register issue evidence of title for swamp and overflowed land, until six months after the same has been segregated by authority of the United States.

Approving applications, etc.

SEC. 3. Section three thousand four hundred and forty-five of the Political Code is hereby amended so as to read as follows:

Section Three Thousand Four Hundred and Forty-five. Any person desiring to purchase lands, as provided in section three thousand four hundred and forty-three of this Code, which have been segregated by authority of the United States, but which have not been sectionized by the same authority, must apply to the Surveyor of the county in which the land is situated, to have the land which he desires to purchase surveyed, and a certificate of such survey must be attached to the affidavit required for the purchase of lands, as provided in said section. All surveys required of County Surveyors by the provisions of this section, must conform, as nearly as practicable, to the system adopted by the United States for the survey of the public lands.

When lands segregated, but not sectionized.

SEC. 4. Sections three thousand four hundred and eighteen, three thousand four hundred and nineteen, three thousand four hundred and twenty, and three thousand four hundred and twenty-one of the Political Code are hereby repealed.

Repealed.

SEC. 5. This Act shall take effect immediately.

[Chap. 526.]

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AN ACT TO AMEND SECTION THREE THOUSAND FOUR HUNDRED AND EIGHTY-TWO OF THE POLITICAL CODE.

[Approved March 16th, 1874.]

*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-two of the Political Code is hereby amended so as to read as follows:

Liability  
for original  
indebted-  
ness.

Section Three Thousand Four Hundred and Eighty-two. The district so set off shall be liable for its just proportion of the legal indebtedness of the original district from which it was set off, when the same shall have been ascertained by law.

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 herewith are hereby repealed.

[Chap. 277.]

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AN ACT TO AMEND SECTION THIRTY-SIX HUNDRED AND SEVENTEEN OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section thirty-six hundred and seventeen is hereby amended to read as follows:

Terms  
defined.

Section Thirty-six Hundred and Seventeen. Whenever the terms mentioned in this section are employed in this Title they are employed in the senses hereafter

affixed to them: First—The term “real estate” includes: One, the ownership of, claim to, possession of, or right to the possession of land and trees, vines, growing crops, and plants, while growing and rooted in the ground, except plants and trees grown in nurseries for propagation and sale; two, all mines, minerals, and quarries in and under the land, and all rights and privileges appertaining thereto; three, improvements. Second—The term “improvements” includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land. Third—The term “personal property” includes everything which is the subject of ownership not included within the meaning of the term “real estate.” Fourth—The term “full cash value” means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

SEC. 2. This Act shall take effect on and after its passage.

[Chap. 613.]

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AN ACT TO AMEND THE POLITICAL CODE RESPECTING  
THE ASSESSMENT AND COLLECTION OF TAXES.

[Approved March 24th, 1874.]

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

SECTION 1. Section three thousand six hundred and thirty of said Code is amended to read as follows:

Section Three Thousand Six Hundred and Thirty. 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:

Assessors’  
forms.

“I, ———, do swear that I am a resident of the

Form of  
Affidavit.

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, own, claim, possess, or control, 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."

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

Powers of  
Assessor.

Section Three Thousand Six Hundred and Thirty-two. Every Assessor shall have power:

First—To require any person found within such Assessor's respective county to make and subscribe an affidavit, giving his name and place of residence.

Second—To subpœna and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his respective county; and he may exercise this power in any county where the persons whom he desires to examine may be found, but shall have no power to require such persons to appear before him in any other county than that in which the subpœna is served upon them. Every person who shall refuse to furnish the statement hereinbefore required in this Chapter, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the Assessor, as above provided, shall, for each and every refusal, and as often as the same is repeated, forfeit to the people of the State the sum of one hundred dollars, in gold coin of the United

States, to be recovered by action brought in their name by the respective Assessor in any Police or Justice's Court. In case such affidavit shall show the residence of the person making the same, to be in any county other than that in which it is taken, or the statement shall disclose property in any county other than that in which it is made, the Assessor shall, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the Assessor of the county in which such residence or property is therein shown to be. One half of all moneys recovered by any Assessor under the provisions of this section must by him be paid into the Treasury of his county, and the other half may be retained by the Assessor for his own use.

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

Section Three Thousand Six Hundred and Fifty-one. The form of the Assessment Book must be substantially as follows:

Form of  
Assessment  
Book.

*Assessment Book of the property of — County, for the year 18—, assessed to all owners and claimants, known and unknown.*

Remarks .....			
Poll tax.....		\$	
Total tax.....		\$	
Total value of all property after equalization by the State Board of Equalization.....		\$	
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.....		\$	
Number of acres.....			
DESCRIPTION OF PROPERTY.	City or town lots.	Block .....	Personal property: (Here items may be enumerated in the space to column for number of acres.)
		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.....			

In the City and County of San Francisco the Form Book shall be such as may be directed by the State Board of Equalization.



SEC. 4. Section three thousand six hundred and ninety-three of said Code is amended so as to read as follows:

Section Three Thousand Six Hundred and Ninety-three. Where the property is found to be assessed above or below its full cash value, the Board must add to or deduct from the valuation of: First—The real estate. Second—Improvements upon such real estate. Third—The personal property, except money and solvent debts: such percentum, respectively, as is sufficient to raise or reduce it to the full cash value. In raising or reducing the valuation of personal property, the Board may confine such raising or reduction to one or more kinds of personal property, not exceeding six in number.

Equalization by State Board.

SEC. 5. Section three thousand six hundred and ninety-six of said Code is amended so as to read as follows:

Section Three Thousand Six Hundred and Ninety-six. At the same time the Board must determine, and transmit to the Board of Supervisors of each county, the rate of the State tax to be levied and collected, which, after allowing twelve per cent for delinquencies in, and costs of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the Legislature for State purposes.

State tax, and rate.

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

Section Three Thousand Seven Hundred and Thirty. As soon as the Auditor receives from the State Board of Equalization a statement of the percentum, if any, to be added to or deducted from the valuation of the property of his county, he must add to or deduct from each assessment the required percentum on the valua-

Auditor's duties after equalization.

Same. tion thereof, as the same has been equalized by the Board of Supervisors, and must enter 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. 7. Section three thousand and seven hundred and thirty-two of said Code is amended to read as follows:

Duplicate  
Assessment  
Book, etc.

Section Three Thousand Seven Hundred and Thirty-two. 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. 8. Section three thousand seven hundred and seventy-three of said Code is amended to read as follows:

Section Three Thousand Seven Hundred and Sev-

enty-three. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing, to the Tax Collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or the possessor does not, then the Collector may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including fifty cents to the Collector for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this Chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith of the same, the whole amount of the property assessed shall be struck off to the people of the State as the purchaser, and the duplicate certificate delivered to the County Treasurer, and filed by him in his office. No charge shall be made for the duplicate certificate when the State is a purchaser; and in such case the Tax Collector shall make an entry, "Sold to the State," on the Duplicate Assessment Book opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections three thousand seven hundred and ninety-seven, three thousand seven hundred and ninety-eight, and three thousand seven hundred and ninety-nine of this Code.

Designating portions to be sold, etc.

SEC. 9. Section three thousand seven hundred and eighty-nine of said Code is hereby amended so as to read as follows:

Section Three Thousand Seven Hundred and Eighty-nine. The Assessment Book, Duplicate Assessment Book, or Delinquent List, or a copy thereof certified by the County Auditor, showing unpaid taxes against

Assessment book, etc. Evidence, etc.

any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

**Repealed.** SEC. 10. Section three thousand eight hundred and one of said Code is repealed.

SEC. 11. The following sections are added to said Code, to be inserted after section three thousand eight hundred and ten, and to be numbered sections three thousand eight hundred and eleven, three thousand eight hundred and twelve, three thousand eight hundred and thirteen, three thousand eight hundred and fourteen, three thousand eight hundred and fifteen, and three thousand eight hundred and sixteen:

When  
assess-  
ments are  
void in  
part.

Section Three Thousand Eight Hundred and Eleven. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the Tax Collector a protest in writing, signed by the respective owner or agent, specifying the portion of the tax which he claims to be invalid, and the grounds upon which such claim is based.

Duty of  
Tax  
Collector  
when sale  
protested  
against.

Section Three Thousand Eight Hundred and Twelve. In case any owner of property, advertised to be sold for delinquent taxes, shall, at least six days before the time advertised for the sale to take place, deliver to the Tax Collector his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part—and if in part

only, for what portion, and in either case specifying the grounds upon which such claim is founded—it shall be the duty of the Tax Collector, either:

First—To sell the property assessed for the whole amount appearing upon the Duplicate Assessment Book; or,

Second—Withdraw the property from sale, and report the case to the State Board of Equalization for its direction in the premises; and in such case the Board of Equalization may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the Collector to proceed with the sale.

Section Three Thousand Eight Hundred and Thirteen. In case property assessed for taxes is purchased by the State, pursuant to the provisions of section three thousand seven hundred and seventy-three of this Code, it shall be assessed the next year for taxes in the same manner as if it had not been so purchased. But it shall not be exposed for sale, and the sale thereof, under such assessment, shall be adjourned until the time of redemption, under the previous sale, shall have expired.

Assess-  
ments  
when State  
purchaser.

Section Three Thousand Eight Hundred and Fourteen. In case an assessment is made under the provisions of section three thousand eight hundred and thirteen of this Code, and the lands are not redeemed from a previous sale had under section three thousand seven hundred and seventy-three, as provided by law, no sale shall be had under the assessment authorized by said section three thousand eight hundred and thirteen, unless directed by the State Board of Equalization.

Subsequent  
assess-  
ments.

Section Three Thousand Eight Hundred and Fifteen. In case property is sold to the State as purchaser, pursuant to section three thousand seven

Redemp-  
tion  
payments.

hundred and seventy-three of this Code, and is subsequently assessed pursuant to section three thousand eight hundred and sixteen of this Code, no person shall be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interest.

Distribution of redemption moneys.

Section Three Thousand Eight Hundred and Sixteen. Whenever property sold to the State, pursuant to the provisions of this Chapter, shall be redeemed, as herein provided, the moneys received on account of such redemption shall be distributed between the State Treasurer and the County Treasurer, and to the respective Funds, in the same manner as if the same had been paid in the first instance to the Tax Collector. The County Treasurer shall keep an account of such taxes so represented by such sales, and shall, on the first Monday of March in each year, make a detailed report of each account, year for year, to the State Treasurer. Whenever the State shall receive from the Tax Collector any grant of property so sold for taxes, the same shall be recorded, at the request of the County Treasurer, free of charge by the County Recorder, and shall be immediately reported by the County Treasurer to the Board of Equalization.

SEC. 12. Section three thousand eight hundred and twenty of said Code is amended to read as follows:

Collection of personal property tax.

Section Three Thousand Eight Hundred and Twenty. The Assessor must collect the taxes on all personal property when, in his opinion, said taxes are not a lien upon real property sufficient to secure the payment of the taxes; *provided*, that in the City and County of San Francisco the Tax Collector shall collect such taxes at any time after the assessment.

SEC. 13. Section three thousand eight hundred and twenty-three of said Code is amended to read as follows:

Section Three Thousand Eight Hundred and Twenty-three. The Assessor and Collector are governed, as to the amount of taxes to be by him collected on personal property, by the State and county rate of the previous year.

Amount thereof.

SEC. 14. Section three thousand eight hundred and twenty-nine of said Code is amended to read as follows:

Section Three Thousand Eight Hundred and Twenty-nine. For services rendered in the collection of taxes, the Assessor shall receive one per cent on the amount by him collected; *provided*, that all fees or commissions collected under this or any other Act by the salaried officers in and for the City and County of San Francisco, shall be by said officers paid into the County Treasury for the use of said city and county.

Assessor's fees on delinquent taxes.

SEC. 15. The following sections are added to said Code, to be inserted immediately after section three thousand eight hundred and ninety-six, and be numbered sections three thousand eight hundred and ninety-seven, and three thousand eight hundred and ninety-eight, three thousand eight hundred and ninety-nine, and three thousand nine hundred:

Section Three Thousand Eight Hundred and Ninety-seven. Whenever the State shall become the purchaser of property sold for taxes, and shall receive a grant of the same, the State Board of Equalization may direct the District Attorney of the county, or the Attorney General, to bring an action to recover possession of the same. In case of judgment for the recovery of the same, or of any part thereof, the Board of Equalization may order the property so recovered to be sold by the County Treasurer, under such regulations and on such terms as they may prescribe, and a grant from the people of the State, executed by the

Actions for possession by State, etc.

County Treasurer to the purchaser, reciting the facts necessary to authorize such sale and conveyance, shall convey all the interest of the State in such property, and be prima facie evidence of such facts. But no bid shall be received at such sale for less than twice the amount of all the taxes levied upon such property, and of all interest, costs, and expenses, up to the date of such sale.

Distribu-  
tion of  
proceeds  
of sale.

Section Three Thousand Eight Hundred and Ninety-eight. In case sales are made under the provisions of the next preceding section, the proceeds of such sale shall be paid into the County Treasury. The Treasurer shall retain and distribute to the respective Funds the portion belonging to the county, and shall pay the balance to the State Treasurer, who must place it in the General Fund. The attorney and counsel fees, costs, and expenses of the litigation for the recovery of the property, and of sales by the same, when audited by the Board of Examiners, must be paid out of the General Fund; *provided*, that the allowances in any one case shall not exceed the amount of said balance in such case.

Proceed-  
ings when  
tax is three  
hundred  
dollars.

Section Three Thousand Eight Hundred and Ninety-nine. The Controller may, at any time after a delinquent list has been delivered to a Collector, direct such Collector not to proceed in the collection of any tax on said list, amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the Collector, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the Controller a certified copy of the entries upon the delinquent list relative to such tax; and the Tax Collector, or the Controller, in case the Tax Collector refuses or neglects for fifteen days after being directed to bring suit for collection by the



Controller, may proceed, by civil action in the proper Court, and in the name of the people of the State of California, to collect such tax and costs.

Section Three Thousand Nine Hundred. In such action, a complaint in the following form is sufficient:

Complaint  
and pro-  
ceedings  
thereunder

(Title of Court.)

The People of the State of California

vs.

(Naming the defendant.)

Plaintiff avers that the defendant is indebted to plaintiff in the sum of \$—, State and county taxes for the fiscal year 18—, with five per cent added for the non-payment of such taxes, and — dollars, costs of collection, to date. Plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the Code of Civil Procedure.

(Signed by the Tax Collector, or Controller, or his attorney.)

On the filing of such complaint, the Clerk must issue the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil actions. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent on the amount of the tax. In such action, the certified copy mentioned in the preceding section, made by the Collector and delivered to the Controller, is prima facie evidence that the person against whose property the tax was levied is indebted to the people of the State of California in the amount of such tax. In case of payment of any such taxes after suit as above mentioned shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the County Treasurer of the county in which

such taxes are due, whereupon the Treasurer, after distributing to the several Funds of the county the portions belonging to it, and paying to the Controller or his attorney the portion received as attorney's fees, and other costs, must pay the remainder to the State Treasurer at the times and in the manner prescribed by law for the payment of other State taxes.

Printing  
and dis-  
tributing  
this Act.

SEC. 16. The State Board of Examiners are hereby directed to have five hundred copies of this Act printed in pamphlet form, and to transmit by express five copies thereof to the County Clerk of each county, for distribution to the revenue officers thereof.

SEC. 17. There is hereby added to Chapter Six, of Title Nine, of Part Three of the Political Code, an additional section, as follows:

Auditor.  
penalty for  
neglect.

Section Thirty-seven Hundred and Thirty-seven. If the County Auditor fails or neglects to perform the duties prescribed by sections three thousand seven hundred and twenty-eight and three thousand seven hundred and twenty-nine of the Political Code, he shall forfeit to the State five hundred dollars, to be recovered by action in the name of the State Board of Equalization.

SEC. 18. There is hereby added to Chapter Six, of Title Nine, of Part Three of the Political Code, an additional section, as follows:

Duplicate  
Assessment  
Book, when  
dispensed  
with.

Section Three Thousand Seven Hundred and Thirty-eight. The Board of Supervisors of any county may, in their discretion, dispense with the making or use of any Duplicate Assessment Book mentioned in any part of this Code; and in all cases where said Duplicate Assessment Book is referred to, it shall be lawful to use and consider the original Assessment Book in all the requirements of every part of this Code referring to the same, and all affidavits, or other statements in

reference to said Duplicate Assessment Book, shall be substantially worded to conform to the use of the original Assessment Book.

SEC. 19. Section thirty-seven hundred and eighty of said Code is amended so as to read as follows:'

Section Thirty-seven Hundred and Eighty. A redemption of the property sold may be made by the owner, or any party in interest, within six months from the date of the purchase. Redemption of property.

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

Section Thirty-seven Hundred and Eighty-one. How made.  
Redemption must be made in gold or silver coin, and when made to the County Treasurer, he must credit the amount paid to the person named in the Collector's certificate, and pay it on demand to the person or his assignees.

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

Section Thirty-seven Hundred and Eighty-five. Deed, etc.  
If the property is not redeemed within six months from the sale, the Collector, or his successor in office, must make to the purchaser or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption; *provided*, that in counties where no fee in making said deed is provided by law, the Collector shall be entitled to receive from the purchaser three dollars for making such deed.

SEC. 22. This Act shall be in force from and after its passage.

## AN ACT AMENDING CERTAIN SECTIONS OF THE POLITICAL CODE, RELATIVE TO THE ASSESSMENT OF PROPERTY FOR TAXATION.

[Approved March 30th, 1874.]

*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 the Political Code is amended so as to read as follows:

Railroad  
rolling  
stock, how  
assessed.

Section Three Thousand Six Hundred and Sixty-three. Where the railroad of a railroad corporation lies in several counties, its rolling stock must be apportioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole rolling stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this State. The land occupied and claimed as the right of way, with the track and all the substructures and superstructures which support the same, must be assessed as a whole, and as real estate, without separating the same into lands and improvements, at a certain sum per mile. The improvements, other than the track and the substructures and superstructures which support the same, whether situated upon land occupied and claimed as the right of way, or on other lands, must be separately assessed. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll roads, with all improvements attached to such properties, must be listed by the Assessor as real estate, and as a whole, without separating the land and the improvements, either in the description or valuation of the same.

SEC. 2. Section three thousand six hundred and

eighty of the Political Code is amended so as to read as follows:

Section Three Thousand Six Hundred and Eighty. In all cases where the Board either adds to, or decreases, or alters the valuation of property made by the Assessor, the Clerk of the Board must note down and preserve, substantially, the evidence upon which such addition, decrease, or alteration was based.

Preservation of equalization evidence.

SEC. 4. Section three thousand seven hundred and seventeen of the Political Code is amended so as to read as follows:

Section Three Thousand Seven Hundred and Seventeen. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after the time the same becomes delinquent.

Tax lien.

[Chap. 662.]

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AN ACT TO AMEND SECTIONS THIRTY-SIX HUNDRED AND NINETY-SIX AND THIRTY-SEVEN HUNDRED AND THIRTEEN OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

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

Section Thirty-six Hundred and Ninety-six. At the same time the Board must determine and transmit to the Board of Supervisors of each county the rate of State tax to be levied and collected, which, after allowing eighteen per cent for delinquencies in and costs of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the Legislature for State purposes.

Rate of State tax, etc.

Amounts  
for twenty-  
sixth and  
twenty-  
seventh  
fiscal years.

SEC. 2. Section Thirty-seven Hundred and Thirteen. The State Board of Equalization must, for State purposes, for the twenty-sixth and twenty-seventh fiscal years, fix such an ad valorem rate of taxation upon each one hundred dollars of taxable property of this State as will raise for the twenty-sixth fiscal year: One—For the General Fund, one million seven hundred and eighty-eight thousand dollars. Two—For the School Fund, one million one hundred and ten thousand dollars. Three—For the Interest and Sinking Fund, three hundred and thirty-six thousand dollars. And for the twenty-seventh fiscal year: One—For the General Fund, one million six hundred thousand dollars. Two—For the School Fund, one million one hundred and thirty thousand dollars. Three—For the Interest and Sinking Fund, three hundred and thirty-six thousand dollars.

SEC. 3. This Act, and the sections of the Political Code herein amended, shall be in force and effect from and after the passage of this Act.

[Chap. 643.]

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AN ACT TO REPEAL SECTION THREE THOUSAND SEVEN HUNDRED AND FIFTY-SEVEN OF THE POLITICAL CODE.

[Approved December 23d, 1873.]

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

Repealed. SECTION 1. Section three thousand seven hundred and fifty-seven of the Political Code is hereby repealed.

SEC. 2. This Act shall take effect immediately.

[Chap. 12.]

AN ACT TO AMEND CERTAIN SECTIONS OF THE POLITICAL CODE RELATING TO COLLECTION OF POLL TAXES, AND TO REPEAL SECTION THREE THOUSAND EIGHT HUNDRED AND FIFTY-NINE OF SAID CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section three thousand eight hundred and thirty-nine is hereby amended to read as follows:

Section Three Thousand Eight Hundred and Thirty-nine. Every male inhabitant of this State, over twenty-one and under sixty years of age, 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.

Persons  
liable to  
poll tax.

SEC. 2. Section three thousand eight hundred and forty is amended to read:

Section Three Thousand Eight Hundred and Forty. Poll tax must be collected by the Assessors between the first Monday in March and the second Monday in January of the ensuing year.

When poll  
tax to be  
collected.

SEC. 3. Section three thousand eight hundred and forty-one is amended to read:

Section Three Thousand Eight Hundred and Forty-one. The County Treasurer must, before the first Monday of March and the first Monday in July of each year, cause to be printed, respectively, of two and three dollars, blank poll tax receipts, a sufficient number for the use of the Assessor.

Blank  
poll tax  
receipts.

SEC. 4. Section three thousand eight hundred and forty-three is amended to read:

Treasurer's  
duties as  
to.

Section Three Thousand Eight Hundred and Forty-three. The Treasurer must, before the first Monday in March of each year: First—Number and sign the two-dollar blanks, and before the first Monday in July, number and sign the three-dollar blanks. Second—At the time of signing make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him kept for that purpose. Third—Deliver all such blanks to the Auditor, and charge him therewith.

SEC. 5. Section three thousand eight hundred and forty-five is amended to read:

Same.

Section Three Thousand Eight Hundred and Forty-five. He must, at any time after the first Monday in March and the first Monday in July, upon demand, deliver to the Assessor, in their order, the two and three-dollar blanks, and charge him therewith.

SEC. 6. Section thirty-eight hundred and forty-six is amended to read:

Collection  
of poll tax.

Section Thirty-eight Hundred and Forty-six. The Assessor must demand payment [of] poll tax of every person liable therefor, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person.

SEC. 7. Section three thousand eight hundred and forty-seven is amended to read:

Seizure  
and sale.

Section Three Thousand Eight Hundred and Forty-seven. The sale may be made after three hours verbal notice of time and place, and the provisions of sections thirty-seven hundred and ninety-one, thirty-seven hundred and ninety-three, thirty-seven hundred and ninety-four, thirty-seven hundred and ninety-five, and thirty-seven hundred and ninety-six, apply to such seizure and sale.



SEC. 8. Section three thousand eight hundred and fifty-four is amended to read:

Section Three Thousand Eight Hundred and Fifty-four. On the first Monday in July the Assessor must return to the Auditor all two-dollar blank poll tax receipts received by him and not used, and pay to the Treasurer the total amount collected and not before paid in, less the amount of his fees, and the Auditor must deliver to him the three-dollar receipts; and on the second Monday in January of each year he must return to the Auditor all the three-dollar poll tax receipts received by him and not used, and must make final settlement with the Auditor and Treasurer therefor.

Return of  
receipts  
and  
settlement.

SEC. 9. Section three thousand eight hundred and fifty-seven is amended to read:

Section Three Thousand Eight Hundred and Fifty-seven. The Assessor must keep a roll of the names and local residence or place of business of all persons subject to or liable for poll tax, and if paid, date and amount of each payment, and if not paid, cause of non-payment; *provided*, that no person shall be returned as delinquent on such roll unless a personal demand has been made upon him.

Poll tax  
rolls.

SEC. 10. Section three thousand eight hundred and fifty-eight is amended to read:

Section Three Thousand Eight Hundred and Fifty-eight. On the second Monday in January of each year, the Assessor must deliver to the Auditor the roll so made up, and the Auditor must add to the total poll tax delinquent on such roll thirty-three and one third per centum additional, and without delay deliver such list to the Tax Collector, and charge the Collector therewith.

Return  
thereof,  
etc.

Repealed. SEC. 11. Section three thousand eight hundred and fifty-nine is hereby repealed.

SEC. 12. Section three thousand eight hundred and sixty is amended to read:

Poll tax  
lien, etc.

Section Three Thousand Eight Hundred and Sixty. If any person, assessed for a property tax, has not paid to the Assessor the poll tax due from him, or for which he is liable, it, with thirty-three and one third per cent in addition thereto, constitutes a lien upon the property assessed to such person, to attach from the first Monday in March in each year, and must be collected in the same manner and at the same time as delinquent taxes are collected.

SEC. 13. Section three thousand eight hundred and sixty-two is amended to read as follows:

Assessor's  
compensation.

Section Three Thousand Eight Hundred and Sixty-two. The Assessor, for services rendered in the collection of poll taxes, shall receive the sum of fifteen (15) per cent, and the Collector, for services rendered in the collection of poll taxes on the delinquent list (including the publication), shall receive the sum of twenty-five (25) per cent on all delinquent poll tax collected by him; *provided*, that in the City and County of San Francisco all moneys collected under the provisions of this Act, by the Tax Collector, shall be paid into the public Treasury and belong thereto as other public funds.

SEC. 14. This Act shall go into effect immediately after its passage.

[Chap. 679.]

AN ACT TO AMEND SECTION THIRTY-EIGHT HUNDRED  
AND SIXTY-SIX OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

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

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

Section Thirty-eight Hundred and Sixty-six. The County Treasurers of the Counties of Amador, Alameda, Contra Costa, Calaveras, El Dorado, Nevada, Placer, Sierra, Solano, Yolo, San Francisco, Sacramento, San Joaquin, Santa Clara, Tuolumne, and Yuba, respectively, must, between the fifteenth and thirtieth days of January, April, June, and October of each year; and the County Treasurers of the Counties of Humboldt, Klamath, and Del Norte, must, between the fifteenth and thirtieth days of October and April in each year; and the County Treasurers of other counties of this State must, between the fifteenth and thirtieth days of January and June, respectively, in each year, proceed to the State Capitol and settle in full with the Controller of State, and pay over in cash to the Treasurer of State, all funds which have come into their hands as County Treasurers before the close of business at the end of the previous month. If sufficient property tax has not been reported by the Auditor to pay all charges and commissions allowed by law, the Controller shall defer the settlement until the next regular settlement. No mileage shall be allowed any Treasurer for any deferred settlement.

County  
Treasurers  
to settle  
with  
Controller  
when.

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

[Chap. 644.]

AN ACT TO AMEND SECTION THREE THOUSAND NINE HUNDRED AND TWENTY-ONE OF THE POLITICAL CODE.

[Approved March 16th, 1874.]

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

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

Bound-  
aries,  
County  
Sierra.

Section Three Thousand Nine Hundred and Twenty-one. Beginning at the south corner of Plumas, in the center of State Creek, as established in section three thousand nine hundred and twenty; thence easterly on southern line of Plumas, as established in said section, to the range line between township twenty-one north, range thirteen east, and township twenty-one north, fourteen east, Mt. Diablo meridian; thence north on said range line, to the northwest corner of township twenty-one north, fourteen east, Mt. Diablo B. and M.; thence east on the line between townships twenty-one and twenty-two north, Mt. Diablo base, to the State line forming the northeast corner; thence south on said State line to the northeast corner of Nevada County, a point east of the source of South Fork of the Middle Yuba River; thence west to the source of and down the South Fork and Middle Yuba River to a point ten miles above the mouth of the latter; thence in a straight line northerly to a point on the North Fork of the Yuba River known as Cuteye Foster's Bar; down said river to the mouth of Big Cañon Creek, then up said creek four miles; thence in a straight line to the place of beginning. County seat, Downieville.

SEC. 2. This Act shall take effect immediately.

[Chap. 284.]

## AN ACT TO AMEND SECTION THREE THOUSAND NINE HUNDRED AND TWENTY-TWO OF THE POLITICAL CODE.

[Approved March 7th, 1874.]

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

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

Section Three Thousand Nine Hundred and Twenty-two. Beginning at the northwest corner of Yuba, in Feather River, at the mouth of Honcut Creek; thence northeasterly up the Honcut Creek and the north or Natchez branch of the same, to its source, on line established by Surveyor General, on survey of West-coatt and Henning, eighteen hundred and fifty-nine; thence to the summit line of the ridge dividing the waters of the Yuba and Feather Rivers; thence northeasterly up said ridge, on line of said survey, to the third station tree westerly from the Woodville House; thence in a right line, fifty chains more or less, to a station tree easterly from said house about twenty-six chains—said right line passing about three chains northerly of said house; thence northeasterly on said ridge and survey, to a point on line of said survey a little westerly from the Village of Strawberry Valley—which point is two thousand feet distant westerly, in right line from point of highest altitude on line of said survey east, and within three hundred yards of the Village of Strawberry Valley; thence to the common corner of Plumas, Butte, and Yuba, as established in section three thousand nine hundred and twenty; thence northwesterly on southwesterly line of Plumas, as established in said section, to the most eastern southeastern corner of Tehama, as established in section three thousand nine hundred and fifteen, forming

Bound-  
aries,  
County  
Butte.

**Same.** also the north corner of Butte; thence southwesterly on the southeasterly line of Tehama to the southeast corner of Tehama, at point of intersection of Rock Creek and southern line of township twenty-four north, Mount Diablo base; thence west on said township line to the Sacramento River; thence down said river to the southwest corner of the Llano Seco grant; thence northeasterly along said grant line to its intersection with the northern boundary of township nineteen north; thence east to Watson's bridge, on Butte Creek; thence on Colusa County east line, down Butte Creek, to the northwest corner of Sutter County, as established in section three thousand nine hundred and twenty-six; thence east on north line of Sutter County to Feather River; thence down Feather River to place of beginning. County seat, Oroville.

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

[Chap. 202.]

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**AN ACT TO AMEND THE POLITICAL CODE IN REFERENCE TO THE BOUNDARIES OF ALAMEDA COUNTY.**

[Approved March 30th, 1874.]

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

**SECTION 1.** Section three thousand nine hundred and fifty-three of the Political Code is hereby amended so as to read as follows:

**ALAMEDA.**

**Bound-  
aries,  
County  
Alameda.**

[Section] Three Thousand Nine Hundred and Fifty-three. Beginning at the southwest corner, being the common corner of San Mateo, Santa Clara, and Alameda, as established in section three thousand nine hun-

dred and fifty-one; thence easterly on northerly line of Same. Santa Clara, as established in section three thousand nine hundred and fifty-two, to common corner of San Joaquin, Stanislaus, Santa Clara, and Alameda, as established in section three thousand nine hundred and thirty-two; thence northwesterly on the west line of San Joaquin County to the slough known as the Pescadora (being the west channel or "Old San Joaquin River"); thence westerly in a straight line until it strikes the dividing ridge in the direction of the house of Joze Harban, in Amador Valley; thence westerly along said ridge crossing the gulch one half mile below Prince's Mill; thence to and running upon the dividing ridge between the Redwoods known as the San Antonio and Prince's Woods; thence along said ridge to the head of the gulch or creek (Cerreto Creek) that divides the ranches of the Peraltas from the San Pablo Ranches; thence down said gulch to its mouth; thence southwesterly to the common corner of San Francisco, Contra Costa, and Alameda, as established by section three thousand nine hundred and fifty; thence southerly to a point in the Bay of San Francisco that would intersect a line parallel with the north line of the Central Pacific Railroad Company's wharf (as it now is), if extended westerly five hundred feet towards Yerba Buena Island; thence southeasterly in a line parallel with the east line of the City and County of San Francisco-(which is the line now dividing said city and county from the County of Alameda), to its intersection with the south line of said city and county, as established in section three thousand nine hundred and fifty; thence easterly along said last mentioned line to the northeast corner of San Mateo; and thence southeasterly along the eastern line of San Mateo to the place of beginning. Horace A. Higley's survey map of Alameda County, eighteen

Same.

hundred and fifty-seven, are declared to contain a more particular description of the line out of the Bay of San Francisco. County seat, City of Oakland; *provided*, that nothing in this Act contained shall be construed to place "Yerba Buena Island," or any part thereof, outside the limits of the City and County of San Francisco, but the same shall be deemed to be within said city and county, and the westerly boundary line of the County of Alameda shall not come within two thousand and five hundred feet of any part of said island.

[Chap. 672.]

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AN ACT TO AMEND SECTION THREE THOUSAND NINE HUNDRED AND SEVENTY-SEVEN AND THREE THOUSAND NINE HUNDRED AND EIGHTY-FIVE OF THE POLITICAL CODE.

[Approved March 30th, 1874.]

*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 the Political Code is hereby amended so as to read as follows:

Election,  
county seat  
removal.

Section Three Thousand Nine Hundred and Seventy-seven. 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, within five days after receiving such petition, order an election, naming the day on which it must be held, not more than sixty nor less than thirty-five days from the time of calling it, specifying its object.

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



Section Three Thousand Nine Hundred and Eighty-five. When the county seat of a county has been once removed, it may be again removed, from time to time, in the manner prescribed by this Chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by qualified electors of the county equal in number to at least three fourths of all the votes cast at the next preceding election; nor unless, at such election, when ordered, a majority of all the votes cast are in favor of some other place as the county seat of the county; nor must two elections to effect such removal be held within any three years.

Subsequent  
removals.

SEC. 3. This Act shall take effect and be in force in the County of San Mateo from and after the first day of July, A. D. eighteen hundred and seventy-four, and in every other county of this State from and after its passage.

[Chap. 593.]

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# AN ACT TO AMEND SECTION FOUR THOUSAND AND ONE OF THE POLITICAL CODE.

[Approved March 24th, 1874.]

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

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

Section Four Thousand and One. Its powers can only be exercised by the Board of Supervisors, or by agents and officers acting under their authority, or authority of law; *provided, however,* that whenever any Board of Supervisors shall, without authority of law, order any money paid as a salary, fees, or for

Powers of  
counties,  
how  
exercised  
etc.

Same.

other purposes, and such money shall have been actually paid, or whenever the County Clerk or County Auditor has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the Board of Supervisors, or by the law, and the same shall have been paid, the District Attorney of such county is hereby empowered and it is hereby made his duty to institute suit in the name of the county, against such person or persons, to recover the money so paid, and twenty per cent damage for the use thereof, and no order of the Board of Supervisors therefor shall be necessary in order to maintain such suit; and, *provided further*, that when the money has not been paid on such orders, it is hereby made the duty of the District Attorney of such county to commence suit, in the name of the county, for restraining the payment of the same; and no order of the Board of Supervisors therefor shall be necessary in order to maintain such suit.

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

[Chap. 410.]

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AN ACT TO AMEND AN ACT ENTITLED AN ACT TO ESTABLISH A POLITICAL CODE, APPROVED MARCH TWELFTH, EIGHTEEN HUNDRED AND SEVENTY-TWO, TO ADD A NEW SECTION THERETO, TO BE KNOWN AS SECTION FOUR THOUSAND AND FORTY-SEVEN.

[Approved March 18th, 1874.]

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

SECTION 1. The Act entitled an Act to establish a Political Code, approved March twelfth, eighteen hundred and seventy-two, is hereby amended by the addi-

tion of a new section, to be known as section four thousand [and] forty-seven, to read as follows:

Section Four Thousand and Forty-seven. 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 County Courts, to require obedience to their citations, and decorum in their meetings.

Special  
powers,  
Super-  
visors.

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

[Chap. 317.]

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AN ACT TO AMEND SECTION FOUR THOUSAND ONE HUNDRED AND NINE OF THE POLITICAL CODE OF THE STATE OF CALIFORNIA.

[Approved December 22d, 1873.]

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

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

Section Four Thousand One Hundred and Nine. All county and township officers, except judicial officers, Assessors, and Supervisors, must be elected at the general election held in September, eighteen hundred and seventy-three, and every two years thereafter, and hold office for two years from the first Monday of March next after their election; and the officers now holding shall continue in office until the first Monday in March, A. D. eighteen hundred and seventy-four, except Assessors, as hereinafter provided. As-

Election of  
county and  
township  
officers.

Same.

sessors must be elected at the general election held in September, eighteen hundred and seventy-five, and every four years thereafter, and hold office for four years from the first Monday of March next after their election, except that in the City and County of San Francisco the Assessor holds his office for the term of four years from the first Monday of December next after his election. Every Assessor now in office must hold his office and exercise the duties thereof until his successor is elected at the general election in September, eighteen hundred and seventy-five. The provision of this section, so far as it relates to the election and term of office of Assessors, applies to every county, and city and county, in this State; *provided*, that the term of office of no city and county officer of the City and County of San Francisco shall be in anywise affected by reason of this Act; *and, provided further*, that nothing contained in this Act shall operate to extend the term of office of the present Assessor of El Dorado, Alameda, and San Joaquin County.

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

[Chap. 8.]

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AN ACT TO AMEND AN ACT ENTITLED AN ACT TO ESTABLISH A POLITICAL CODE, APPROVED MARCH TWELFTH, EIGHTEEN HUNDRED AND SEVENTY-TWO.

[Approved March 3d, 1874.]

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

SECTION 1. Section number four thousand one hundred and twenty is hereby amended so as to read as follows:

Section Four Thousand One Hundred and Twenty. Absence, county officers.  
 No county officer may absent himself from the State for more than thirty days.

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

[Chap. 165.]

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AN ACT TO ADD ADDITIONAL SECTIONS TO THE  
 POLITICAL CODE.

[Approved February 28th, 1874.]

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

SECTION 1. The following sections are added as new sections to the Political Code, and must be inserted in said Code after section four thousand three hundred and forty-four, and designated as sections four thousand three hundred and forty-five, four thousand three hundred and forty-six, and four thousand three hundred and forty-seven:

Section Four Thousand Three Hundred and Forty-five. When a criminal action is removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the indictment was found. Costs on removal of criminal actions.

Section Four Thousand Three Hundred and Forty-six. The Clerk of the county to which such action is removed shall certify the amount of costs allowed and certified by the Court to the Auditor of his county, and such Auditor shall audit the same and draw his warrants therefor upon the Treasurer of the county from which such action was removed, and such Auditor shall forward to said Treasurer and Auditor of the county from which said action was transferred as aforesaid, a certified copy of the total amount of costs Certificates of amount, etc.

Same. allowed by the Court, giving each item as certified to him by the County Clerk and the Court; and the Auditor receiving such certified copy of said costs allowed, shall enter the same in his books as a charge against the Treasurer of his county, and the County Treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the General Fund of said county; or if at the time of presentation there is not sufficient moneys in the said General Fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the Auditor of the county where the indictment was found.

Application.

Section Four Thousand Three Hundred and Forty-seven. Sections four thousand three hundred and forty-five and four thousand three hundred and forty-six of this Code shall apply to all criminal actions which have been or may be removed for trial since the first day of January, eighteen hundred and seventy-three.

SEC. 2. This Act shall take effect immediately.

[Chap. 159.]

## AN ACT TO AMEND THE POLITICAL CODE.

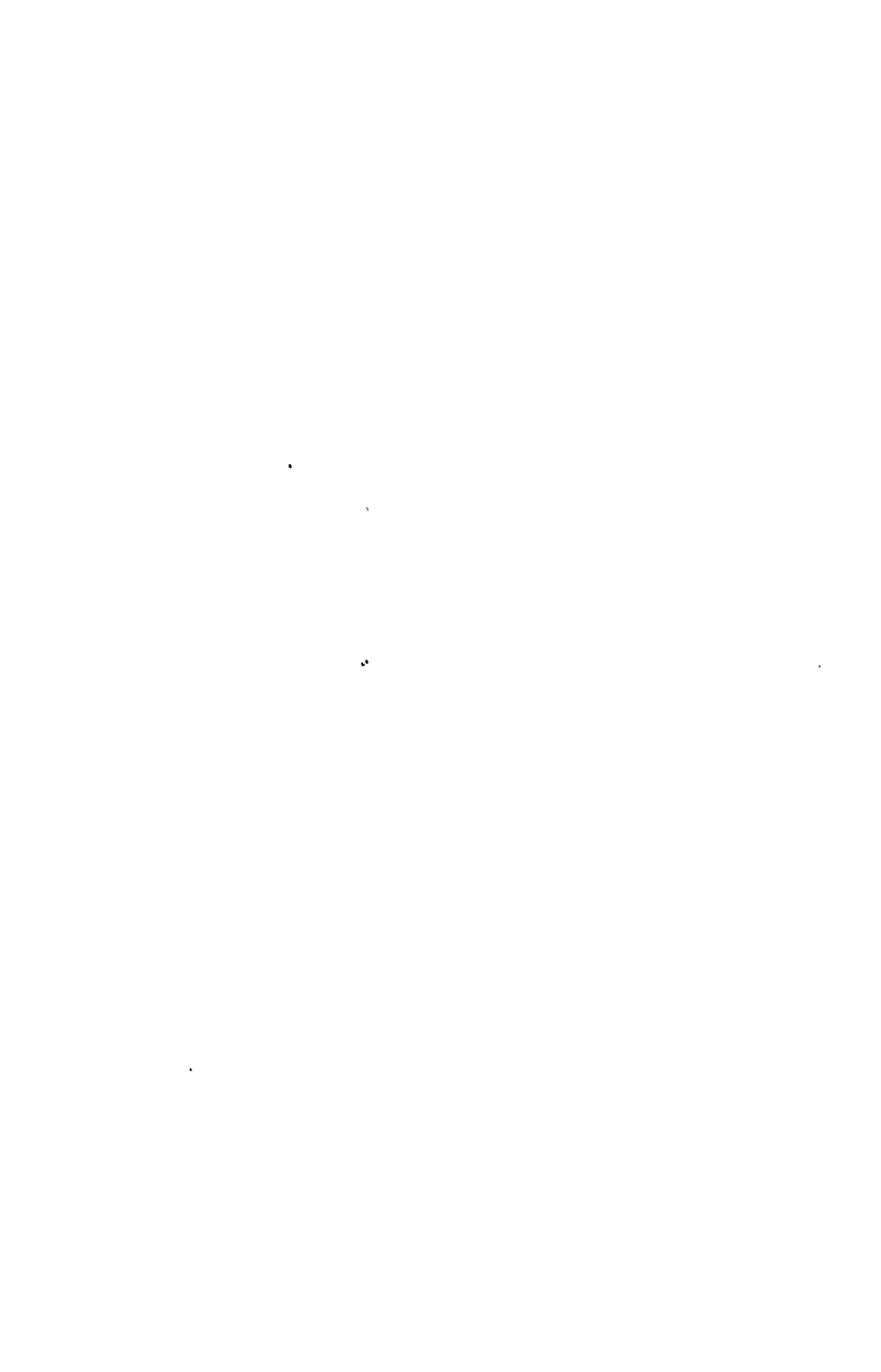
[Approved March 28th, 1874.]

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

SECTION 1. Sections four thousand three hundred and fifty-eight to four thousand three hundred and sixty-five, both inclusive, of the Political Code, are hereby repealed. Repealed.

SEC. 2. This Act shall take effect immediately.

[Chap. 515.]





# CIVIL CODE.



ACTS  
AMENDATORY OF  
THE CIVIL CODE,

PASSED AT THE  
TWENTIETH SESSION OF THE LEGISLATURE.

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AN ACT TO AMEND THE CIVIL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section fourteen of the Civil Code is amended to read as follows:

Section Fourteen. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "de-

Terms  
defined.

Same. pose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes property, real and personal;

Two—The words "real property" are coextensive with lands, tenements, and hereditaments;

Three—The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

Four—The word "month" means a calendar month, unless otherwise expressed; and,

Five—The word "will" includes codicils.

Repealed. SEC. 2. Sections fifteen, sixteen, and seventeen of said Code are hereby repealed.

SEC. 3. Section nineteen of said Code is amended so as to read as follows:

Constructive notice. Section Nineteen. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

Repealed. SEC. 4. Sections twenty-eight, thirty, and thirty-one of said Code are repealed.

SEC. 5. Section thirty-three of said Code is amended to read as follows:

Delegation of powers, minors. Section Thirty-three. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

SEC. 6. Section thirty-four of said Code is amended to read as follows:

Section Thirty-four. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this Title, and subject to the provisions of the Titles on marriage, and on master and servant.

Contracts  
by minors.

SEC. 7. Section thirty-five of said Code is amended to read as follows:

Section Thirty-five. In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

When may  
disaffirm,  
etc.

SEC. 8. Section thirty-six of said Code is amended to read as follows:

Section Thirty-six. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

When may  
not  
disaffirm.

SEC. 9. Section thirty-eight of said Code is amended to read as follows:

Section Thirty-eight. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things

Contracts  
by persons  
without  
under-  
standing.

furnished to him necessary for his support or the support of his family.

SEC. 10. Section thirty-nine of said Code is amended to read as follows:

By persons  
of unsound  
mind.

Section Thirty-nine. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the Chapter on Rescission of this Code.

SEC. 11. Section forty-seven of said Code is amended to read as follows:

Privileged  
publica-  
tions.

Section Forty-seven. A privileged publication is one made:

One—In the proper discharge of an official duty.

Two—In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

Three—In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

Four—By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

SEC. 12. Section fifty of said Code is amended to read as follows:

Right to  
use force.

Section Fifty. Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

SEC. 13. Section fifty-eight of said Code is amended so as to read as follows:

Section Fifty-eight. If either party to a marriage be incapable from physical causes of entering into the marriage state; or if the consent of either be obtained by fraud or force, the marriage is voidable.

Voidable marriages.

SEC. 14. Section sixty-one of said Code is amended to read as follows:

Section Sixty-one. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

Polygamy, etc.

One—The former marriage has been annulled or dissolved.

Two—Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

SEC. 15. Section sixty-two of said Code is amended to read as follows:

Section Sixty-two. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

Release from marriage contracts.

SEC. 16. Section sixty-nine of said Code is amended to read as follows:

Marriage  
licenses.

Section Sixty-nine. All persons about to be joined in marriage must first obtain a license therefor from the Clerk of the County Court 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.

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

Require-  
ments by  
persons  
solemniz-  
ing  
marriage.

Section Seventy-two. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the County Clerk does before issuing the license.



SEC. 18. Section seventy-three of said Code is amended to read as follows:

Section Seventy-three. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

Certificates  
of  
marriage.

One—The fact, time, and place of solemnization; and,

Two—The names and places of residence of one or more witnesses to the ceremony.

SEC. 19. Section seventy-six of said Code is amended to read as follows:

Section Seventy-six. If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

Declara-  
tion where  
there is no  
record.

One—The names, ages, and residences of the parties.

Two—The fact of marriage.

Three—That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses.

SEC. 20. Section eighty-two of said Code is amended to read as follows:

Section Eighty-two. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

Causes for  
annulling  
marriages.

One—That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

Two—That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

Same.

Three—That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife.

Four—That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

Five—That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Six—That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable.

SEC. 21. Section eighty-three of said Code is amended to read as follows:

Actions  
therefor,  
when com-  
menced.

Section Eighty-three. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

One—For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

Two—For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

Three—For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

Four—For causes mentioned in subdivision four:

by the party injured, within four years after the discovery of the facts constituting the fraud.

Five—For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

Six—For causes mentioned in subdivision six: by the injured party, within four years after the marriage.

SEC. 22. Section ninety of said Code is amended to read as follows: Marriage,  
how  
dissolved.

Section Ninety. Marriage is dissolved only:

One—By the death of one of the parties; or,

Two—By the judgment of a Court of competent jurisdiction decreeing a divorce of the parties.

SEC. 23. Section ninety-one of said Code is amended to read as follows:

Section Ninety-one. The effect of a judgment decreeing a divorce, is to restore the parties to the state of unmarried persons. Effect of  
divorce.

SEC. 24. Section ninety-two of said Code is amended to read as follows:

Section Ninety-two. Divorces may be granted for any of the following causes: Causes for  
divorce.

One—Adultery.

Two—Extreme cruelty.

Three—Willful desertion.

Four—Willful neglect.

Five—Habitual intemperance.

Six—Conviction of felony.

SEC. 25. Section one hundred of said Code is amended to read as follows:

Section One Hundred. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. Absence  
becomes  
desertion,  
when.

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

Desertion,  
how cured.

Section One Hundred and Two. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

SEC. 28. Section one hundred and eighteen of said Code is amended to read as follows:

Evidence of  
condonation.

Section One Hundred and Eighteen. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

SEC. 29. Section one hundred and nineteen of said Code is amended to read as follows:

Can only be  
made, when

Section One Hundred and Nineteen. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

SEC. 30. Section one hundred and twenty-three of said Code is amended to read as follows:

When to  
bar defense

Section One Hundred and Twenty-three. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or com-

pletion of the cause of divorce against which the re-  
crimination is shown.

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

Section One Hundred and Twenty-four. A divorce Divorce,  
when  
denied.  
must be denied:

One—When the cause is adultery and the action is  
not commenced within two years after the commission  
of the act of adultery, or after its discovery by the  
injured party; or,

Two—When the cause is conviction of felony, and  
the action is not commenced before the expiration of  
two years after a pardon, or the termination of the  
period of sentence.

Three—In all other cases when there is an unreason-  
able lapse of time before the commencement of the  
action.

SEC. 32. Section one hundred and thirty of said  
Code is amended to read as follows:

Section One Hundred and Thirty. No divorce can Divorce by  
default,  
etc.  
be granted upon the default of the defendant, or upon  
the uncorroborated statement, admission, or testimony  
of the parties, or upon any statement or finding of fact  
made by a referee; but the Court must, in addition to  
any statement or finding of the referee, require proof  
of the facts alleged, and such proof, if not taken before  
the Court, must be upon written questions and answers.

SEC. 33. Section one hundred and forty-six of said  
Code is amended to read as follows:

Section One Hundred and Forty-six. In case of the Disposition  
of com-  
munity  
property.  
dissolution of the marriage by the decree of a Court  
of competent jurisdiction, the community property,  
and the homestead, shall be assigned as follows:

One—If the decree be rendered on the ground of  
adultery, or extreme cruelty, the community property

Same. shall be assigned to the respective parties in such proportions as the Court, from all the facts of the case, and the condition of the parties, may deem just.

Two—If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

Three—If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the Court, or it may, in the discretion of the Court, be divided, or be sold and the proceeds divided.

Four—If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the Court to assign it for a limited period to the innocent party.

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

Same. Section One Hundred and Forty-seven. The Court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this Chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

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

Same. Section One Hundred and Forty-eight. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the Court.

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

Section One Hundred and Fifty-nine. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Husband and wife, property relations.

SEC. 37. Section one hundred and sixty-six of said Code is amended to read as follows:

Section One Hundred and Sixty-six. The filing of the inventory in the Recorder's office is notice and prima facie evidence of the title of the wife.

Evidence of wife's title, etc.

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

Section One Hundred and Sixty-seven. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband.

Community property, contracts by wife.

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

Section One Hundred and Seventy-four. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Support of wife.

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

Section One Hundred and Seventy-five. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by

Same, when separate from husband.

his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

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

Wife to  
support  
husband,  
when.

Section One Hundred and Seventy-six. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself.

SEC. 42. Section one hundred and ninety-four of said Code is amended to read as follows:

Children  
after disso-  
lution of  
marriage.

Section One Hundred and Ninety-four. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

SEC. 43. Section one hundred and ninety-seven of said Code is amended to read as follows:

Custody of  
legitimate  
child.

Section One Hundred and Ninety-seven. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

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

Wages of  
minors.

Section Two Hundred and Twelve. The wages of a minor employed in service may be paid to him, until the parent or guardian entitled thereto gives the employer notice that he claims such wages.



SEC. 45. The following is added as a new section to said Code, and must be inserted in said Code after section two hundred and fourteen, and designated section two hundred and fifteen:

Section Two Hundred and Fifteen. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

When child becomes legitimate.

SEC. 46. Section two hundred and twenty-two of said Code is amended to read as follows:

Section Two Hundred and Twenty-two. The person adopting a child must be at least ten years older than the person adopted.

Who may adopt.

SEC. 47. Section two hundred and twenty-three of said Code is amended to read as follows:

Section Two Hundred and Twenty-three. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

Consent to adoption.

SEC. 48. Section two hundred and twenty-eight of said Code is amended to read as follows:

Section Two Hundred and Twenty-eight. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

Effect of adoption.

SEC. 49. Section two hundred and forty-one of said Code is amended to read as follows:

Section Two Hundred and Forty-one. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by

Guardian; appointment by will, etc.

deed, to take effect upon the death of the parent appointing:

One—If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead, or incapable of consent.

Two—If the child be illegitimate, by the mother.

SEC. 50. Section two hundred and forty-three of said Code is amended to read as follows:

By Court. Section Two Hundred and Forty-three. 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 Probate Court, as provided in the Code of Civil Procedure.

SEC. 51. Section two hundred and forty-six of said Code is amended to read as follows:

Rules for  
awarding  
custody.

Section Two Hundred and Forty-six. In awarding the custody of a minor, or in appointing a general guardian, the Court or officer is to be guided by the following considerations:

One—By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of a sufficient age to form an intelligent preference, the Court may consider that preference in determining the question.

Two—As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Three—Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.

2. To one who was indicated by the wishes of a deceased parent.

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.

4. To a relative.

SEC. 52. Section two hundred and forty-nine of said Code is amended to read as follows:

Section Two Hundred and Forty-nine. 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 Probate 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.

Duty of guardian of estate.

SEC. 53. Section two hundred and fifty-five of said Code is amended to read as follows:

Section Two Hundred and Fifty-five. The power of a guardian appointed by a Court, is suspended only:

Suspension of power of guardian.

One—By order of the Court; or,

Two—If the appointment was made solely because of the ward's minority, by his attaining majority; or,

Three—The guardianship over the person of the ward, by the marriage of the ward.

SEC. 54. Section two hundred and eighty-four of said Code is amended to read as follows:

Section Two Hundred and Eighty-four. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private.

Corporations; what are.

SEC. 55. Section two hundred and eighty-five of said Code is amended to read as follows:

Private,  
how  
formed.

Section Two Hundred and Eighty-five. Private corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this Article. A majority of such persons must be residents of this State.

SEC. 56. Section two hundred and eighty-six of said Code is amended to read as follows:

For what  
purpose.

Section Two Hundred and Eighty-six. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

SEC. 57. Section two hundred and eighty-seven of said Code is amended to read as follows:

Existence,  
how  
continued.

Section Two Hundred and Eighty-seven. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this State, and still existing, which has not already elected to continue its existence, under the provisions of this Code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its Directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the Directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the Directors upon the written consent of that number of such stockholders or members. A certificate of the action of the Directors, signed by them and their Secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the Chairman and Secretary of the meeting and a majority of the Directors, must be filed in the office of the Clerk of the county where

the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the Secretary of State; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

SEC. 58. Section two hundred and ninety of said Code is amended to read as follows:

Section Two Hundred and Ninety. Articles of incorporation must be prepared, setting forth:

Articles of  
incorpora-  
tion.  
Contents.

One—The name of the corporation.

Two—The purpose for which it is formed.

Three—The place where its principal business is to be transacted.

Four—The term for which it is to exist, not exceeding fifty years.

Five—The number of its Directors or Trustees, and the names and residences of such of them who are to serve until the election of such officers and their qualification.

Six—If there be a capital stock, its amount and the number of shares into which it is divided.

SEC. 59. Section two hundred and ninety-two of said Code is amended to read as follows:

Section Two Hundred and Ninety-two. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this State, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

How  
executed.

SEC. 60. Section two hundred and ninety-six of said Code is amended to read as follows:

Section Two Hundred and Ninety-six. Upon filing

How filed  
and  
certified.

the articles of incorporation in the office of the County Clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the County Clerk, with the Secretary of State, and the affidavit mentioned in the last section, where such affidavit is required, the Secretary of State must issue to the corporation, over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or in this Code otherwise specially provided.

SEC. 61. Section two hundred and ninety-seven of said Code is amended to read as follows:

Certifi-  
cates,  
prima facie  
evidence.

Section Two Hundred and Ninety-seven. A copy of any articles of incorporation filed in pursuance of this Chapter, and certified by the Secretary of State, must be received in all the Courts and other places as prima facie evidence of the facts therein stated.

Repealed.

SEC. 62. Section two hundred and ninety-nine of said Code is repealed.

SEC. 63. Section three hundred and one of said Code is amended to read as follows:

By-laws.

Section Three Hundred and One. Every corporation formed under this Title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that

purpose; and in the event of such meeting being called, Same.  
two weeks notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting President. The written assent of the holders of two thirds of the stock, or of two thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

SEC. 64. Section three hundred and three of said Code is amended to read as follows:

Section Three Hundred and Three. A corporation What may provide for.  
may, by its by-laws, where no other provision is specially made, provide for:

One—The time, place, and manner of calling and conducting its meetings.

Two—The number of stockholders or members constituting a quorum.

Three—The mode of voting by proxy.

Four—The time of the annual election for Directors, and the mode and manner of giving notice thereof.

Five—The compensation and duties of officers.

Six—The manner of election and the tenure of office of all officers other than the Directors; and,

Seven—Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

SEC. 65. Section three hundred and four of said Code is amended to read as follows:

Section Three Hundred and Four. All by-laws Recording, amending, etc.  
adopted must be certified by a majority of (of) the Directors and Secretary of the corporation, and copied

Same.

in a legible hand in some book kept in the office of the corporation, to be known as the "Book of By-Laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the Directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members; or the power to repeal and amend the by-laws, and to adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the Board of Directors. The power when delegated may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated, the repeal shall not take effect.

SEC. 66. Section three hundred and six of said Code is amended to read as follows:

Election of  
Directors.

Section Three Hundred and Six. At the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, Directors must be elected to hold their offices for one year, and until their successors are elected and qualified.

SEC. 67. Section three hundred and seven of said Code is amended to read as follows:

How  
conducted.

Section Three Hundred and Seven. All elections of Directors must be by ballot, and a vote of stockholders representing a majority of the subscribed



capital stock, or of a majority of the members, is necessary to a choice. If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and also at all elections at other meetings of stockholders.

SEC. 68. Section three hundred and thirteen of said Code is amended to read as follows:

Section Three Hundred and Thirteen. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

Stock,  
how repre-  
sented.

SEC. 69. Section three hundred and sixteen of said Code is amended to read as follows:

Section Three Hundred and Sixteen. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

Damages  
for false  
entries, etc.

SEC. 70. Section three hundred and twenty-two of said Code is amended to read as follows:

Section Three Hundred and Twenty-two. Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the

Liability  
of stock-  
holders.

Same.

"Stockholder" defined.

proportion of his claim payable by each, and in such action the Court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to

charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered.

SEC. 71. Section three hundred and twenty-six of said Code is amended to read as follows:

Section Three Hundred and Twenty-six. When the shares of stock in a corporation are owned by parties residing out of the State, the President, Secretary, or Directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor, to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer; and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by a District Judge, or the County Judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer

Non-  
resident  
stockhold-  
ers.

thereof shall be liable for refusing to enter the transfer on the books of the corporation.

SEC. 72. Section three hundred and thirty-one of said Code is amended to read as follows:

Assess-  
ments, how  
levied.

Section Three Hundred and Thirty-one. The Directors of any corporation formed or existing under the laws of this State, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

SEC. 73. Section three hundred and thirty-six of said Code is amended to read as follows:

Publica-  
tion and  
service of  
notice.

Section Three Hundred and Thirty-six. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a State or Territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

SEC. 74. Section three hundred and forty-eight of said Code is amended to read as follows:

Section Three Hundred and Forty-eight. The publication of notice required by this Article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the Secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the Secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates, signed by the Secretary and under the seal of the corporation, are *prima facie* evidence of the contents thereof.

Proofs of  
publication  
and sale.

SEC. 75. Section three hundred and fifty-nine of said Code is amended to read as follows:

Section Three Hundred and Fifty-nine. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the Directors, as follows:

Increasing  
or dimin-  
ishing  
capital  
stock.

One—Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock, must be personally served on each stockholder resident in the State, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week, for four weeks successively.

Two—The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

Same. Three—At least two thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution, before it can be effected.

Four—A certificate must be signed by the Chairman and Secretary of the meeting, and a majority of the Directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

Five—The certificate must be filed in the office of the County Clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of State, and thereupon the capital stock shall be so increased or diminished.

Six—The written assent of the holders of three fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon such written assent, the Directors may proceed to make the certificate herein provided for.

SEC. 76. Section three hundred and sixty of said Code is amended to read as follows:

Property,  
real, how  
acquired.

Section Three Hundred and Sixty. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in Title Seven, Part Three, Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said Title.

SEC. 77. Section three hundred and eighty-eight of said Code is amended to read as follows:

Judgment  
against  
sale of  
franchise,  
etc., under.

Section Three Hundred and Eighty-eight. For the satisfaction of any judgment against a corporation, authorized to receive tolls, its franchise, and all the

rights and privileges thereof, may be levied upon and sold under execution, in the same manner and with like effect as any other property.

SEC. 78. Section three hundred and ninety-three of said Code is amended to read as follows:

Section Three Hundred and Ninety-three. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated. Where made.

SEC. 79. Section four hundred and one of said Code is amended to read as follows:

Section Four Hundred and One. Every corporation formed for a period less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members, called by the Directors expressly for considering the subject, if voted by stockholders representing two thirds of the capital stock; or by two thirds of the members, or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the Chairman and Secretary of the meeting and a majority of the Directors, and be filed in the office of the County Clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of State, and thereupon the term of the corporation shall be extended for the specified period. Extension of term.

SEC. 80. Section four hundred and two of said Code is repealed. Repealed.

SEC. 81. Section four hundred and twenty-seven of said Code is amended to read as follows:

Funds, how  
invested.

Section Four Hundred and Twenty-seven. Every fire and marine insurance corporation may, by its Board of Directors, or as the by-laws direct, invest its funds in loans upon real or personal property, or in the purchase of stocks, bonds, or other securities, but no loan must be made on the stock of the corporation, or on the notes or obligations of any of its stockholders.

SEC. 81½. Section four hundred and twenty-eight of said Code is amended to read as follows:

Insurance,  
limit of one  
risk.

Section Four Hundred and Twenty-eight. Fire and marine insurance corporations must never take on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in, and intact at the time of taking such risk, without reinsuring the excess above one tenth.

SEC. 82. Section four hundred and forty-one of said Code is amended to read as follows:

Guarantee  
notes and  
interest.

Section Four Hundred and Forty-one. Until the Guarantee Fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the Fund, unless another note of equal solvency is substituted therefor, with the approval of the Board of Directors. The corporation must allow a commission, not exceeding five per cent per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less



than one year, be increased or reduced by the Board of Directors, so as to conform to the current rate.

SEC. 83. Section four hundred and forty-four of said Code is amended to read as follows:

Section Four Hundred and Forty-four. Life, health, and accident insurance corporations may invest their capital stock as follows: Investment of capital stock.

One—In loans upon unincumbered and improved real property within the State of California, which shall be worth at the time of the investment at least forty per cent more than the sum loaned.

Two—In the purchase of or loans upon interest-bearing bonds, and other securities of the United States and of the State of California.

Three—In the purchase of or loans upon interest-bearing bonds of any of the other States of the Union, or of any county, or incorporated city, or city and county, in the State of California.

Four—In the purchase of loans upon any stocks of corporations formed under the laws of this State, except of mining corporations, which shall have, at the time of the investment, a value, in the City and County of San Francisco, of not less than sixty per cent of their par value, and shall be rated as first-class securities; but no loans shall be made on any securities specified in subdivisions three and four of this section, in any amount beyond sixty per cent of the market value of the securities, nor shall any loan be made on the stock of the corporation, or notes or other obligations of its corporators.

SEC. 84. Section four hundred and forty-seven of said Code is amended to read as follows:

Section Four Hundred and Forty-seven. Every life insurance corporation organized under the laws of this State must, on or before the first day of February of each year, furnish the Insurance Commissioner the Furnishing date of valuation, etc.

Same. necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other State or country, and doing business in this State, must, upon the written requisition of the Commissioner, furnish him, at such time as he may designate, the requisite data for determining the valuation of all its policies then outstanding; such valuations must be based upon the rate of mortality established by the American Experience Life Table, and interest at four and one half per cent per annum. For the purpose of making the valuations, the Insurance Commissioner is authorized to employ a competent actuary, whose compensation for such valuations shall be three cents for each thousand dollars of insurance; to be paid by the respective companies whose policies are thus valued.

SEC. 85. Section four hundred and ninety-one of said Code is amended to read as follows:

Railways,  
rail used.

Section Four Hundred and Ninety-one. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this Chapter, must be constructed of the best quality of iron or steel rail, known as T or H rail, or other pattern of equal utility.

SEC. 86. Section four hundred and ninety-eight of said Code is amended to read as follows:

Right of  
way, con-  
ditions, etc.

Section Four Hundred and Ninety-eight. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions:

One—To construct their tracks on those portions of streets designated in the ordinance granting the right,

which must be as nearly as possible in the middle same thereof.

Two—To plank, pave, or macadamize the entire length of the street used by their track, between the rails and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings.

Three—That the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely.

SEC. 87. Section five hundred and five of said Code is amended to read as follows:

Section Five Hundred and Five. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore prescribed, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section.

Tickets,  
etc.

SEC. 88. Section five hundred and six of said Code is amended to read as follows:

Section Five Hundred and Six. Upon the trial of an action for any of the sums forfeited, as provided in the two preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was at the time of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employé of the cor-

Proof of  
agency.

poration, to receive the money, and give the ticket or check mentioned.

SEC. 89. Section five hundred and seven of said Code is amended to read as follows:

Reserved  
rights.

Section Five Hundred and Seven. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter, or repair the streets or highways, is reserved to the corporation, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible, and, if required, the corporation must shift its rails so as to avoid the obstructions made thereby.

SEC. 90. Section five hundred and ten of said Code is amended to read as follows:

Law,  
street  
railroads.

Section Five Hundred and Ten. Street railroads are governed by the provisions of Title Three of this Part, so far as they are applicable, unless such railroads are therein specially excepted.

SEC. 91. Section five hundred and twelve of said Code is amended to read as follows:

Commis-  
sioners to  
act with  
Surveyor.

Section Five Hundred and Twelve. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three Commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the Board of Supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the Supervisors, as provided in the succeeding section.

SEC. 92. Section five hundred and fourteen of said Code is amended to read as follows:

Section Five Hundred and Fourteen. All wagon

road corporators may bridge any stream, or keep ferries thereon, on the line of their road, and when bridges are constructed by them, or ferries established by them, they must do all things necessary to keep the same in good condition. They can only take such tolls on their road, ferries, or bridges, as are fixed by the Board of Supervisors of the proper county through which the road passes, or in which the bridge or ferry is situated, except that in the Counties of Trinity, Shasta, Klamath, Butte, Siskiyou, Del Norte, Plumas, Humboldt, and Sierra, the Directors of such corporations may fix their own tolls; but in no case must the tolls of any corporation be more than sufficient to pay fifteen per cent per annum of the amount invested in the construction of its road, including therein the cost of its bridges and ferries, and a dividend among the stockholders equal to twelve per cent per annum, upon the amount so invested, after paying for repairs and other expenses of the road, bridges, and ferries. If tolls, other than as herein provided, are charged or demanded, the corporation shall forfeit to the party charged, the sum of one hundred dollars, to be recovered in a civil action, and may also be proceeded against for a forfeiture of its franchise.

Bridges,  
ferries,  
tolls, etc.

SEC. 93. Section five hundred and twenty-one of said Code is amended to read as follows:

Section Five Hundred and Twenty-one. The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient

Revenue,  
how appro-  
priated.

to pay said dividend, and incidental expenses, and to keep the road in good repair.

**Repealed.** SEC. 94. Section five hundred and forty-one of said Code is repealed.

SEC. 95. Section five hundred and forty-nine of said Code is amended to read as follows:

**Water  
corpora-  
tions,  
duties, etc.**

Section Five Hundred and Forty-nine. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The rates to be charged

**Rates.**

for water must be determined by Commissioners, to be selected as follows: two by the city and county or city or town authorities, or when there are no city or town authorities, by the Board of Supervisors of the county, and two by the water company; and in case a majority cannot agree to the valuation, the four Commissioners must choose a fifth Commissioner; if they cannot agree upon a fifth, then the County Judge of the county must appoint such fifth person. The decision of the majority of the Commissioners shall determine the rates to be charged for water for one year, and until new rates are established. The Board of Supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the State.

SEC. 96. Section five hundred and ninety-eight of said Code is amended to read as follows:

**Religious,  
etc., corpo-  
rations,  
mortgage  
and sale of  
real estate.**

Section Five Hundred and Ninety-eight. 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 District Court held in the county Same. 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. 97. Section six hundred and thirty-nine of said Code is amended to read as follows:

Section Six Hundred and Thirty-nine. Corporations Building corporations, funds for. organized for the erection of buildings and making other improvements on real property, may raise funds in shares not exceeding two hundred dollars each, payable in periodical installments. Such bodies are known as land and building corporations, and may be organized with or without a capital stock.

SEC. 98. Sections six hundred and forty-six and six Repealed. hundred and forty-eight of said Code are repealed.

SEC. 99. Section six hundred and seventy of said Code is amended to read as follows:

Section Six Hundred and Seventy. The State is the Property of the State. owner of all land below tide water, and below ordinary high-water mark, bordering upon tide water within the State; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the State; and of all property of which there is no other owner.

SEC. 100. Section six hundred and seventy-one of said Code is amended to read as follows:

Who may own.

Section Six Hundred and Seventy-one. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State.

SEC. 101. Section seven hundred and ten of said Code is amended to read as follows:

Conditions restraining marriage.

Section Seven Hundred and Ten. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

SEC. 102. Section seven hundred and fifty-five of said Code is amended to read as follows:

Government of real property.

Section Seven Hundred and Fifty-five. Real property within this State is governed by the law of this State, except where the title is in the United States.

SEC. 103. Section seven hundred and sixty-two of said Code is amended to read as follows:

Estates, fee and fee simple.

Section Seven Hundred and Sixty-two. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

SEC. 104. Section seven hundred and sixty-six of said Code is amended to read as follows:

Freehold.

Section Seven Hundred and Sixty-six. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

SEC. 105. Section seven hundred and seventy of said Code is amended to read as follows:

Suspended ownership.

Section Seven Hundred and Seventy. The absolute ownership of a term of years cannot be suspended for



a longer period than the absolute power of alienation can be suspended in respect to a fee.

SEC. 106. Section seven hundred and seventy-four of said Code is amended to read as follows:

Section Seven Hundred and Seventy-four. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons, the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

Successive estates, limitations.

SEC. 107. Section seven hundred and seventy-five of said Code is amended to read as follows:

Section Seven Hundred and Seventy-five. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term.

Remainders.

SEC. 108. Section eight hundred and two of said Code is amended to read as follows:

Section Eight Hundred and Two. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

Unattached servitudes.

One—The right to pasture, and of fishing and taking game.

Two—The right of a seat in church.

Third—The right of burial.

Four—The right of taking rents and tolls.

Five—The right of way.

Six—The right of taking water, wood, minerals, or other things.

SEC. 109. Section eight hundred and twenty-two of said Code is amended to read as follows:

Assigns of  
lessee,  
remedies  
against.

Section Eight Hundred and Twenty-two. Whatever remedies the lessor of any real property against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

SEC. 110. The following is added as a new section to said Code, and must be inserted in said Code after section eight hundred and twenty-six, and designated section eight hundred and twenty-seven:

Leases,  
change of  
terms.

Section Eight Hundred and Twenty-seven. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

SEC. 111. Section eight hundred and thirty of said Code is amended to read as follows:

Boundaries  
by water.

Section Eight Hundred and Thirty. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide water, takes to ordinary high-water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

SEC. 112. Section eight hundred and thirty-two of said Code is amended to read as follows:

Section Eight Hundred and Thirty-two. Each co-terminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

Lateral  
and  
subjacent  
support.

SEC. 113. Sections eight hundred and forty-eight, eight hundred and forty-nine, eight hundred and fifty, and eight hundred and fifty-one of said Code are repealed.

Repealed.

SEC. 114. Section eight hundred and fifty-three of said Code is amended to read as follows:

Section Eight Hundred and Fifty-three. When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

Trust, when  
presumed.

SEC. 115. Sections eight hundred and fifty-four and eight hundred and fifty-five of said Code are repealed.

Repealed.

SEC. 116. Section eight hundred and fifty-seven of said Code is amended to read as follows:

Section Eight Hundred and Fifty-seven. Express trusts may be created for any of the following purposes:

Express  
trusts,  
purposes of.

One—To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

Two—To mortgage or lease real property for the

Same. benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

Three—To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of Title Two of this Part; or,

Four—To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same Title.

SEC. 117. Section eight hundred and fifty-eight of said Code is repealed, and the following section is substituted in its place:

Vesting of  
mortgage  
powers.

Section Eight Hundred and Fifty-eight. Where a power to sell real property is given to a mortgagee, or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

SEC. 118. Section eight hundred and sixty of said Code is repealed, and the following section is substituted in its place:

Exercise of  
vested  
powers.

Section Eight Hundred and Sixty. Where a power is vested in several persons, all must unite in its execution; but, in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

SEC. 119. Sections eight hundred and sixty-one

and eight hundred and sixty-two of said Code are Repealed.  
repealed.

SEC. 120. Section eight hundred and sixty-seven of said Code is amended to read as follows:

Section Eight Hundred and Sixty-seven. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.

Restraining disposition of trusts.

SEC. 121. Section eight hundred and sixty-eight of said Code is repealed. Repealed.

SEC. 122. Section eight hundred and sixty-nine of said Code is amended to read as follows:

Section Eight Hundred and Sixty-nine. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

Effect of omitting trust in conveyance

SEC. 123. Title Five, of Part Two, of Division Two, on Powers of the Civil Code, embracing sections of said Code from section eight hundred and seventy-eight to nine hundred and forty-six, inclusive, is repealed. Repealed.

SEC. 124. Section nine hundred and forty-seven of said Code is repealed. Repealed.

SEC. 125. Section nine hundred and fifty-three of said Code is amended to read as follows:

Thing in  
action  
denied.

Section Nine Hundred and Fifty-three. A thing in action is a right to recover money or other personal property by a judicial proceeding.

SEC. 126. Section nine hundred and sixty of said Code is amended to read as follows:

Ships or  
shipping.

Section Nine Hundred and Sixty. The term "ship or shipping," when used in this Code, includes steam-boats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

SEC. 127. Section nine hundred and ninety-one of said Code is amended to read as follows:

Trade  
marks, etc.

Section Nine Hundred and Ninety-one. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol, or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

SEC. 128. Section ten hundred and thirteen of said Code is amended to read as follows:

Fixtures.

Section Ten Hundred and Thirteen. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section ten hundred and nineteen, belongs to the owner of the land, unless he chooses to require the former to remove it.

SEC. 129. Section ten hundred and nineteen of said Code is repealed, and the following section is substituted in its place:

Section Ten Hundred and Nineteen. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Fixtures,  
removal of  
by tenant.

SEC. 130. Section ten hundred and fifty-three of said Code is amended to read as follows:

Section Ten Hundred and Fifty-three. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two Articles, includes all these instruments, unless it is specially applied to real property.

"Grant"  
defined.

SEC. 131. Section ten hundred and sixty of said Code is repealed.

Repealed.

SEC. 132. Section eleven hundred and ten of said Code is amended to read as follows:

Section Eleven Hundred and Ten. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

Grants on  
condition,  
when  
absolute.

SEC. 133. Section eleven hundred and twelve of said Code is amended to read as follows:

Section Eleven Hundred and Twelve. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.

Highway  
boundary  
transfers.

SEC. 134. Section eleven hundred and fourteen of said Code is amended to read as follows:

"Incum-  
brances,"  
what.

Section Eleven Hundred and Fourteen. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

SEC. 135. Section eleven hundred and fifty-one of said Code is amended to read as follows:

Gift in  
view of  
death,  
revocation.

Section Eleven Hundred and Fifty-one. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation, shall not be affected by the revocation.

SEC. 136. Section eleven hundred and sixty-one of said Code is amended to read as follows:

Acknowl-  
edgment of  
instru-  
ments.

Section Eleven Hundred and Sixty-one. Before an instrument can be recorded, unless it belongs to the class provided for in either sections eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its President or Secretary, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by Article Three of this Chapter.

Repealed.

SEC. 137. Section eleven hundred and sixty-three of said Code is repealed.

SEC. 138. Section eleven hundred and seventy of said Code is amended to read as follows:



Section Eleven Hundred and Seventy. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the Recorder's office, with the proper officer, for record.

Instrument  
when  
deemed  
recorded.

SEC. 139. Section eleven hundred and eighty-three of said Code is amended to read as follows:

Section Eleven Hundred and Eighty-three. The proof or acknowledgment of an instrument may be made without the United States, before either:

Proof of,  
outside  
United  
States.

One—A Minister, Commissioner, or Charge d'Af-faires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

Two—A Consul, Vice Consul, or Consular Agent of the United States, resident in the country where the proof or acknowledgment is made; or,

Three—A Judge of a Court of record of the country where the proof or acknowledgment is made; or,

Four—Commissioners appointed for such purposes by the Governor of the State, pursuant to special statutes; or,

Five—A Notary Public.

SEC. 140. Section eleven hundred and eighty-eight of said Code is amended to read as follows:

Section Eleven Hundred and Eighty-eight. An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

Certificate.

SEC. 141. Section eleven hundred and ninety-nine of said Code is amended to read as follows:

Section Eleven Hundred and Ninety-nine. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

Evidence  
of hand-  
writing  
must prove  
what.

Same.

One—The existence of one or more of the conditions mentioned therein; and,

Two—That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

Three—That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

Four—The place of residence of the witness.

SEC. 142. The following is added as a new section to said Code, and must be inserted in said Code after section twelve hundred and six, and designated section twelve hundred and seven:

Recorded  
instru-  
ments,  
notice by,  
etc.

Section Twelve Hundred and Seven. Any instrument affecting real property, which was, previous to the thirtieth day of January, one thousand eight hundred and seventy-three, copied into the proper book of record, kept in the office of any County Recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine.

SEC. 143. Section twelve hundred and thirty-seven of said Code is amended to read as follows:

Home-  
stead.

Section Twelve Hundred and Thirty-seven. The homestead consists of the dwelling house in which

the claimant resides, and the land on which the same is situated, selected as in this Title provided.

SEC. 144. Section twelve hundred and thirty-eight of said Code is amended to read as follows:

Section Twelve Hundred and Thirty-eight. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property.

From what selected.

SEC. 145. Section twelve hundred and thirty-nine of said Code is amended to read as follows:

Section Twelve Hundred and Thirty-nine. The homestead cannot be selected from the separate property of the wife, without her consent, shown by her making or joining in making the declaration of homestead.

From what not.

SEC. 146. Section twelve hundred and forty-one of said Code is amended to read as follows:

Section Twelve Hundred and Forty-one. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

Sale of, on execution.

One—Before the declaration of homestead was filed for record, and which constitute liens upon the premises.

Two—On debts secured by mechanics', laborers', or vendors' liens upon the premises.

Three—On debts secured by mortgages upon the premises, executed and acknowledged by the husband, wife, or an unmarried claimant.

Four—On debts secured by mortgages upon the

premises, executed and recorded before the declaration of homestead was filed for record.

SEC. 153. Section twelve hundred and fifty-seven of said Code is amended to read as follows:

Homestead  
exemption  
moneys  
protected.

Section Twelve Hundred and Fifty-seven. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

SEC. 155. Section twelve hundred and sixty-one of said Code is amended to read as follows:

"Head of  
family"  
defined.

Section Twelve Hundred and Sixty-one. The phrase "head of a family," as used in this Title, includes within its meaning:

One—The husband, when the claimant is a married person.

Two—Every person who has residing on the premises with him or her and under his or her care and maintenance, either:

1. His or her minor child, or the minor child of his or her deceased wife or husband.

2. A minor brother or sister, or the minor child of a deceased brother or sister.

3. A father, mother, grandfather, or grandmother.

4. The father, mother, grandfather, or grandmother of a deceased husband or wife.

5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves.

SEC. 156. Section twelve hundred and sixty-two of said Code is amended to read as follows:

Home-  
stead,  
selection.

Section Twelve Hundred and Sixty-two. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such se-

lection, the wife, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

SEC. 157. Section twelve hundred and sixty-three of said Code is amended to read as follows:

Section Twelve Hundred and Sixty-three. The Declaration of. declaration of homestead must contain:

One—A statement, showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit.

Two—A statement that the person making it is residing on the premises, and claims them as a homestead.

Three—A description of the premises.

Four—An estimate of their actual cash value.

SEC. 158. Section twelve hundred and sixty-five of said Code is amended to read as follows:

Section Twelve Hundred and Sixty-five. From and In whom vests. 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 Probate 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.

Repealed. SEC. 160. Section twelve hundred and seventy-one of said Code is repealed.

SEC. 161. Section twelve hundred and seventy-three of said Code is amended to read as follows:

Will by  
married  
woman.

Section Twelve Hundred and Seventy-three. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

SEC. 163. Section twelve hundred and eighty-three of said Code is amended to read as follows:

Witness,  
devisee  
without  
will,  
succeeds to  
what.

Section Twelve Hundred and Eighty-three. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Repealed. SEC. 164. Section twelve hundred and eighty-four of said Code is repealed.

SEC. 165. Section twelve hundred and eighty-five of said Code is amended to read as follows:

Wills made  
out of  
State.

Section Twelve Hundred and Eighty-five. No will made out of this State is valid as a will in this State, unless executed according to the provisions of this Chapter.

Repealed. SEC. 166. Section twelve hundred and eighty-six of said Code is repealed.

SEC. 167. Section twelve hundred and eighty-nine of said Code is amended to read as follows:

Section Twelve Hundred and Eighty-nine. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

Nuncupative will, requisites of.

One—The estate bequeathed must not exceed in value the sum of one thousand dollars.

Two—It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

Three—The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

SEC. 168. Section twelve hundred and ninety-four of said Code is repealed.

Repealed.

SEC. 169. Section thirteen hundred and twelve of said Code is amended to read as follows:

Section Thirteen Hundred and Twelve. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Wills pass estate subsequently acquired.

SEC. 170. Section thirteen hundred and thirty-two of said Code is amended to read as follows:

Residuary  
clauses.

Section Thirteen Hundred and Thirty-two. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

SEC. 171. Section thirteen hundred and thirty-three of said Code is amended to read as follows:

Same

Section Thirteen Hundred and Thirty-three. A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

SEC. 172. Section thirteen hundred and forty-three of said Code is amended to read as follows:

Death of  
devisee or  
legatee.

Section Thirteen Hundred and Forty-three. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section thirteen hundred and ten.

SEC. 173. Section thirteen hundred and fifty-eight of said Code is amended to read as follows:

Estates  
chargeable.

Section Thirteen Hundred and Fifty-eight. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this Code and the Code of Civil Procedure.

SEC. 174. Section thirteen hundred and fifty-nine of said Code is amended to read as follows:

Order of  
resort to  
estate for  
debts.

Section Thirteen Hundred and Fifty-nine. The property of a testator, except as otherwise specially provided in this Code and the Code of Civil Procedure,



ure, must be resorted to for the payment of debts, in the following order:

One—The property which is expressly appropriated by the will for the payment of the debts;

Two—Property not disposed of by the will;

Three—Property which is devised or bequeathed to a residuary legatee;

Four—Property which is not specifically devised or bequeathed; and,

Five—All other property ratably. Before any debts are paid, the expenses of the administration, and the allowance to the family, must be paid or provided for.

SEC. 175. Section thirteen hundred and sixty of said Code is amended to read as follows:

Section Thirteen Hundred and Sixty. The property of a testator, except as otherwise specially provided in this Code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order: Same for legacies.

One—The property which is expressly appropriated by the will for the payment of the legacies.

Two—Property not disposed of by the will.

Three—Property which is devised or bequeathed to a residuary legatee.

Four—Property which is specifically devised or bequeathed.

SEC. 176. Section thirteen hundred and sixty-seven of said Code is amended to read as follows:

Section Thirteen Hundred and Sixty-seven. A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death. Satisfaction.

SEC. 177. Section thirteen hundred and seventy-six of said Code is amended to read as follows:

Section Thirteen Hundred and Seventy-six. The validity and interpretation of wills, wherever made, Law of interpretation.

are governed when relating to property within this State, by the law of this State.

SEC. 178. Section thirteen hundred and eighty-four of said Code is amended to read as follows:

Intestate's  
estate, to  
whom  
passes.

Section Thirteen Hundred and Eighty-four. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the Probate Court, and to the possession of any administrator appointed by that Court, for the purposes of administration.

Repealed.

SEC. 179. Section thirteen hundred and eighty-five of said Code is repealed.

SEC. 180. Section thirteen hundred and eighty-six of said Code is amended to read as follows:

Succession  
to and dis-  
tribution of  
property.

Section Thirteen Hundred and Eighty-six. 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:

One—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 of the descendants are in the same degree of kindred to the decedent they share equally, other-

wise they take according to the right of representation. Same. If the decedent leave no surviving husband or wife, but leaves 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.

Two—If the decedent leave no issue, (and) the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, 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 he leave a mother also, she takes an equal share with the brothers and sisters. If decedent leave no issue, nor husband, nor wife, the estate must go to the father.

Three—If there be no issue, nor husband, nor wife, nor father, 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; if a mother survive, she takes an equal share with the brothers and sisters.

Four—If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Five—If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Six—If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in

Same.

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. However:

Seven—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.

Eight—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 parent 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.

Nine—If the decedent leave no husband, wife, or kindred, the estate escheats to the State, for the support of common schools.

SEC. 181. Section fourteen hundred and one of said Code is amended to read as follows:

Community property on death of wife.

Section Fourteen Hundred and One. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such dis-

position, goes to her descendants, or heirs, exclusive of her husband.

SEC. 181½. Section fourteen hundred and twenty-eight of said Code is amended to read as follows:

Section Fourteen Hundred and Twenty-eight. An obligation arises either from: Obligations, how incurred.

One—The contract of the parties; or,

Two—The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

SEC. 182. Section fourteen hundred and seventy-nine of said Code is amended to read as follows:

Section Fourteen Hundred and Seventy-nine. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows: Application of general performance.

One—If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

Two—If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of [the] debtor.

Three—If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the

Same. following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral undertaking.
5. Of an obligation secured by a lien or collateral undertaking.

SEC. 183. Section fourteen hundred and eighty-eight of said Code is amended to read as follows:

Offer of performance. Section Fourteen Hundred and Eighty-eight. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

SEC. 184. Section fifteen hundred and twelve of said Code is amended to read as follows:

Prevention of performance. Section Fifteen Hundred and Twelve. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

Repealed. SEC. 185. Section fifteen hundred and thirteen of said Code is repealed.

SEC. 186. Section fifteen hundred and twenty-one of said Code is amended to read as follows:

Accord. Section Fifteen Hundred and Twenty-one. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

SEC. 187. Section fifteen hundred and twenty-four of said Code is amended to read as follows:

Section Fifteen Hundred and Twenty-four. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

Part performance.

SEC. 188. Section fifteen hundred and thirty-three of said Code is amended to read as follows:

Section Fifteen Hundred and Thirty-three. When the obligation of a third person, or an order upon such person is accepted in satisfaction, the creditor may rescind such (such) acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

Novation, rescission of.

SEC. 189. Section fifteen hundred and forty-two of said Code is amended to read as follows:

Section Fifteen Hundred and Forty-two. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

General release.

SEC. 190. Section sixteen hundred and twenty-four of said Code is amended to read as follows:

Section Sixteen Hundred and Twenty-four. The following contracts are invalid, unless the same, or

What contracts must be written.

Same. some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

One—An agreement that, by its terms, is not to be performed within a year from the making thereof.

Two—A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four of this Code.

Three—An agreement made upon consideration of marriage, other than a mutual promise to marry.

Four—An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods and chattles, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum.

Five—An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Repealed. SEC. 191. Sections sixteen hundred and fifty-eight, sixteen hundred and sixty-nine, and sixteen hundred and seventy-two of said Code are repealed.

SEC. 192. Section sixteen hundred and ninety-seven of said Code is amended to read as follows:

Altering  
contracts,  
verbal.

Section Sixteen Hundred and Ninety-seven. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new con-



sideration, and is extinguished thereby to the extent of the new alteration.

SEC. 193. Section sixteen hundred and ninety-eight of said Code is amended to read as follows:

Section Sixteen Hundred and Ninety-eight. A Written. contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

SEC. 194. Section seventeen hundred and thirty-one of said Code is amended to read as follows:

Section Seventeen Hundred and Thirty-one. An Agreement to sell real property. agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

SEC. 195. Section seventeen hundred and thirty-two of said Code is repealed. Repealed.

SEC. 196. Section seventeen hundred and thirty-nine of said Code is amended to read as follows:

Section Seventeen Hundred and Thirty-nine. No Contract to sell personal property. sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

One—The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

Two—The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

Three—The buyer, at the time of sale, pays a part of the price.

SEC. 197. Section seventeen hundred and forty-one of said Code is amended to read as follows:

Section Seventeen Hundred and Forty-one. No Real Property. agreement for the sale of real property, or of an in-

terest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized in writing; but this does not abridge the power of any Court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

SEC. 198. Section seventeen hundred and seventy-four of said Code is amended to read as follows:

Warranty  
on sale of  
written  
instrument.

Section Seventeen Hundred and Seventy-four. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

SEC. 199. Section seventeen hundred and ninety-eight of said Code is amended to read as follows:

Auction-  
eer's mem-  
orandum of  
sale.

Section Seventeen Hundred and Ninety-eight. When property is sold by auction, an entry made by the auctioneer, in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

SEC. 200. Section eighteen hundred and forty of said Code is amended to read as follows:

Liability of  
depository.

Section Eighteen Hundred and Forty. The liability of a depository for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

SEC. 201. Section nineteen hundred and fourteen of said Code is amended to read as follows:

Section Nineteen Hundred and Fourteen. When-  
 ever a loan of money is made, it is presumed to be  
 made upon interest, unless it is otherwise expressly  
 stipulated at the time in writing.

Interest on  
loan.

SEC. 202. Section nineteen hundred and fifteen of  
 said Code is amended to read as follows:

Section Nineteen Hundred and Fifteen. Interest is  
 the compensation allowed by law or fixed by the par-  
 ties for the use, or forbearance, or detention of money.

Interest,  
what.

SEC. 203. Section nineteen hundred and seventeen  
 of said Code is amended to read as follows:

Section Nineteen Hundred and Seventeen. Unless  
 there is an express contract in writing fixing a differ-  
 ent rate, interest is payable on all moneys at the rate  
 of ten per cent per annum, after they become due on  
 any instrument of writing, except a judgment, and on  
 moneys lent or due on any settlement of accounts,  
 from the day on which the balance is ascertained, and  
 on moneys received to the use of another and detained  
 from him. In the computation of interest for a period  
 less than a year, three hundred and sixty days are  
 deemed to constitute a year.

Legal  
interest.

SEC. 204. Section nineteen hundred and twenty of  
 said Code is amended to read as follows:

Section Nineteen Hundred and Twenty. Interest  
 is payable on judgments recovered in the Courts of  
 this State, at the rate of seven per cent per annum,  
 and no greater rate, but such interest must not be  
 compounded in any manner or form.

Interest on  
judgment.

SEC. 205. Section nineteen hundred and forty-one  
 of said Code is amended to read as follows:

Section Nineteen Hundred and Forty-one. The  
 lessor of a building intended for the occupation of  
 human beings must, in the absence of an agreement

Obligations  
of lessor.

to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in section nineteen hundred and twenty-nine.

SEC. 206. Section nineteen hundred and forty-two of said Code is amended to read as follows:

Repairs by  
lessee.

Section Nineteen Hundred and Forty-two. If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

SEC. 207. Section nineteen hundred and forty-nine of said Code is amended to read as follows:

Tenant to  
deliver  
notice  
received.

Section Nineteen Hundred and Forty-nine. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him [if] in writing.

SEC. 208. Section nineteen hundred and eighty-one of said Code is amended to read as follows:

Employé,  
duties of.

Section Nineteen Hundred and Eighty-one. An employé must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impos-

sible or unlawful, or would impose new and unreasonable burdens upon the employé.

SEC. 209. Section nineteen hundred and eighty-four of said Code is amended to read as follows:

Section Nineteen Hundred and Eighty-four. An employé is always bound to use such skill as he possesses, so far as the same is required, for the service specified. To use skill

SEC. 210. Section nineteen hundred and eighty-eight of said Code is amended to read as follows:

Section Nineteen Hundred and Eighty-eight. An employé who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. Employers preferred.

SEC. 211. Section two thousand and sixty-five of said Code is repealed. Repealed.

SEC. 212. Section two thousand and seventy-nine of said Code is amended to read as follows:

Section Two Thousand and Seventy-nine. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the Title on Liens; but no claim for salvage, as such, can accrue against any vessel, or her freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved. Salvage.

SEC. 213. Section twenty-one hundred and twenty of said Code is amended to read as follows:

Section Twenty-one Hundred and Twenty. If, for

Notice  
when  
freight not  
delivered.

any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest Post Office.

SEC. 214. Section twenty-one hundred and twenty-one of said Code is amended to read as follows:

When  
consignee  
does not  
accept.

Section Twenty-one Hundred and Twenty-one. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

Repealed.

SEC. 215. Section twenty-one hundred and twenty-two of said Code is repealed.

SEC. 216. Section twenty-one hundred and sixty-one of said Code is amended to read as follows:

Carrier of  
messages.

Section Twenty-one Hundred and Sixty-one. A carrier of messages for reward, other than by telegraph, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required in making the delivery, to pay on his route toll or ferriage, but for any distance beyond one mile

from such office, compensation may be charged for a messenger employed by the carrier.

SEC. 217. Section twenty-one hundred and sixty-two of said Code is amended to read as follows:

Section Twenty-one Hundred and Sixty-two. A Same. carrier of messages for reward, must use great care and diligence in the transmission and delivery of messages.

SEC. 218. Section twenty-one hundred and sixty-eight of said Code is amended to read as follows:

Section Twenty-one Hundred and Sixty-eight. Every Common carrier. one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.

SEC. 219. Section twenty-one hundred and seventy-two of said Code is amended to read as follows:

Section Twenty-one Hundred and Seventy-two. A Starting. common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

SEC. 220. Section twenty-one hundred and seventy-four of said Code is amended to read as follows:

Section Twenty-one Hundred and Seventy-four. The Obligations of. obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

SEC. 221. Section twenty-one hundred and seventy-six of said Code is amended to read as follows:

Section Twenty-one Hundred and Seventy-six. A Modifications thereof. passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage,

Same. with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same.

SEC. 222. The following is added as a new section to said Code, and must be inserted in said Code after section twenty-one hundred and seventy-six, and designated section twenty-one hundred and seventy-seven:

Loss of  
valuable  
letters.

Section Twenty-one Hundred and Seventy-seven. A common carrier is not responsible for loss or mis-carriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

SEC. 223. Section twenty-one hundred and eighty-three of said Code is amended to read as follows:

Delivery of  
luggage,  
etc.

Section Twenty-one Hundred and Eighty-three. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.



SEC. 224. Section twenty-one hundred and ninety-six of said Code is amended to read as follows:

Section Twenty-one Hundred and Ninety-six. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence. Liability for delay.

SEC. 225. Section twenty-two hundred of said Code is amended to read as follows:

Section Twenty-two Hundred. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading. For valuables.

SEC. 226. The following is added as a new section to said Code, and must be inserted in said Code after section twenty-two hundred and three, and designated section twenty-two hundred and four:

Section Twenty-two Hundred and Four. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage. Sale of property by.

SEC. 227. Section twenty-three hundred and seventy-five of said Code is amended to read as follows:

Section Twenty-three Hundred and Seventy-five. The master of a ship, during a voyage, is a general

Shipmaster's  
authority.

agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this Article.

SEC. 228. Section twenty-three hundred and seventy-seven of said Code is amended to read as follows:

Power to  
hypothecate.

Section Twenty-three Hundred and Seventy-seven. The master of a ship may hypothecate the ship, freightage, and cargo, and sell part of the cargo, in the cases prescribed by the Chapters on Bottomry and Respondentia, and in no others, except that the master may also sell the cargo, or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition that if left on board or reshipped it would be entirely lost, or would seriously endanger the interests of its owners.

SEC. 229. The following is added as a new section to said Code, and must be inserted in said Code after section twenty-three hundred and eighty-four, and designated section twenty-three hundred and eighty-five:

Liability  
for cargo  
sold, etc.

Section Twenty-three Hundred and Eighty-five. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship.

SEC. 230. Section twenty-four hundred and sixty-two of said Code is amended to read as follows:

Power of  
liquidating  
partner.

Section Twenty-four Hundred and Sixty-two. A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obli-

gation in its name, or revive a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of the Code of Civil Procedure.

SEC. 231. Section twenty-four hundred and sixty-six of said Code is amended to read as follows:

Section Twenty-four Hundred and Sixty-six. Except as otherwise provided in the next section, every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the Clerk of the county in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

Fictitious  
names,  
duties of  
those using.

SEC. 232. Section twenty-four hundred and sixty-seven of said Code is amended to read as follows:

Section Twenty-four Hundred and Sixty-seven. A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this State the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

Foreign  
copartner-  
ships.

SEC. 233. Section twenty-four hundred and sixty-eight of said Code is amended to read as follows:

Section Twenty-four Hundred and Sixty-eight. The certificate filed with the Clerk, as provided in section twenty-four hundred and sixty-six, must be signed by the partners, and acknowledged before some officer

Certifi-  
cates,  
execution,  
filing, etc.

Same.

authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this Act. Persons doing business as partners contrary to the provisions of this Article, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any Court of this State, until they have first filed the certificate and made the publication herein required.

SEC. 234. Section twenty-four hundred and sixty-nine of said Code is amended to read as follows:

Change of  
member-  
ship.

Section Twenty-four Hundred and Sixty-nine. On every change in the members of a partnership transacting business in this State under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the County Clerk, and a new publication made as required by this Article on the formation of such partnership.

SEC. 235. Section twenty-four hundred and seventy of said Code is amended to read as follows:

Register by  
County  
Clerk.

Section Twenty-four Hundred and Seventy. Every County Clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this Article, entering in alpha-

betical order the name of every such partnership, and of each partner therein.

SEC. 236. The following is added as a new section to said Code, and must be inserted in said Code after section twenty-five hundred and fifty-seven, and designated section twenty-five hundred and fifty-eight:

Section Twenty-five Hundred and Fifty-eight. Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

Void  
insurance  
stipulations.

SEC. 237. The following is added as a new section to said Code, and must be inserted in said Code after section twenty-five hundred and eighty-two, and designated section twenty-five hundred and eighty-three:

Section Twenty-five Hundred and Eighty-three. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this Chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

Rescission  
of  
insurance  
contract.

SEC. 238. Section twenty-six hundred and five of said Code is amended to read as follows:

Section Twenty-six Hundred and Five. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

Express  
warranties.

SEC. 239. Section twenty-six hundred and nine of said Code is amended to read as follows:

Section Twenty-six Hundred and Nine. When, before the time arrives for the performance of a warranty relating to the future, a loss insured against

Performance  
excused.

happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

SEC. 240. Section twenty-six hundred and seventeen of said Code is amended to read as follows:

Return of  
premium.

Section Twenty-six Hundred and Seventeen. A person insured is entitled to a return of premium, as follows:

One—To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

Two—Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

SEC. 241. Section twenty-six hundred and eighteen of said Code is amended to read as follows:

When not  
allowed.

Section Twenty-six Hundred and Eighteen. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

SEC. 242. Section twenty-six hundred and twenty-nine of said Code is amended to read as follows:

Willfulness  
and  
negligence.

Section Twenty-six Hundred and Twenty-nine. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

SEC. 243. Section twenty-six hundred and thirty-three of said Code is amended to read as follows:

Notice of  
loss.

Section Twenty-six Hundred and Thirty-three. In case of loss upon an insurance against fire, an insurer

is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

SEC. 244. Section twenty-six hundred and forty-two of said Code is amended to read as follows:

Section Twenty-six Hundred and Forty-two. In Double insurance. case of double insurance, the several insurers are liable to pay losses thereon as follows:

One—In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

Two—In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies, is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss, is to contribute ratably.

SEC. 245. Section twenty-six hundred and eighty-one of said Code is amended to read as follows:

Section Twenty-six Hundred and Eighty-one. In Warranty of seaworthiness. every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

SEC. 246. Section twenty-six hundred and eighty-three of said Code is amended to read as follows:

When  
complied  
with.

Section Twenty-six Hundred and Eighty-three. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

One—When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

Two—When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transhipped, be seaworthy at the commencement of its particular voyage.

SEC. 247. Section twenty-seven hundred and seven of said Code is amended to read as follows:

Liability  
when  
voyage  
broken.

Section Twenty-seven Hundred and Seven. When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

Repealed.

SEC. 248. Section twenty-seven hundred and ten of said Code is repealed.

SEC. 249. Section twenty-seven hundred and eleven of said Code is amended to read as follows:

Average  
losses.

Section Twenty-seven Hundred and Eleven. Where it has been agreed that an insurance upon a particular thing, or class of things, shall be free from particular average, a marine insurer is not liable for any par-



ticular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured.

SEC. 250. Section twenty-seven hundred and twelve of said Code is amended to read as follows:

Section Twenty-seven Hundred and Twelve. An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

Insurance  
against  
total loss.

SEC. 251. Section twenty-seven hundred and forty-five of said Code is amended to read as follows:

Section Twenty-seven Hundred and Forty-five. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the (the) exercise of that right.

Contribution.

SEC. 252. Section twenty-seven hundred and fifty-two of said Code is repealed.

Repealed.

SEC. 253. Section twenty-seven hundred and seventy-three of said Code is amended to read as follows:

Section Twenty-seven Hundred and Seventy-three. An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

Indemnity  
for future  
wrong act  
void.

SEC. 254. Section twenty-eight hundred and thirty-nine of said Code is amended to read as follows:

Exoneration  
of  
surety.

Section Twenty-eight Hundred and Thirty-nine. Performance of the principal obligation, or an offer of such performance, duly made as provided in this Code, exonerates a surety.

SEC. 255. Section twenty-nine hundred and thirteen of said Code is amended to read as follows:

Extinguishing  
liens.

Section Twenty-nine Hundred and Thirteen. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration.

SEC. 256. Section twenty-nine hundred and twenty-four of said Code is amended to read as follows:

Transfer,  
when  
mortgage,  
when  
pledge.

Section Twenty-nine Hundred and Twenty-four. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

SEC. 257. Section twenty-nine hundred and thirty of said Code is amended to read as follows:

Subse-  
quently  
acquired  
titles.

Section Twenty-nine Hundred and Thirty. Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

SEC. 258. Section twenty-nine hundred and thirty-four of said Code is amended to read as follows:

Section Twenty-nine Hundred and Thirty-four. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Recording  
assign-  
ments.

SEC. 259. Section twenty-nine hundred and thirty-five of said Code is amended to read as follows:

Section Twenty-nine Hundred and Thirty-five. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.

Not notice  
to  
mortgageor.

SEC. 260. Section twenty-nine hundred and thirty-seven of said Code is repealed.

Repealed.

SEC. 261. Section twenty-nine hundred and forty-one of said Code is amended to read as follows:

Section Twenty-nine Hundred and Forty-one. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, and must, at the expense of the mortgagor, acknowledge the execution 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 mortgage, who refuses to execute and deliver to the mortgagor the certificate of discharge, and to acknowledge the execution thereof, or to enter satisfaction or cause satisfaction to be entered of the mort-

Satisfac-  
tion of  
mortgage.

gage, 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 also forfeit to him or them the sum of one hundred dollars.

**Repealed.**      **SEC. 262.** Sections twenty-nine hundred and forty-nine and twenty-nine hundred and fifty-one of said Code are repealed.

**SEC. 263.** Section twenty-nine hundred and fifty-two of said Code is amended to read as follows:

**May be recorded.**      Section Twenty-nine Hundred and Fifty-two. Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

**SEC. 264.** Section three thousand and one of said Code is amended to read as follows:

**Sale of pledged property.**      Section Three Thousand and One. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

**SEC. 266.** Section three thousand and nine of said Code is amended to read as follows:

**Pledgee may retain.**      Section Three thousand and Nine. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

**SEC. 267.** Section thirty-one hundred of said Code is amended to read as follows:

**Place of payment.**      Section Thirty-one Hundred. A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found.

SEC. 268. Section thirty-one hundred and sixteen of said Code is amended to read as follows:

Section Thirty-one Hundred and Sixteen. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him: Implied warranties of indorser.

First—That it is in all respects what it purports to be.

Second—That he has a good title to it.

Third—That the signatures of all prior parties are binding upon them.

Fourth—That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections thirty-one hundred and eighty-nine, thirty-two hundred and thirteen, thirty-two hundred and forty-eight, or thirty-two hundred and fifty-five.

SEC. 269. Section thirty-one hundred and twenty-one of said Code is repealed. Repealed.

SEC. 270. Section thirty-one hundred and thirty-one of said Code is amended to read as follows:

Section Thirty-one Hundred and Thirty-one. Presentment of a negotiable instrument for payment when necessary must be made as follows, as nearly as by reasonable diligence it is practicable: Presentment, how made.

First—The instrument must be presented by the holder.

Second—The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there.

Third—An instrument which specifies a place for its payment must be presented there; and if the place

**Same.** specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.

Fourth—An instrument which does not specify a place for its payment, must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter; and,

Fifth—The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

Sixth—If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

**Repealed.** SEC. 271. Section thirty-one hundred and sixty-five of said Code is repealed.

SEC. 272. Section thirty-one hundred and seventy-six of said Code is amended to read as follows:

**Bill, where payable.** Section Thirty-one Hundred and Seventy-six. A bill of exchange is payable:

First—At the place where, by its terms, it is made payable; or,

Second—If it specify no place of payment, then at the place to which it is addressed; or,

Third—If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence, [cannot] with reasonable diligence, be ascer-

tained, presentment for payment is excused, and the bill may be protested for non-payment.

SEC. 273. Section thirty-one hundred and eighty-six of said Code is amended to read as follows:

Section Thirty-one Hundred and Eighty-six. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable.

Presentment for acceptance.

First—The bill must be presented by the holder or his agent.

Second—It must be presented on a business day, and within reasonable hours.

Third—It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,

Fourth—The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

SEC. 274. Section thirty-one hundred and ninety-nine of said Code is amended to read as follows:

Section Thirty-one Hundred and Ninety-nine. The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

Acceptance admits what.

SEC. 275. Section thirty-two hundred and sixty-two of said Code is repealed.

Repealed.

SEC. 276. Section thirty-three hundred of said Code is amended to read as follows:

**Measure of damages.** Section Thirty-three Hundred. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

SEC. 277. Section thirty-three hundred and thirty-six of said Code is amended to read as follows:

**Conversion** Section Thirty-three Hundred and Thirty-six. The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time; and,

Second—A fair compensation for the time and money properly expended in pursuit of the property.

SEC. 278. Section thirty-three hundred and fifty-six of said Code is amended to read as follows:

**Value of thing in action.** Section Thirty-three Hundred and Fifty-six. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

SEC. 279. Section thirty-three hundred and eighty of said Code is amended to read as follows:

**Specific delivery.** Section Thirty-three Hundred and Eighty. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

SEC. 280. Section thirty-three hundred and eighty-four of said Code is amended to read as follows:

**Specific performance.** Section Thirty-three Hundred and Eighty-four. Except as otherwise provided in this Article, the specific performance of an obligation may be compelled.



SEC. 281. Sections thirty-three hundred and eighty-five, thirty-three hundred and ninety-three, thirty-four hundred and fifty-three, thirty-four hundred and fifty-four, thirty-four hundred and fifty-five, and thirty-four hundred and fifty-six of said Code are repealed. Repealed.

SEC. 282. Section thirty-four hundred and twenty-three of said Code is amended to read as follows:

Section Thirty-four Hundred and Twenty-three. An injunction cannot be granted: Injunction, when not allowed.

First—To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

Second—To stay proceedings in a Court of the United States.

Third—To stay proceedings in another State upon a judgment of a Court of that State.

Fourth—To prevent the execution of a public statute, by officers of the law, for the public benefit.

Fifth—To prevent the breach of a contract, the performance of which would not be specifically enforced.

Sixth—To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Seventh—To prevent a legislative act by a municipal corporation.

SEC. 283. Section thirty-four hundred and fifty-seven of said Code is amended to read as follows:

Section Thirty-four Hundred and Fifty-seven. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases: Assignment, when void.

First—If it give a preference of one debt or class of debts over another.

Second—If it tend to coerce any creditor to release or compromise his demand.

**Same.** Third—If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor.

Fourth—If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid.

Fifth—If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

Sixth—If it exempt him from liability for neglect of duty or misconduct.

SEC. 284. Section thirty-four hundred and seventy-nine of said Code is amended to read as follows:

**Nuisance,  
what.**

Section Thirty-four Hundred and Seventy-nine. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

SEC. 285. Section thirty-four hundred and eighty of said Code is amended to read as follows:

**Public  
nuisance.**

Section Thirty-four Hundred and Eighty. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

**Repeals,  
limitations,  
etc.**

SEC. 286. All provisions of law inconsistent with the provisions of this Act are hereby repealed, but no rights acquired or proceedings taken under the pro-

visions repealed shall be impaired or in any manner Same. affected by this repeal, and whenever a limitation or period of time is prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Act takes effect, and the same or any other limitation is prescribed by this Act, the time of limitation which shall have run when this Act takes effect shall be deemed part of the time prescribed by this Act.

SEC. 287. With relation to the laws passed at the present session of the Legislature, this Act must be construed as though it had been passed on the first day of the present session. If the provisions of any law passed at the present session of the Legislature contravenes or is inconsistent with the provisions of this Act, the provisions of such law must prevail. Construction of Act.

SEC. 288. This Act shall take effect on the first day of July, eighteen hundred and seventy-four.

[Chap. 612.]

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AN ACT TO AMEND SECTION FOUR HUNDRED AND NINETEEN AND TO ADD CERTAIN NEW SECTIONS TO THE CIVIL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section four hundred and nineteen of the Civil Code is hereby amended so as to read as follows:

Section Four Hundred and Nineteen. No company, corporation, or association, except mutual life, health, and accident corporations, shall hereafter be formed or organized, under the laws of this State, for the transaction of business in any kind of insurance, Insurance capital.

Same.

except on live stock, without a subscribed capital equal to at least two hundred thousand dollars in United States gold coin; twenty-five per cent whereof must be paid in previous to the issuance of any policy, and the residue by monthly or quarterly installments, within twelve months from the day of filing the certificate of incorporation. No individual, or person, or corporation, organized under the laws of any other State or country as a stock company, must transact any kind of insurance business in this State, except on live stock, unless such person or corporation has a paid up capital stock equal to at least two hundred thousand dollars in United States gold coin, and has available cash assets, exclusive of stock notes, equal to two hundred thousand dollars in such gold coin over and above all liabilities for losses, reported expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this State. Nor must any individual or person, as agent of any person or corporation, organized under the laws of any other State or country as a mutual insurance company, transact any kind of insurance business in this State, except on live stock, unless such person or corporation possess available cash assets equal to at least two hundred thousand dollars in United States gold coin, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this State.

SEC. 2. The following sections are added as new sections to said Code, and must be inserted in said Code after section four hundred and forty-eight, and designated as sections four hundred and forty-nine, four hundred and fifty, and four hundred and fifty-one, respectively:

Section Four Hundred and Forty-nine. When the certificate of the Insurance Commissioner of this State, of the valuation of the policies of a life insurance company, as provided in section four hundred and forty-seven of the Civil Code of this State, issued to any company organized under the laws of this State, shall not be accepted by the insurance authorities of any other State, in lieu of a valuation of the same, by the insurance officer of such other State, then every company organized under the laws of such other State, doing business in this State, shall be required to have a separate valuation of its policies made under the authority of the Insurance Commissioner of this State, as provided in section four hundred and forty-seven of the Civil Code.

Retaliatory  
clause.

Section Four Hundred and Fifty. Every policy of insurance upon life issued hereafter within the limits of the State of California, whether by a person or corporation, organized under the laws of this State, or under those of any other State or country, or by the agent of such person or corporation, must contain written evidence that it was issued in this State. And any such policy issued in this State, which shall not contain such written evidence, is, at the option of the holder, null and void. And the person or corporation issuing such policy, without the evidence hereinbefore required, shall forfeit to the people of the State of California, for each and every policy so issued, the sum of one hundred dollars in United States gold coin, to be collected by the Insurance Commissioner as provided by section five hundred and ninety-eight of the Political Code.

Policies  
issued  
within  
State.

Section Four Hundred and Fifty-one. Whenever, during the life of any policy of insurance hereafter issued in this State, such policy shall be, by the legal holder thereof, presented to the person or corporation

Cancellation  
and  
payment.

Same. issuing the same, or to the agent of such person or corporation, for payment and cancellation, such person or corporation must, within sixty days after such presentation and demand of payment, pay to the holder of such policy, in like currency to that of the policy, a sum equal to seventy-five per cent of the then present value of such policy, as ascertained and determined in accordance with the provisions of section four hundred and forty-seven of the Civil Code, and such payment shall be a full and complete liquidation of such policy.

[Chap. 623.]

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AN ACT TO AMEND SECTION FIVE HUNDRED AND  
FOURTEEN OF THE CIVIL CODE.

[Approved March 28th, 1874.]

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

SECTION 1. Section five hundred and fourteen of the Civil Code is hereby amended so as to read as follows:

Tolls, etc.  
Roads, etc.

Section Five Hundred and Fourteen. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges as are fixed by the Board of Supervisors of the proper county through which the road passes or in which the ferry or bridge is situate, except that in the Counties of Klamath, Butte, Del Norte, Plumas, Humboldt, and Sierra the Directors may fix their own tolls, but in no case must the tolls be more than sufficient to pay fifteen per cent nor less than ten per cent per annum on the cost of construction, after paying for repairs and other expenses for attending to the

roads, bridges, or ferries. If tolls other than as herein provided are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

[Chap. 524.]

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AN ACT TO AMEND SECTION FIVE HUNDRED AND SEVENTY-FOUR OF THE CIVIL CODE.

[Approved March 18th, 1874.]

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

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

Section Five Hundred and Seventy-four. Savings and loan corporations may purchase, hold, and convey real and personal property, as follows:

Property,  
savings and  
loan corporations.

First—The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two thirds of the stockholders, the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars.

Second—Such as may have been mortgaged, pledged, or conveyed to it in trust, for its benefit, in good faith, for money loaned in pursuance of the regular business of the corporation.

Third—Such as may have been purchased at sales under pledges, mortgages, or deeds of trust made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon.

Fourth—No such corporation must purchase, hold,

Same.

or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section, must be sold by the corporation within five years after the title thereto is vested in it by purchase or otherwise.

Fifth—No corporation must purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, mortgages on real estate, bonds, securities, or evidences of indebtedness, public or private, gold and silver bullion, and United States Mint certificates of ascertained value, and evidences of debt issued by the United States.

Sixth—No corporation must purchase, hold, or convey bonds, securities, or evidences of indebtedness, public or private, except bonds of the United States, of the State of California, and of the counties, cities, or cities and counties, or towns of the State of California, unless such corporation has a capital stock or reserved fund paid in, of not less than three hundred thousand dollars.

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

[Chap. 318.]

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AN ACT TO ADD SECTION ELEVEN HUNDRED AND SIXTY-FIVE TO THE CIVIL CODE.

[Approved March 11th, 1874.]

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

SECTION 1. There is hereby added to the Civil Code a new section, to be placed after section eleven hundred and sixty-four, to be numbered eleven hundred and sixty-five, which shall read as follows:



Section Eleven Hundred and Sixty-five. The Recorder must, in all cases, indorse the amount of his fee for recordation on the instrument recorded.

Recorder's  
fees.

[Chap. 244.]

AN ACT TO AMEND SECTION TWELVE HUNDRED AND SEVENTY-FIVE OF THE CIVIL CODE.

[Approved January 29th, 1874.]

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

SECTION 1. Section twelve hundred and seventy-five of the Civil Code is hereby amended to read as follows:

Section Twelve Hundred and Seventy-five. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Who may  
take by  
will.

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

[Chap. 43.]

AN ACT TO AMEND THE CIVIL CODE BY ADDING A NEW SECTION, TO BE DESIGNATED SECTION THIRTEEN HUNDRED AND THIRTEEN.

[Approved March 18th, 1874.]

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

SECTION 1. The following is added as a new section to said Code, and must be inserted in said Code after

section thirteen hundred and twelve, and designated thirteen hundred and thirteen:

Charitable,  
etc.,  
bequests.

Section Thirteen Hundred and Thirteen. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death such devise or legacy and each of them shall be valid; *provided*, that no such devises or bequests shall collectively exceed one third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

SEC. 2. This Act shall take effect on and after its passage.

[Chap. 304.]

# CODE OF CIVIL PROCEDURE.



# ACTS

AMENDATORY OF

## THE CODE OF CIVIL PROCEDURE,

PASSED AT THE

TWENTIETH SESSION OF THE LEGISLATURE.

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AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE.

[Approved March 24th, 1874.]

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

SECTION 1. Section nine of the Code of Civil Procedure is amended to read as follows:

Section Nine. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code.

Limita-  
tions.

SEC. 2. Section eleven of said Code is amended to read as follows:

**Holidays.** Section Eleven. If the first day of January, the twenty-second day of February, the fourth day of July, or the twenty-fifth day of December, falls upon a Sunday, the Monday following is a holiday.

SEC. 3. Section seventeen of said Code is amended to read as follows:

**Terms,  
etc.,  
defined.**

Section Seventeen. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes both real and personal property.

Two—The words "real property" are coextensive with lands, tenements, and hereditaments.

Three—The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Four—The word "month" means a calendar month, unless otherwise expressed.

Five—The word "will" includes codicils.

Six—The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a Court or judicial officer, and the word "process" a

writ or summons issued in the course of judicial proceedings.

Seven—The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories.

SEC. 4. Section twenty-six of said Code is amended to read as follows:

Section Twenty-six. An obligation is a legal duty, Obligation defined. by which one person is bound to do or not to do a certain thing, and arises from:

One—Contract; or,

Two—Operation of law.

SEC. 5. Section forty-three of said Code is amended to read as follows:

Section Forty-three. The Supreme Court has also power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Jurisdiction of Supreme Court.

SEC. 6. Section seventy-six of said Code is amended to read as follows:

Section Seventy-six. Each term must be held for such period as in the opinion of the Court may be necessary for the transaction of business, having due regard to the business pending in the Court in other counties of the district. For the purpose of hearing and determining actions in equity, and special proceedings of a civil nature, motions for new trials, motions for, and to dissolve or modify injunctions, motions to set aside or vacate orders of arrest and writs of attachment, and for the entry of orders and judgments, this Court is always open. Duration of terms.

SEC. 7. Section eighty-five of said Code is amended to read as follows:

County  
Court;  
jurisdic-  
tion.

Section Eighty-five. Its original jurisdiction extends:

One—To actions to prevent or abate a nuisance.

Two—To actions of forcible entry and detainer.

Three—To proceedings in insolvency.

Four—To all special cases or proceedings in which the law, giving the remedy or authorizing the proceedings, confers the jurisdiction upon it.

Five—To the issuance of writs of habeas corpus, and all writs necessary to the exercise of its powers.

Six—To inquire, by the intervention of a Grand Jury, of all public offenses committed or triable in the county; and except in the City and County of San Francisco.

Seven—To the trial of all indictments, except for treason, misprision of treason, murder, and manslaughter.

SEC. 8. Section ninety-seven of said Code is amended to read as follows:

Probate  
Court;  
jurisdic-  
tion.

Section Ninety-seven. The Probate Court has jurisdiction:

One—To open and receive proof of last wills and testaments, and to admit them to probate.

Two—To grant letters testamentary, of administration, and of guardianship, and to revoke the same.

Three—To appoint appraisers of estates of deceased persons.

Four—To compel executors, administrators, and guardians to render accounts.

Five—To order the sale of property of estates, or belonging to minors.

Six—To order the payment of debts due from estates.



Seven—To order and regulate all distributions and partitions of property or estates of deceased persons.

Eight—To compel the attendance of witnesses, and the production of title deeds, papers, and other property of an estate, or of a minor.

Nine—To exercise the powers conferred by Title Eleven, Part Three, of this Code.

Ten—To make such orders as may be necessary to the exercise of the powers conferred upon it.

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

Section One Hundred and Seventeen. These Courts also have jurisdiction of the following public offenses committed within the respective townships or cities in which such Courts are established:

Justices' Courts; Jurisdiction.

One—Petit larceny.

Two—Assault and battery, or either, 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.

Three—Breaches of the peace, riots, 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.

SEC. 10. The following is added as a new section to said Code, and must be inserted in said Code after section one hundred and eighteen, and designated section one hundred and nineteen:

Section One Hundred and Nineteen. Nothing in this Code shall be construed to affect the provisions of an Act entitled "An Act to organize and regulate the Justices' Courts in the City and County of San Francisco," approved March twenty-sixth, eighteen hundred and sixty-six, or of any Act amending or supplementing said Act; but the said Act and all Acts amend-

San Francisco.

atory thereof or supplementary thereto are continued in force.

SEC. 11. Section one hundred and twenty-five of said Code is amended to read as follows:

Private  
trial.

Section One Hundred and Twenty-five. In an action for divorce, criminal conversation, seduction, 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.

SEC. 12. Section one hundred and fifty-two of said Code is amended to read as follows:

Seal of  
Court.

Section One Hundred and Fifty-two. The seal of the Court need not be affixed to any proceeding therein, or document, except:

One—To a writ.

Two—To the certificate of the probate of a will, or of the appointment of an executor, administrator, or guardian.

Three—To the authentication of a copy of a record or other proceeding of the Court, or of an officer thereof, or of a copy of a document on file in the office of the Clerk.

SEC. 13. Section one hundred and sixty-one of said Code is amended to read as follows:

Judges of  
other  
counties,  
Courts by.

Section One Hundred and Sixty-one. Any County or Probate Judge may hold terms, or portions of terms, of the County or Probate Court, and perform any or all of the duties of County or Probate Judge, in any other county of this State, as well as in that for which he was elected, upon the request of the County or Probate Judge of such county; and when, by reason of sickness or absence from the State, or from any other cause, a County or Probate Court cannot be held in any county, a certificate of that fact must be trans-

mitted by the Clerk to the Governor, who may thereupon direct some other County or Probate Judge to hold such Court.

SEC. 14. Section one hundred and sixty-two of said Code is repealed. Repealed.

SEC. 15. The following is added as a new section to said Code, and must be inserted in said Code after section one hundred and eighty-seven, and designated as section one hundred and eighty-eight:

Section One Hundred and Eighty-eight. The trial or hearing of an action, civil or criminal, in any Court which has commenced, and is in progress, shall not be stayed or discontinued by the arrival of the period fixed by law for another term of such Court, but it shall be lawful for the Court to proceed with the trial or hearing and bring it to a conclusion, in like manner and with the same effect as if another stated term of the Court had not intervened. Trials and intervening terms.

SEC. 16. Section two hundred of said Code is amended to read as follows:

Section Two Hundred. A person is exempt from liability to act as a juror, if he be: Exempt jurors.

One—A judicial, civil, or military officer of the United States or of the State of California.

Two—A person holding a county office.

Three—A practicing attorney and counselor at law.

Four—A minister of the gospel, or a priest of any denomination, following his profession.

Five—A teacher in a college, academy, or school.

Six—A practicing physician or dentist.

Seven—An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution.

Eight—Engaged in the performance of duty as officer or attendant of a County Jail or the State Prison.

Same,

Nine—Employed on board of a vessel navigating the waters of this State.

Ten—An express agent, mail carrier, superintendent, employé, or operator of a telegraph line doing a general telegraph business in this State, or keeper of a public ferry or toll gate.

Eleven—An active member of the fire department of any city, town, or village in this State, or an exempt member by reason of five years active service.

Twelve—A superintendent, engineer, or conductor on a railroad.

Thirteen—An editor or local reporter of a newspaper.

SEC. 17. The following is added as a new section to said Code, and must be inserted in said Code after section two hundred and one, and designated as section two hundred and two:

Exempt  
juror;  
excuse for  
non-  
attendance

Section Two Hundred and Two. If any 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 when 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.

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

Jury lists,  
how made.

Section Two Hundred and Four. The District Judges of the several districts within or embracing part of the City and County of San Francisco, and the County Judge of the county, and the Judge of the Municipal Criminal Court of San Francisco, or a majority of such Judges, must meet in San Francisco in

the month of December of each year, at the time and place designated by the County Judge, and make a list of persons to serve as jurors in the Courts of record, held in said city and county, for the ensuing year. And the Board of Supervisors of each of the other counties of the State must, at its first regular meeting in each year, or at any other meeting, if neglected at the first, make a list of persons to serve as jurors in the Courts of record in their respective counties until a new list is provided. Same.

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

Section Two Hundred and Fourteen. Before the commencement of any term of Court, the Judge thereof, if a jury will be required therefor, must make and file with the County Clerk, an order that one be drawn. The number to be drawn must be named in the order; if to form a Grand Jury, it must be twenty-four, and if a trial jury, such number as the Judge may direct; and the time must be designated at which the drawing will take place. Order for drawing.

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

Section Two Hundred and Fifteen. Before the drawing, the Clerk must notify the Sheriff and County Judge of the time appointed for such drawing. Notifica-  
tions of  
drawing.

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

Section Two Hundred and Seventeen. If the officers named do not appear, the Clerk must adjourn the drawing till the next day, and, by written notice, require two electors of the county to attend such drawing on the adjourned day. Adjourn-  
ment of  
drawing.

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

Court may  
order jury  
drawn  
when.

Section Two Hundred and Twenty-six. Whenever jurors are not drawn and summoned to attend any Court of record, or a sufficient number of jurors fail to appear, such Court may, in its discretion, order a sufficient number to be forthwith drawn and summoned to attend the Court; or it may, by an order entered on its minutes, direct an Elisor selected by the Court, or the Sheriff of the county, forthwith to summon so many good and lawful men of the county, to serve as jurors, as the case may require. And in either case such jurors must be summoned in the manner provided by the preceding section.

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

Talesmen.

Section Two Hundred and Twenty-seven. When there are not competent jurors enough present to form a panel, the Court may direct the Sheriff, or an Elisor selected by the Court, to summon a sufficient number of persons, having the qualification of jurors, to complete the panel, from the body of the county and not from the bystanders, and the Sheriff or Elisor must summon the number so ordered, accordingly, and return the names to the Court.

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

Shorthand  
reporter.

Section Two Hundred and Sixty-nine. The Judge of each Court of record may appoint a competent shorthand reporter, to hold office during the pleasure of the Judge. Such reporter must, 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 counsel for the defendant in a criminal action or proceeding, take down in shorthand 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, must within such reasonable time after the trial of such case as the Court may designate, write out the same in plain legible longhand, and verify and file it with the Clerk of the Court in which the case was tried.

SEC. 25. Section two hundred and seventy-six of said Code is amended to read as follows:

Section Two Hundred and Seventy-six. Every applicant for admission as attorney and counselor must produce satisfactory testimonials of good moral character, and except as provided in section two hundred and seventy-nine, undergo a strict examination in open Court, as to his qualifications, by the Justices of the Supreme Court.

Attorney,  
etc.,  
admission.

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

Section Two Hundred and Eighty-four. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows:

Change of  
attorney.

One—Upon his own consent, filed with the Clerk, or entered upon the minutes.

Two—Upon the order of the Court or Judge thereof, upon the application of the client, after notice to the attorney.

SEC. 27. Section two hundred and eighty-seven of said Code is amended to read as follows:

Section Two Hundred and Eighty-seven. An attorney and counselor may be removed or suspended by the Supreme Court, and by the District Courts of the

Removal &  
suspension

**Same.** State, for either of the following causes, arising after his admission to practice:

One—His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence.

Two—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, and any violation of the oath taken by him, or of his duties as such attorney and counselor.

Three—Corruptly and without authority appearing as attorney for a party to an action or proceeding.

Four—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 District Court, the judgment or order of removal or suspension may be reviewed on appeal, by the Supreme Court.

SEC. 28. Section two hundred and ninety-six of said Code is amended to read as follows:

**Answer.** Section Two Hundred and Ninety-six. 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.

SEC. 29. Section two hundred and ninety-nine of said Code is amended to read as follows:

**Judgment.** Section Two Hundred and Ninety-nine. 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 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.

SEC. 30. Section three hundred and seventeen of said Code is amended to read as follows:

Section Three Hundred and Seventeen. When letters patent or grants of real property issued or made by the people of this State, are declared void by the determination of a competent Court, an action for the recovery of the property so conveyed may be brought, either by the people of the State, or by any subsequent patentee or grantee of the property, his heirs or assigns, within five years after such determination, but not after that period.

Actions to be brought within five years.

SEC. 31. Section three hundred and thirty-six of said Code is amended to read as follows:

Section Three Hundred and Thirty-six. Within five years:

Limitations, five years.

One—An action upon a judgment or decree of any Court of the United States or of any State within the United States.

Two—An action for mesne profits of real property.

SEC. 32. Section three hundred and thirty-seven of said Code is amended to read as follows:

Section Three Hundred and Thirty-seven. Within four years:

Four years

An action upon any contract, obligation, or liability, founded upon an instrument in writing executed in this State.

SEC. 33. Section three hundred and thirty-nine of said Code is amended to read as follows:

Section Three Hundred and Thirty-nine. Within two years:

**Two years.** One—An action upon a contract, obligation, or liability, not founded upon an instrument of writing, or founded upon an instrument of writing executed out of the State.

Two—An action against a Sheriff, Coroner, or Constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this subdivision does not apply to an action for an escape.

Three—An action to recover damages for the death of one caused by the wrongful act or neglect of another.

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

**One year.** Section Three Hundred and Forty. Within one year:

One—An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to an individual and the State, except where the statute imposing it prescribes a different limitation.

Two—An action upon a statute for a forfeiture or penalty to the people of this State.

Three—An action for libel, slander, assault, battery, false imprisonment, or seduction.

Four—An action against a Sheriff or other officer for the escape of a prisoner, arrested or imprisoned on civil process.

Five—An action against a municipal corporation for damages for injuries to property caused by a mob or riot.

SEC. 35. Section three hundred and forty-one of said Code is amended to read as follows:

Section Three Hundred and Forty-one. Within six months:

An action against an officer, or officer de facto: Six months

One—To recover any goods, wares, merchandise, or other property, seized by any such officer in his official capacity as Tax Collector, or to recover the price or value of any goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making any such seizure.

Two—To recover stock sold for a delinquent assessment, as provided in section three hundred and forty-seven of the Civil Code.

SEC. 36. The following is added as a new section to said Code, and must be inserted in said Code after section three hundred and forty-seven, and designated section three hundred and forty-eight:

Section Three Hundred and Forty-eight. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan society, there is no limitation. No limitations.

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

Section Three Hundred and Seventy. When a married woman is a party, her husband must be joined with her, except: Joining husband and wife as parties.

One—When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

Two—When the action is between herself and her husband, she may sue or be sued alone.

Three—When she is living separate and apart from her husband by reason of his desertion of her, or by agreement, in writing, entered into between them, she may sue or be sued alone.

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

Infant to  
appear  
how.

Section Three Hundred and Seventy-two. When an infant is a party, he must appear either by his general guardian, or by a guardian appointed by the Court in which the action is prosecuted, or by a Judge thereof. A guardian may be appointed in any case, when it is deemed by the Court in which the action is prosecuted, or by a Judge thereof, expedient to represent the infant in the action, notwithstanding he may have a general guardian, and may have appeared by him.

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

Actions for  
injury to  
children.

Section Three Hundred and Seventy-six. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury, or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

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

Actions for  
causing  
death, etc.

Section Three Hundred and Seventy-seven. When the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the pre-

ceding section, such damages may be given as under all the circumstances of the case, may be just.

SEC. 41. Section three hundred and eighty of said Code is amended to read as follows:

Section Three Hundred and Eighty. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

Defendants,  
actions for  
real estate.

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

Section Three Hundred and Eighty-one. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or if [of] establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties  
holding  
under  
common  
title.

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

Section Three Hundred and Eighty-five. An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the Court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of

Abatement  
of  
actions.

interest, the action or proceeding may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

SEC. 44. Section three hundred and eighty-seven of said Code is amended to read as follows:

Interven-  
tion.

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

SEC. 45. Section four hundred and five of said Code is amended to read as follows:

Actions,  
how com-  
menced.

Section Four Hundred and Five. Civil actions in the Courts of this State are commenced by filing a complaint.

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

Indorse-  
ment of  
complaint.

Section Four Hundred and Six. The Clerk must indorse on the complaint the day, month, and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued, and if

the action be brought against two or more defendants, Same. who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

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

Section Four Hundred and Nine. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only, shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. Notice of lis pendens.

SEC. 48. Section four hundred and ten of said Code is hereby amended so as to read as follows:

Section Four Hundred and Ten. The summons may be served by the Sheriff of the county where the defendant is found, or by any other person, over the age Service and return of summons.

Same. of eighteen, not a party to the action. A copy of the complaint must be served with the summons, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the Sheriff, it must be returned, with his certificate of its service, and of the service of any copy of the complaint where such copy is served, to the office of the Clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SEC. 49. Section four hundred and eleven of said Code is hereby amended so as to read as follows:

Summons,  
how  
served.

Section Four Hundred and Eleven. The summons must be served by delivering a copy thereof, as follows:

One—If the suit is against a corporation formed under the laws of this State: to the President or other head of the corporation, Secretary, Cashier, or managing agent thereof.

Two—If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, Cashier, or Secretary within this State: to such agent, Cashier, or Secretary.

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

Four—If against a person residing within this State who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and



for whom a guardian has been appointed: to such person, and also to his guardian.

Five—If against a county, city, or town: to the President of the Board of Supervisors, President of the Council or Trustees, or other head of the legislative department thereof.

Six—In all other cases, to the defendant personally.

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

Section Four Hundred and Thirteen. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the State, or absent therefrom, must not be less than two months. In case of publication, where the residence of a non-resident or absent defendant is known, the Court or Judge must direct a copy of the summons and complaint to be forthwith deposited in the Post Office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the State is equivalent to publication and deposit in the Post Office, and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Publication,  
service by.

SEC. 51. Section four hundred and sixteen of said Code is amended to read as follows:

Section Four Hundred and Sixteen. From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the Court is deemed to have acquired jurisdiction of

Jurisdiction  
of  
action.

the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.

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

Answer;  
contents.

Section Four Hundred and Thirty-seven. The answer of the defendant shall contain:

One—A general or specific denial of the material allegations of the complaint controverted by the defendant.

Two—A statement of any new matter constituting a defense or counterclaim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

SEC. 53. Section four hundred and forty of said Code is amended to read as follows:

Compensated  
demands.

Section Four Hundred and Forty. When cross-demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

SEC. 54. The following is added as a new section to said Code, and must be inserted in said Code after

section four hundred and forty-one, and designated as section four hundred and forty-two:

Section Four Hundred and Forty-two. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the Court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.

SEC. 55. Section four hundred and forty-three of said Code is amended to read as follows:

Section Four Hundred and Forty-three. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counterclaims set up in the answer.

SEC. 56. Section four hundred and forty-eight of said Code is amended to read as follows:

Section Four Hundred and Forty-eight. When the defense to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the Clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

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

Section Four Hundred and Sixty-five. All pleadings subsequent to the complaint, must be filed with

the Clerk, and copies thereof served upon the adverse party or his attorney.

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

Variance.

Section Four Hundred and Sixty-nine. No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the Court may order the pleading to be amended, upon such terms as may be just.

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

Amend-  
ments.

Section Four Hundred and Seventy-two. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to a complaint is overruled and there is no answer filed, the Court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied, to the extent mentioned in section four hundred and sixty-two.

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

Amend-  
ments by  
Court.

Section Four Hundred and Seventy-three. 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 Same. 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 also 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; and when, for any reason satisfactory to the Court or the Judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the Court, or the Judge thereof, in vacation, may grant the relief upon application made within a reasonable time, not exceeding six months after the adjournment of the term. 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 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. 61. The following is added as a new section to said Code, and must be inserted in said Code after section four hundred and seventy-five, and designated section four hundred and seventy-six:

Time to  
answer  
after  
demurrer.

Section Four Hundred and Seventy-six. When a demurrer to any pleading is sustained or overruled, and time to amend or answer is given, the time so given runs from the service of notice of the decision or order.

SEC. 62. Section four hundred and seventy-nine of said Code is amended to read as follows:

Arrest of  
defendant.

Section Four Hundred and Seventy-nine. The defendant may be arrested, as hereinafter prescribed, in the following cases:

One—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the State with intent to defraud his creditors.

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

Three—In an action to recover the possession of personal property unjustly detained, when the property or any part thereof, has been concealed, removed,

or disposed of, to prevent its being found or taken by the Sheriff. Same.

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

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

SEC. 63. Section four hundred and eighty-one of said Code is amended to read as follows:

Section Four Hundred and Eighty-one. The order may be made whenever it appears to the Judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section four hundred and seventy-nine. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the Clerk of the Court.

*Affidavit  
for order of  
arrest.*

SEC. 64. Section four hundred and eighty-two of said Code is amended to read as follows:

Section Four Hundred and Eighty-two. Before making the order, the Judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the Judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum speci-

*Security  
thereon.*

fied in the undertaking. The undertaking must be filed with the Clerk of the Court.

SEC. 65. Section four hundred and ninety-four of said Code is amended to read as follows:

Qualifica-  
tions of  
bail.

Section Four Hundred and Ninety-four. The qualifications of bail are as follows:

One—Each of them must be a resident and householder, or freeholder, within the State.

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

SEC. 66. Section five hundred and three of said Code is amended to read as follows:

Vacation  
of order.

Section Five Hundred and Three. A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the Judge who made the order, or the Court in which the action is pending, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

Repealed.

SEC. 67. Section five hundred and twenty-one of said Code is repealed.

SEC. 68. Section five hundred and thirty-seven of said Code is amended to read as follows:



Section Five Hundred and Thirty-seven. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this Chapter provided, in the following cases: Attach-  
ment.

One—In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in this State, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, becomes valueless.

Two—In an action upon a contract, express or implied, against a defendant not residing in this State.

Sec. 69. Section five hundred and thirty-eight of said Code is amended to read as follows:

Section Five Hundred and Thirty-eight. The Clerk of the Court must issue the writ of attachment, upon receiving an affidavit by or on behalf of plaintiff, showing: Affidavit  
for.

One—That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs, or counterclaims,) upon a contract, express or implied, for the direct payment of money, and that such contract was made, or is payable, in this State, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; or,

Two—That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over

and above all legal set-offs, or counterclaims), and that the defendant is a non-resident of the State; and,

Three—That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

SEC. 70. Section five hundred and thirty-nine of said Code is amended to read as follows:

Undertaking on.

Section Five Hundred and Thirty-nine. Before issuing the writ, the Clerk must require a written undertaking on the part of the plaintiff, in an amount not less than three hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay all costs, including reasonable attorneys' fees, that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, if the attachment be wrongfully issued.

SEC. 71. Section five hundred and fifty-five of said Code is amended to read as follows:

Release of.

Section Five Hundred and Fifty-five. Before making such order, the Court or Judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders, or householders, in the State, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The Court or Judge making such order may fix the sum for which the undertaking must be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed

for that purpose. The sureties may be required to justify before the Court or Judge, and the property attached cannot be released from the attachment without their justification, if the same be required.

SEC. 72. Section five hundred and fifty-six of said Code is amended to read as follows:

Section Five Hundred and Fifty-six. 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 the Judge thereof, or to a County Judge, that the writ of attachment be discharged, on the ground that the same was improperly or irregularly issued.

Motion to discharge.

SEC. 73. Section five hundred and sixty-six of said Code is amended to read as follows:

Section Five Hundred and Sixty-six. No party, or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the Clerk. If a receiver be appointed upon an ex parte application, the Court, before making the order, may require from the applicant an undertaking with sufficient sureties, in an amount to be fixed by the Court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the Court may, in its discretion, at any time after said appointment, require an additional undertaking.

Receivers.

SEC. 74. Section five hundred and ninety-two of said Code is amended to read as follows:

**Trials of  
issues.**

Section Five Hundred and Ninety-two. In actions for the recovery of specific, real, or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the Court, subject to its power to order any such issue to be tried by a jury, or to be referred to a referee, as provided in this Code.

SEC. 75. Section six hundred and one of said Code is amended to read as follows:

**Challeng-  
ing jurors.**

Section Six Hundred and One. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to four peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

SEC. 76. Section six hundred and two of said Code is amended to read as follows:

**Grounds of  
challenge.**

Section Six Hundred and Two. Challenges for cause may be taken on one or more of the following grounds:

One—A want of any of the qualifications prescribed by this Code to render a person competent as a juror.

Two—Consanguinity or affinity, within the fourth degree, to any party.

Three—Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business

with either party, or surety on any bond or obligation Same.  
for either party.

Four—Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action.

Five—Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation.

Six—Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or of some of them.

Seven—The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

SEC. 77. Section six hundred and twenty-seven of said Code is amended to read as follows:

Section Six Hundred and Twenty-seven. In an action for the recovery of ~~specific~~ personal property, <sup>Verdict, specific property</sup> if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or, if being in favor of defendant, they also find that he is entitled to a return thereof, must find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

SEC. 78. Section six hundred and thirty-one of said Code is amended to read as follows:

Section Six Hundred and Thirty-one. Trial by jury <sup>Waiver, trial by jury.</sup> may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery

of specific real or personal property, with or without damages, and with the assent of the Court in other actions, in manner following:

One—By failing to appear at the trial.

Two—By written consent, in person or by attorney, filed with the Clerk.

Three—By oral consent, in open Court, entered in the minutes.

SEC. 79. Section six hundred and thirty-two of said Code is amended to read as follows:

Question  
of fact,  
filing  
decision.

Section Six Hundred and Thirty-two. Upon the trial of a question of fact by the Court, its decision must be given in writing and filed with the Clerk within thirty days after the cause is submitted for decision.

SEC. 80. Section six hundred and thirty-five of said Code is amended to read as follows:

Findings,  
how  
prepared.

Section Six Hundred and Thirty-five. At the time the cause is submitted, the Judge may direct either or both of the parties to prepare findings of facts, unless they have been waived, and when so directed, the party must within two days prepare and serve upon his adversary, and submit to the Judge such findings, and may within two days thereafter, briefly suggest in writing to the Judge why he desires findings upon the points included within the findings prepared by himself, or why he objects to findings upon the points included within the findings prepared by his adversary. The Judge may adopt, modify, or reject the findings so submitted. If, at the time of the submission of the cause, the Judge does not direct the preparation of findings, or those prepared are rejected, then he must himself prepare the findings.

SEC. 81. Section six hundred and forty-six of said Code is amended to read as follows:

Section Six Hundred and Forty-six. An exception Exceptions is an objection upon a matter of law to a decision of a Court, Judge, or referee in an action or proceeding, and may be taken by either party to any decision made either before or after judgment; and except as provided in the following section, it must be taken at the time the decision is made.

SEC. 82. Section six hundred and fifty of said Code is amended to read as follows:

Section Six Hundred and Fifty. Where a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill, to the Judge who tried or heard the case, upon five days notice to the adverse party, or be delivered to the Clerk of the Court for the Judge. When received by the Clerk he must immediately deliver them to the Judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the Judge, the Clerk must, upon notice in writing of such party, immediately forward them by mail, or other safe channel; if not thus forwarded, the Clerk must deliver them to

Bill of, how settled.

**Sams.** the Judge immediately after his return to the county. When received from the Clerk, the Judge must designate the time at which he will settle the bill, and the Clerk must immediately notify the parties of such designation. At the time designated, the Judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the Judge or referee, for settlement, without notice to the adverse party. It is the duty of the Judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the Clerk.

SEC. 83. Section six hundred and fifty-one of said Code is amended to read as follows:

Exceptions  
after  
judgment.

Section Six Hundred and Fifty-one. Exceptions to any decision made after judgment may be presented to the Judge at the time of such decision, and be settled or noted, as provided in section six hundred and forty-nine, and a bill thereof may be presented and settled afterwards, as provided in section six hundred and fifty, and within like periods after entry of the order, upon appeal from which such decision is reviewable.

SEC. 84. Section six hundred and fifty-eight of said Code is amended to read as follows:

Motion for  
new trial,  
papers.

Section Six Hundred and Fifty-eight. When the application is made for a cause mentioned in the first,



second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made, at the option of the moving party, either upon the minutes of the Court, or a bill of exceptions, or a statement of the case, prepared as hereinafter provided.

SEC. 85. Section six hundred and fifty-nine of said Code is amended to read as follows:

Section Six Hundred and Fifty-nine. The party Notice, etc. intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case:

One—If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, file such affidavits with the Clerk, and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

Two—If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry by section six hundred and fifty, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been

Same.

already settled and filed, when the notice of motion is given, such bill shall be used on the motion.

Three—If the motion is to be made upon a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the Court in which the action is pending, or the Judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the Judge who tried or heard the cause, for settlement, or be delivered to the Clerk of the Court for the Judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the Judge, upon five days' notice to the adverse party, or delivered to the Clerk of the Court for the Judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and Clerk, and Judge, as are required for the settlement of bills of exception by section six hundred and fifty. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the Judge or referee, for settlement, without notice to the adverse party. When the notice of the motion designates, as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be in-

sufficient. When the notice designates, as the ground Same.  
of the motion, errors in law occurring at the trial, and  
excepted to by the moving party, the statement shall  
specify the particular errors upon which the party will  
rely. If no such specifications be made, the state-  
ment shall be disregarded on the hearing of the mo-  
tion. It is the duty of the Judge or referee, in settling  
the statement, to strike out of it all redundant and  
useless matter, and to make the statement truly rep-  
resent the case, notwithstanding the assent of the  
parties to such redundant or useless matter, or to any  
inaccurate statement. When settled, the statement  
shall be signed by the Judge or referee, with his cer-  
tificate to the effect that the same is allowed, and  
shall then be filed with the Clerk.

Four—When the motion is to be made upon the  
minutes of the Court, and the ground of the motion  
is the insufficiency of the evidence to justify the ver-  
dict or other decision, the notice of motion must  
specify the particulars in which the evidence is alleged  
to be insufficient; and, if the ground of the motion be  
errors in law occurring at the trial, and excepted to  
by the moving party, the notice must specify the par-  
ticular errors upon which the party will rely. If the  
notice do not contain the specifications here indicated,  
when the motion is made on the minutes of the Court,  
the motion must be denied.

SEC. 86. Section six hundred and sixty of said  
Code is amended to read as follows:

Section Six Hundred and Sixty. The application  
for a new trial shall be heard at the earliest practica-  
ble period after notice of the motion, if the motion is  
to be heard upon the minutes of the Court, and in  
other cases, after the affidavits, bill of exceptions, or  
statement, as the case may be, are filed, and may be  
brought to a hearing upon motion of either party.

Hearing  
applica-  
tion.

On such hearing reference may be had in all cases to the pleadings and orders of the Court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

SEC. 87. Section six hundred and sixty-one of said Code is amended to read as follows:

Record on  
appeal.

Section Six Hundred and Sixty-one. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the Court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, and the same or a copy thereof be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same, or a copy thereof, upon the party appealing, or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement as provided by section six hundred and fifty-nine, but the statement shall only contain the grounds argued before the Court for a new trial, and so much of the evidence or other matter as may be necessary to explain them; and it shall be the duty of the Judge to exclude all other evidence or matter from the statement.

SEC. 88. The following sections are added as new sections to said Code, and must be inserted in said

Code after section six hundred and sixty-one, and designated as section six hundred and sixty-two, and section six hundred and sixty-three:

Section Six Hundred and Sixty-two. The verdict of a jury may also be vacated, and a new trial granted by the Court in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the Court, or the evidence in the case, as to satisfy the Court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice. The order of the Court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the Court, as provided in section six hundred and sixty-one.

New trial  
on motion  
of Court.

Section Six Hundred and Sixty-three. When the action is tried by a District Judge in his district, out of the county of his residence, the motion for a new trial may, upon the consent of parties, be brought to a hearing before such Judge at chambers, or in open Court, in the county of his residence, or in any other county.

Hearing  
motion by  
consent.

SEC. 89. Section six hundred and seventy of said Code is amended to read as follows: .

Section Six Hundred and Seventy. Immediately after entering the judgment, the Clerk must attach together and file the following papers, which constitute the judgment roll:

Judgment  
roll.

One—In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum in-

Same.

dorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment.

Two—In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the Court, or referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

SEC. 90. Section six hundred and seventy-one of said Code is amended to read as follows:

Judgment  
lien.

Section Six Hundred and Seventy-one. Immediately after filing a judgment roll, the Clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterwards acquire, until the lien ceases. The lien continues for two years, unless the enforcement of the judgment be stayed on appeal by the execution of a sufficient undertaking, as provided in this Code, in which case the lien of the judgment ceases.

SEC. 91. Section six hundred and seventy-five of said Code is amended to read as follows:

Satisfac-  
tion  
judgment.

Section Six Hundred and Seventy-five. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor,

or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such indorsement, and, upon motion, the Court may compel it, or may order the entry of satisfaction to be made without it.

SEC. 92. Section six hundred and eighty-four of said Code is amended to read as follows:

Section Six Hundred and Eighty-four. When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the Court.

Enforcing  
judgment.

SEC. 93. Section six hundred and ninety-one of said Code is amended to read as follows:

Section Six Hundred and Ninety-one. The Sheriff must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of

Execution  
service of  
writ.

**Same.** property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the Court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the Sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

SEC. 94. Section six hundred and ninety-two of said Code is amended to read as follows:

**Notice of  
sale under.**

Section Six Hundred and Ninety-two. Before the sale of property on execution, notice thereof must be given as follows:

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

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

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

Four—When the judgment under which the prop-



erty is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

SEC. 95. Section six hundred and ninety-five of said Code is amended to read as follows:

\* Section Six Hundred and Ninety-five. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any Court of competent jurisdiction.

If purchaser refuse to pay, etc.

SEC. 96. Section six hundred and ninety-six of said Code is amended to read as follows:

Section Six Hundred and Ninety-six. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Same.

SEC. 97. Section seven hundred and three of said Code is amended to read as follows:

Section Seven Hundred and Three. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so

Redemption.

**Same.**

disposed, redeemed from any previous redemptioner, within sixty days after the last redemption(er), on paying the sum paid on the last previous redemption, with four per cent thereon in addition, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. Written notice of redemption must be given to the Sheriff, and a duplicate filed with the Recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the Sheriff, and filed with the Recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a Sheriff's deed; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the Recorder of

the county in which the property is situated, and the Recorder must note the record thereof in the margin of the record of the certificate of sale.

SEC. 98. Section seven hundred and fifty-five of said Code is amended to read as follows:

Section Seven Hundred and Fifty-five. Immediately after filing the complaint in the District 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.

Filing  
notice lis  
pendens.

SEC. 99. Section seven hundred and sixty-four of said Code is amended so as to read as follows:

Section Seven Hundred and Sixty-four. In making the partition the referees must divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the Court, pursuant to the provisions of this Chapter, designating the several portions by proper land marks; and may employ a surveyor, with the necessary assistance to aid them. Before making partition or sale the referees may, wherever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties or sold, but shall remain an open and public way, road, or street, unless the referees shall set the same apart as a private way for the use of the parties interested, or some of them, their heirs and assigns, in which case it shall remain such private way.

Partition,  
referees,  
etc.

SEC. 100. Section seven hundred and eighty-seven of said Code is amended to read as follows:

Convey-  
ances.

Section Seven Hundred and Eighty-seven. The conveyances must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

SEC. 101. Section seven hundred and ninety-six of said Code is amended to read as follows:

Costs of.

Section Seven Hundred and Ninety-six. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees or [of] referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the Court may require the expense of such litigation to be paid by the parties thereto, or any of them.

Repealed.

SEC. 102. Section seven hundred and ninety-eight of said Code is repealed.

SEC. 103. The following is added as a new section to said Code, and must be inserted in said Code after section eight hundred and nine, and designated as section eight hundred and ten:

Section Eight Hundred and Ten. When the action is brought upon the information or application of a private party, the Attorney General may require such party to enter into an undertaking, with sureties to be approved by the Attorney General, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

Actions on  
informa-  
tion,  
undertak-  
ing.

SEC. 104. Section eight hundred and thirteen of said Code is amended to read as follows:

Vessels,  
etc.  
liability of.

Section Eight Hundred and Thirteen. All steamers, vessels, and boats are liable:

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

Two—For supplies furnished in this State for their use, at the request of their respective owners, masters, agents, or consignees.

Three—For work done or materials furnished in this State for their construction, repair, or equipment.

Four—For their wharfage and anchorage within this State.

Five—For non-performance, or mal-performance, of any contract for the transportation of persons or property between places within this State, made by their respective owners, masters, agents, or consignees.

Six—For injuries committed by them to persons or property, in this State.

Demands for these several causes constitute liens upon all steamers, vessels, and boats, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of one year from the time the cause of action accrued.

SEC. 105. Section eight hundred and fourteen of said Code is amended to read as follows:

Actions,  
how  
brought.

Section Eight Hundred and Fourteen. Actions for any of the causes specified in the preceding section must be brought against the owners by name, if known, but if not known, that fact shall be stated in the complaint, and the defendants shall be designated as unknown owners. Other persons having a lien upon the vessel may be made defendants to the action, the nature and amount of such lien being stated in the complaint.

SEC. 106. Section eight hundred and sixteen of said Code is amended to read as follows:

Summons,  
service of.

Section Eight Hundred and Sixteen. The summons, attached to a certified copy of the complaint, must be served on the owners, if they can be found; otherwise, it may be served on the master, mate, or person having charge of the steamer, vessel, or boat.

SEC. 107. Section eight hundred and seventeen of said Code is amended to read as follows:

Attaching  
vessels, etc.

Section Eight Hundred and Seventeen. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the steamer, vessel, or boat, with its tackle, apparel, and furniture, attached as security for the satisfaction of any judgment that may be recovered in the action.

SEC. 108. Section eight hundred and eighteen of said Code is amended to read as follows:

Writ, when  
issued.

Section Eight Hundred and Eighteen. The Clerk of the Court must issue a writ of attachment, on the application of the plaintiff, upon receiving a written undertaking on behalf of the plaintiff, executed by two or more sufficient sureties, to the effect that if the judgment be rendered in favor of the owner of the steamer, vessel, or boat, as the case may be, he will

pay all costs and damages that may be awarded against him, and all damages that may be sustained by him from the attachment, not exceeding the sum specified in the undertaking, which shall in no case be less than five hundred dollars.

SEC. 109. Section eight hundred and nineteen of said Code is amended to read as follows:

Section Eight Hundred and Nineteen. The writ Contents of. must be directed to the Sheriff of the county within which the steamer, vessel, or boat lies, and direct him to attach such steamer, vessel, or boat, with its tackle, apparel, and furniture, and keep the same in his custody until discharged in due course of law.

SEC. 110. Section eight hundred and twenty of said Code is amended to read as follows:

Section Eight Hundred and Twenty. The Sheriff Execution of. to whom the writ is directed and delivered must execute it without delay, and must attach and keep in his custody the steamer, vessel, or boat named therein, with its tackle, apparel, and furniture, until discharged in due course of law; but the Sheriff is not authorized by any such writ to interfere with the discharge of any merchandise on board of such steamer, vessel, or boat, or with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

SEC. 111. Section eight hundred and twenty-one of said Code is amended to read as follows:

Section Eight Hundred and Twenty-one. The Who may defend. owner, or the master, agent, or consignee of the steamer, vessel, or boat, may, on behalf of the owner, appear and answer, or plead to the action; and may except to the sufficiency of the sureties on the under-

taking filed on behalf of the plaintiff, and may require sureties to justify, as upon bail on arrest.

SEC. 112. Section eight hundred and twenty-two of said Code is amended to read as follows:

Discharge  
of attach-  
ment.

Section Eight Hundred and Twenty-two. After the attachment is levied, the owner, or the master, agent, or consignee of the steamer, vessel, or boat, may, in behalf of the owner, have the attachment discharged, upon giving to the Sheriff an undertaking of at least two sufficient sureties in an amount sufficient to satisfy the demand in suit, besides costs, or depositing that amount with the Sheriff. Upon receiving such undertaking or amount, the Sheriff must restore to the owner, or the master, agent, or consignee of the owner, the steamer, vessel, or boat attached.

SEC. 113. Section eight hundred and twenty-three of said Code is amended to read as follows:

Same.

Section Eight Hundred and Twenty-three. After the appearance in the action of the owner, the attachment may, on motion, also be discharged in the same manner, and on like terms and conditions, as attachments in other cases, subject to the provisions of section eight hundred and twenty-five.

SEC. 114. Section eight hundred and twenty-four of said Code is amended to read as follows:

Sale and  
application  
of proceeds.

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



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

Two—To the payment of the judgment and costs, including his fees.

Three—He must pay any balance remaining to the owner, or to the master, agent, or consignee who may have appeared on behalf of the owner, or if there be no appearance, then into Court, subject to the claim of any party or parties legally entitled thereto.

SEC. 115. Section eight hundred and twenty-six of said Code is amended to read as follows:

Section Eight Hundred and Twenty-six. If the claim of the mariner, boatman, or other person, filed Claims of mariners, etc. 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 the Court in which the action is pending, or a Judge thereof, either in term or vacation, 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. 116. Section eight hundred and thirty-two of said Code is amended to read as follows:

Justices'  
Courts;  
actions,  
where  
brought.

Section Eight Hundred and Thirty-two. Actions in Justices' Courts must be commenced, and, subject to the right to change the place of trial, as in this Chapter provided, must be tried:

One—If there be no Justices' Court for the township or city in which the defendant resides: in any city or township of the county in which he resides.

Two—When two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships or different cities of the same county, or in different counties: in the township or city in which any of the persons liable may reside.

Three—In cases of injury to the person or property: in the township or city where the injury was committed, or where the defendant resides.

Four—If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same: in the township or city in which the property may be found, or in which the property was taken, or in which the defendant resides.

Five—When the defendant is a non-resident of the county: in any township or city wherein he may be found.

Six—When the defendant is a non-resident of the State: in any township or city in the State.

Seven—When a person has contracted to perform an obligation at a particular place, and resides in another county, township, or city: in the township or city in which such obligation is to be performed, or in which he resides; and the township or city in which the obligation is incurred shall be deemed to be the township or city in which it is to be performed, unless there is a special contract to the contrary.

Eight—When the parties voluntarily appear and plead without summons: in any township or city in the State.

Nine—In all other cases: in the township or city in which the defendant resides.

SEC. 117. Section eight hundred and forty-three of said Code is amended to read as follows:

Section Eight Hundred and Forty-three. When an infant is a party, he must appear either by his general guardian, if he have one, or by a guardian appointed by the Justice as follows: Guardian  
for infant.

One—If the infant 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, upon the application of a relative or friend.

Two—If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the Justice must make the appointment.

SEC. 118. Section eight hundred and forty-eight of said Code is amended to read as follows:

Section Eight Hundred and Forty-eight. The summons cannot be served out of the county of the Justice before whom the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendants out of the county, and except also when an action is brought against a party who has contracted to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides. When the defendant resides in the county, the summons cannot be Service of  
summons.

served within two days of the time fixed for the appearance of the defendant: when he resides out of the county, and the summons is served out of the county, the summons cannot be served within twenty days of such time.

SEC. 119. Section eight hundred and sixty-two of said Code is amended to read as follows:

Affidavit,  
etc., order  
of arrest.

Section Eight Hundred and Sixty-two. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the Justice by the affidavit of himself, or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the Justice a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

SEC. 120. Section eight hundred and ninety-three of said Code is amended to read as follows:

Judgments, how  
entered.

Section Eight Hundred and Ninety-three. The judgment in Justices' Courts must be entered substantially in the form required by section six hundred and sixty-seven of this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject, must be stated in the judgment.

SEC. 121. Section nine hundred and eleven of said Code is amended to read as follows:

Docket,  
what to  
contain.

Section Nine Hundred and Eleven. Every Justice must keep a book, denominated a "Docket," in which he must enter:

One—The title of every action or proceeding.

Two—The object of the action or proceeding; and **Same.** if a sum of money be claimed, the amount thereof.

Three—The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact.

Four—The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

Five—Every adjournment, stating on whose application and to what time.

Six—The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.

Seven—The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request.

Eight—The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

Nine—The judgment of the Court, specifying the costs included and the time when rendered.

Ten—The issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Justice, when and by whom.

Eleven—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

SEC. 122. Section nine hundred and twenty-four of said Code is amended to read as follows:

Section Nine Hundred and Twenty-four. The pre- Costs.  
vailing party in Justices' Courts is entitled to costs of the action and also of any proceedings taken by him

in aid of an execution, issued upon any judgment recovered therein.

SEC. 123. Section nine hundred and forty of said Code is amended to read as follows:

Appeal,  
how taken.

Section Nine Hundred and Forty. An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose, unless within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the Clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

SEC. 124. Section nine hundred and forty-two of said Code is amended to read as follows:

Under-  
taking on.

Section Nine Hundred and Forty-two. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant, by two or more sureties; to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from or any part thereof be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion

of the respondent in his favor against the sureties for Same. such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state that they are severally worth, and judgment may be entered against the sureties by the Court from which the appeal is taken, pursuant to the stipulations herein designated. When the judgment or order appealed from is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking must be made payable in the same kind of money or currency.

SEC. 125. Section nine hundred and forty-six of said Code is amended to read as follows:

Section Nine Hundred and Forty-six. Whenever an appeal is perfected, as provided in the preceding sections of this Chapter, it stays all further proceedings in the Court below upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the Court below may proceed upon any other matter embraced in the action and not affected by the order appealed from. An[d] the Court below may, in its discretion, dispense with or limit the security required by this Chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attach-

Appeal  
stays pro-  
ceedings  
below,  
when.

ment, unless an undertaking be executed and filed on the part of the appellant by at least two sureties, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the Court below be sustained; and unless, within five days after the entry of the order appealed from, such appeal be perfected.

SEC. 126. Section nine hundred and forty-eight of said Code is amended to read as follows:

Exceptions  
to and  
justifica-  
tion of  
sureties.

Section Nine Hundred and Forty-eight. The adverse party may except to the sufficiency of the sureties to 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, a County Judge, 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, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Deposit.

SEC. 127. Section nine hundred and fifty of said Code is amended to read as follows:

Papers on  
appeal.

Section Nine Hundred and Fifty. On an appeal from a final judgment, the appellant must furnish the Court with a copy of the notice of appeal, of the judg-



ment roll, and of any bill of exceptions or statement in the case upon which the appellant relies. Any statement used on motion for a new trial or settled after decision of such motion when the motion is made upon the minutes of the Court, as provided in section six hundred and sixty-one, or any bill of exceptions settled, as provided in sections six hundred and forty-nine or six hundred and fifty, or used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

Papers on appeal.

SEC. 128. Section nine hundred and fifty-one of said Code is amended to read as follows:

Section Nine Hundred and Fifty-one. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the judgment or order appealed from, and of papers used on the hearing in the Court below.

Same.

SEC. 129. Section nine hundred and fifty-two of said Code is amended to read as follows:

Section Nine Hundred and Fifty-two. On an appeal from an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section six hundred and sixty-one of this Code.

Same.

SEC. 130. Section nine hundred and fifty-three of said Code is amended to read as follows:

Section Nine Hundred and Fifty-three. The copies provided for in the last three sections must be certified to be correct by the Clerk or the attorneys, and must be accompanied with a certificate of the Clerk or attorneys that an undertaking on appeal, in due form,

How certified, etc.

has been properly filed, or a stipulation of the parties waiving an undertaking.

SEC. 131. Section nine hundred and fifty-seven of said Code is amended to read as follows:

Powers of  
Court on  
reversal.

Section Nine Hundred and Fifty-seven. When the judgment or order is reversed or modified, the appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate Court that the appeal was made for delay, it may add to the costs such damages as may be just.

SEC. 132. Section nine hundred and sixty-six of said Code is amended to read as follows:

Appeals  
from  
County  
Courts.

Section Nine Hundred and Sixty-six. An appeal may be taken to the Supreme Court from the County Courts, in the following cases:

One—From a final judgment in an action of forcible entry and detainer; in an action to prevent or abate a nuisance; in a proceeding in insolvency; and in any special cases and proceedings, and in cases which involve 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.

Two—From an order granting or refusing a new trial in the cases designated in this section, and from any special order made after final judgment in such cases.

SEC. 133. Section nine hundred and sixty-nine of said Code is amended to read as follows:

From  
Probate  
Courts.

Section Nine Hundred and Sixty-nine. An appeal may be taken to the Supreme Court from a judgment or order of the Probate Court:

One—Granting, or refusing, or revoking letters testamentary, or of administration, or of guardianship.

Two—Admitting, or refusing to admit, a will to probate.

Three—Against or in favor of the validity of a will, or revoking the probate thereof.

Four—Against or in favor of setting apart property, or making an allowance for a widow or child.

Five—Against or in favor of directing the partition, sale, or conveyance of real property.

Six—Settling an account of an executor, or administrator, or guardian.

Seven—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.

Eight—Overruling a motion for a new trial.

Nine—Confirming a report of an appraiser setting apart the homestead.

SEC. 134. Section nine hundred and seventy-one of said Code is amended to read as follows:

Section Nine Hundred and Seventy-one. When the order or decree 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 order or decree had been affirmed.

Acts of  
adminis-  
trator, etc.,  
valid.

SEC. 135. Section nine hundred and ninety-seven of said Code is amended to read as follows:

Offers to  
comprom-  
mise.

Section Nine Hundred and Ninety-seven. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the Clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

SEC. 136. Section ten hundred of said Code is amended to read as follows:

Inspection  
of entries,  
etc.

Section One Thousand. Any Court in which an action is pending, or a Judge thereof, or a County Judge, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of 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. 137. Section ten hundred and twelve of said Code is amended to read as follows:

Section Ten Hundred and Twelve. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail. Service by mail, when.

SEC. 138. Section ten hundred and thirteen of said Code is amended to read as follows:

Section Ten Hundred and Thirteen. In case of service by mail the notice or other paper must be deposited in the Post Office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended one day for every twenty-five miles distance between the place of deposit and the place of address, such extension, however, not to exceed ninety days in all. How.

SEC. 139. Section ten hundred and thirty-three of said Code is amended to read as follows:

Section Ten Hundred and Thirty-three. The party in whose favor judgment is rendered, and who claims his costs, must deliver to the Clerk, and serve upon the adverse party, within five days after the verdict or notice of the decision of the Court or referee—or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made—a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his Bill of costs, etc.

attorney, stating that to the best of his knowledge and belief the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within five days after notice of filing of the bill of costs, file a motion to have the same taxed by the Court in which the judgment was rendered, or by the Judge thereof at chambers.

• SEC. 140. Section ten hundred and fifty-four of said Code is amended to read as follows:

Extension  
of time.

Section Ten Hundred and Fifty-four. 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 the 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 the Judge thereof, or, in the absence of such Judge from the county in which the action is pending, by the County Judge; but such extension shall not exceed thirty days, without the consent of the adverse party.

SEC. 141. The following is added as a new section to said Code, and must be inserted in said Code after section ten hundred and fifty-eight, and designated as section ten hundred and fifty-nine:

Substitu-  
tion of  
surety, etc.

Section Ten Hundred and Fifty-nine. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate Court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy such judgment, in all respects as if he had recovered the same.

SEC. 142. Section ten hundred and sixty-seven of said Code is amended to read as follows:

Section Ten Hundred and Sixty-seven. The writ of certiorari may be denominated the writ of review.

SEC. 143. Section ten hundred and eighty-four of said Code is hereby amended so as to read as follows:

Section Ten Hundred and Eighty-four. The writ of mandamus may be denominated a writ of mandate.

SEC. 144. Section ten hundred and ninety-four of said Code is amended to read as follows:

Section Ten Hundred and Ninety-four. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the Court must proceed to hear or fix a day for hearing the argument of the case.

SEC. 145. Section ten hundred and ninety-seven of said Code is amended to read as follows:

Section Ten Hundred and Ninety-seven. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board, or person, if it appear to the Court that any member of such tribunal, corporation, or Board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

SEC. 146. Section eleven hundred and eight of said Code is amended to read as follows:

Return of writs, &c.

Section Eleven Hundred and Eight. Writs of review, mandate, and prohibition, issued by the Supreme Court, or by the District Court, may, in the discretion of the Court issuing the writ, be made returnable, and a hearing thereon be had at any time.

SEC. 147. Section eleven hundred and sixty-one of said Code is amended to read as follows:

Unlawful detainer.

Section Eleven Hundred and Sixty-one. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

One—Where he continues in possession in person, or by subtenants, of the property, or of any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord; but, in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

Two—Where he continues in possession in person, or by subtenants, without the permission of his landlord, after default in the payment of rent pursuant to the lease or agreement under which the property is held, and three days notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him; and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within one year after the rent becomes due.

Three—Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, than the one for the payment of rent, and three days notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall



have been served upon him; and if there be a sub-tenant in actual occupation of the premises, also upon such subtenant. Same.

Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. A tenant may take proceedings similar to those prescribed in this Chapter to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

SEC. 148. Section eleven hundred and sixty-two of said Code is amended to read as follows:

Section Eleven Hundred and Sixty-two. The notices required by the preceding section may be served, either: Service of notice.

One—By delivering a copy to the tenant personally; or,

Two—If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or,

Three—If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

SEC. 149. Section eleven hundred and sixty-four of said Code is amended to read as follows:

Parties  
defendant.

Section Eleven Hundred and Sixty-four. No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. In case a married woman be a tenant or subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action.

SEC. 150. Section eleven hundred and sixty-six of said Code is amended to read as follows:

Complaint.

Section Eleven Hundred and Sixty-six. The plaintiff must file with the Clerk of the County Court his written complaint, setting forth therein 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. On filing the complaint, the Clerk must issue a summons thereon, returnable at a day designated therein, which shall not be less than three days nor more than twelve days from its date.

SEC. 151. Section eleven hundred and sixty-seven of said Code is amended to read as follows:

Section Eleven Hundred and Sixty-seven. 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 section, where the same has not for any reason been served, the plaintiff may have an alias summons issued.

Summons,  
service, etc.

SEC. 152. Section eleven hundred and seventy-one of said Code is amended to read as follows:

Section Eleven Hundred and Seventy-one. Whenever an issue of fact is presented by the pleadings, it must be tried by 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 County Court.

Trial by  
jury.

SEC. 153. Section eleven hundred and seventy-four of said Code is amended to read as follows:

Section Eleven Hundred and Seventy-four. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the Court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of

Verdict,  
judgment,  
etc.

Same.

rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the Court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into Court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the Court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

SEC. 154. The following is added as a new section to said Code, and must be inserted in said Code after section eleven hundred and seventy-eight, and designated as section eleven hundred and seventy-nine:

Section Eleven Hundred and Seventy-nine. The County Court may relieve a tenant against a forfeiture

of a lease, and restore him to his former estate, in cases 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 eleven hundred and seventy-four. The application may be made by a tenant, or subtenant, 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, is made.

Forfeiture,  
relief  
against, etc.

SEC. 155. Section eleven hundred and eighty-five of said Code is amended to read as follows:

Section Eleven Hundred and Eighty-five. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the Court on rendering judgment, is also subject to the lien, if, at the commencement of the work, or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered, or repaired, but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Mechanics'  
lien,  
lands, etc.

SEC. 156. Section eleven hundred and ninety-seven of said Code is amended to read as follows:

Section Eleven Hundred and Ninety-seven. Nothing contained in this Chapter shall be construed to

Not to  
affect right  
of way.

impair or affect the right of any person to whom any debt may be due for work done or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

SEC. 157. Section twelve hundred and four of said Code is amended to read as follows:

Preferred  
creditors,  
assign-  
ments.

Section Twelve Hundred and Four. In all assignments of property, made by any person to trustees or assignees, on account of the inability of the person, at the time of the assignment, to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person, to the amount of one hundred dollars each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor.

SEC. 158. Section twelve hundred and five of said Code is amended to read as follows:

Estates.

Section Twelve Hundred and Five. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer, for services rendered within the sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person.

SEC. 159. Section twelve hundred and six of said Code is amended to read as follows:

Execu-  
tions, etc.

Section Twelve Hundred and Six. In cases of executions, attachments, and writs of a similar nature, issued against any person, except for claims for labor

done, any miners, mechanics, salesmen, servants, clerks Same. and laborers, who have claims against the defendant for labor done, may give notice of their claims, and the amount thereof, sworn to by the person making the claim, to the creditor and the officer executing either of such writs, at any time before the actual sale of property levied on; and, unless such claim is disputed by the debtor or a creditor, such officer must pay to such persons, out of the proceeds of the sale, the amount each is entitled to receive for services rendered within the sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all of the claims so presented, and claiming preference under this section, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days, for the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action; and in case judgment be had for the claim, or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim, with the same rank as the original claim.

SEC. 160. Section twelve hundred and thirty-eight of said Code is amended to read as follows:

Section Twelve Hundred and Thirty-eight. Subject to the provisions of this Title the right of eminent domain may be exercised in behalf of the following public uses: Eminent domain, uses.

One—Fortifications, magazines, arsenals, navy yards, navy and army stations, lighthouses, range and beacon

Same.

lights, coast surveys, and all other public uses authorized by the Government of the United States.

Two—Public buildings and grounds for the use of the State, and all other public uses authorized by the Legislature of this State.

Three—Public buildings and grounds for the use of any county, incorporated city, or city and county, village, town or school districts, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, or city and county, village, or town; or for draining any county, incorporated city, or city and county, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, or city and county, village, or town, or the inhabitants thereof, which may be authorized by the Legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes by which the same may be authorized.

Four—Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, by-roads, plank and turnpike roads, steam and horse railroads, canals, ditches, flumes, aqueducts, and pipes, for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable.

Five—Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines.



Six—By-roads leading from highways to residences and farms. Same.

Seven—Telegraph lines.

Eight—Sewerage of any incorporated city, or city and county, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the State, or to any College or University.

SEC. 161. Section twelve hundred and thirty-nine of said Code is amended to read as follows:

Section Twelve Hundred and Thirty-nine. The following is a classification of the estates and rights in lands subject to be taken for public use:

Estates  
subject to  
public  
use.

One—A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

Two—An easement, when taken for any other use.

Three—The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

SEC. 162. Section twelve hundred and forty-four of said Code is amended to read as follows:

Section Twelve Hundred and Forty-four. The complaint must contain:

Complaint  
in condem-  
nation.

One—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 plaintiffs.

Two—The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

Same.

Three—A statement of the right of the plaintiff.

Four—If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with surveys and maps thereof.

Five—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 unincorporated village, or town, the County Judge alone must be named as plaintiff.

Probate of  
will;  
petition.

SEC. 163. Section thirteen hundred of said Code is hereby amended so as to read as follows:

Section Thirteen Hundred. A petition for the probate of a will must show:

One—The jurisdictional facts.

Two—Whether the person named as executor consents to act, or renounces his right to letters testamentary.

Three—The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner.

Four—The probable value and character of the property of the estate.

Five—The name of the person for whom letters testamentary are prayed.

No defect of form or in the statement of jurisdictional facts actually existing shall make void the probate of a will.

SEC. 164. Section thirteen hundred and four of said Code is hereby amended so as to read as follows:

Section Thirteen Hundred and Four. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the State, at their places of residence, if known to the petitioner, and deposited in the Post Office, with the postage thereon prepaid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them, and deposited in the Post Office at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing is equivalent to mailing.

Notification.

SEC. 165. Section thirteen hundred and six of said Code is amended to read as follows:

Section Thirteen Hundred and Six. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the Court, unless the parties appear, must require proof that the notice has been given, which being made, the Court must hear testimony in proof of the will.

Hearing.

SEC. 166. Section thirteen hundred and seven of said Code is amended to read as follows:

Section Thirteen Hundred and Seven. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the Court for that purpose; but a

Contesting.

contest made by an attorney appointed by the Court does not bar a contest after probate by the party so represented, if commenced within the time provided in Article Four of this Chapter; nor does the non-appointment of an attorney by the Court of itself invalidate the probate of a will.

SEC. 167. Section thirteen hundred and twenty-eight of said Code is amended to read as follows:

Citations. Section Thirteen Hundred and Twenty-eight. Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the State, so far as known to the petitioner; or to their guardians, if any of them are minors; or to their personal representatives, if any of them are dead; requiring them to appear before the Court on some day of a regular term, therein specified, to show cause why the probate of the will should not be revoked.

SEC. 168. Section thirteen hundred and thirty-three of said Code is amended to read as follows:

When  
conclusive. Section Thirteen Hundred and Thirty-three. If no person, within one year after the probate of a will, contest the same or the validity thereof, the probate of the will is conclusive; saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

SEC. 169. Section thirteen hundred and forty of said Code is amended to read as follows:

Lost wills;  
provisions,  
proofs, etc. Section Thirteen Hundred and Forty. When a lost will is established, the provisions thereof must be distinctly stated and certified by the Probate 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 ad-

ministration with the will annexed, must be issued thereon, in the same manner 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 thirteen hundred and sixteen.

SEC. 170. Section thirteen hundred and eighty-four of said Code is amended to read as follows:

Section Thirteen Hundred and Eighty-four. When such petition is filed, the Clerk must, in addition to the notice provided in section thirteen hundred and seventy-three, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Revoca-  
tion;  
citations  
for, etc.

SEC. 171. Section thirteen hundred and ninety-four of said Code is amended to read as follows:

Section Thirteen Hundred and Ninety-four. Before the Probate Court 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 to  
sureties,  
etc.

SEC. 172. Section thirteen hundred and ninety-six of said Code is amended to read as follows:

When bond  
may be  
dispensed  
with.

Section Thirteen Hundred and Ninety-six. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed without any bond, unless the Court, for good cause, require one to be executed; but the executor may at any time afterwards (if it appear from any cause necessary or proper) be required to file a bond, as in other cases.

SEC. 173. Section fourteen hundred and sixty of said Code is amended to read as follows:

Examina-  
tions, etc.,  
as to  
embezzle-  
ment, etc.

Section Fourteen Hundred and Sixty. 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, 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 Probate 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 Probate Court. The order

for such disclosure, made upon such examination, is *Same.* prima facie evidence of the right of such 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.

SEC. 174. The following is added as a new section to said Code, and must be inserted in said Code after section fourteen hundred and six, and designated as section fourteen hundred and seven:

Section Fourteen Hundred and Seven. The liability of principal and sureties upon the bond of any executor, administrator, or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable. Liability of principal, etc.

SEC. 175. Section fourteen hundred and sixty-eight of said Code is amended to read as follows:

Section Fourteen Hundred and Sixty-eight. When property is set apart for the use of the family, in accordance with the provisions of this Chapter, if the decedent left a widow or surviving husband, and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children. Descent of property set apart; for family support.

SEC. 176. Section fourteen hundred and seventy-four of said Code is amended to read as follows:

**Homestead** Section Fourteen Hundred and Seventy-four. 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, 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 husband or wife, 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 Probate 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. 177. Section fourteen hundred and seventy-five of said Code is amended to read as follows:

Same,  
when less  
than five  
thousand  
dollars

Section Fourteen Hundred and Seventy-five. 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 Probate 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 allowed 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 proportionally



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.

SEC. 178. Section fourteen hundred and seventy-six of said Code is amended to read as follows:

Section Fourteen Hundred and Seventy-six. If the homestead, as selected and recorded, be returned in the inventory appraised at more than five thousand dollars, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceeded five thousand dollars, or if the homestead was appraised as provided in the Civil Code, and such appraised value exceeded that sum, the appraisers must determine whether the premises can be divided without material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in value to the sum of five thousand dollars, and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of five thousand dollars, and that they cannot be divided without material injury, they must report such finding, and thereafter the Court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

Same,  
when over  
five  
thousand  
dollars.

SEC. 179. Section fourteen hundred and seventy-eight of said Code is amended to read as follows:

Section Fourteen Hundred and Seventy-eight. When the report of the appraisers is filed, the Court must set a day for hearing any objections thereto, from any one interested in the estate. Notice of the hearing

Hearing  
appraisers  
report.

must be given for such time, and in such manner, as the Court may direct. If the Court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the Court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report, as upon the first report.

Repealed. SEC. 180. Sections fourteen hundred and seventy-nine, fourteen hundred and eighty, fourteen hundred and eighty-one, fourteen hundred and eighty-two, fourteen hundred and eighty-three, and fourteen hundred and eighty-four, are repealed.

SEC. 181. Section fourteen hundred and ninety-three of said Code is amended to read as follows:

Claims,  
barred  
when.

Section Fourteen Hundred and Ninety-three. If a claim arising upon a contract heretofore made, be not presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the Probate Judge, that the claimant had no notice, as provided in this Chapter, by reason of being out of the State, it may be presented any time before a decree of distribution is entered. A claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged, must be presented within one month after such deficiency is ascertained. All claims arising upon contracts hereafter made, 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 satis-

faction of the executor or administrator and the Probate Judge, 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.

SEC. 182. Section fourteen hundred and ninety-four of said Code is amended to read as follows:

Section Fourteen Hundred and Ninety-four. Every claim which is due when presented to the 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 claimant or 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 reasons 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 District Court.

Proof of,  
etc.

SEC. 183. Section fourteen hundred and ninety-six of said Code is amended to read as follows:

Section Fourteen Hundred and Ninety-six. 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 the Probate Judge for his approval, who must, in the same manner, indorse upon

Allowance  
and  
rejection  
of claims.

Same.

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 is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is prima facie evidence of such presentation and rejection. 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. 184. Section fifteen hundred of said Code is amended to read as follows:

Presentation before suit.

Section Fifteen Hundred. No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator.

SEC. 185. The following is added as a new section to said Code, and must be inserted in said Code after section fifteen hundred and twelve, and designated as section fifteen hundred and thirteen:

Payment of interest-bearing claims.

Section Fifteen Hundred and Thirteen. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the Court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to ex-

isting debts unless the creditor consent to accept the amount.

SEC. 186. Section fifteen hundred and sixteen of said Code is amended to read as follows:

Section Fifteen Hundred and Sixteen. All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this Code and in the Civil Code. And the said property, personal and real, may be sold as the Court may direct, in the manner prescribed in this Chapter. There shall be no priority as between personal and real property for the above purposes.

Estate, how chargeable.

SEC. 187. Section fifteen hundred and eighteen of said Code is amended to read as follows:

Section Fifteen Hundred and Eighteen. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined. 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 the necessity be stated in the order directing the sale.

Petitions for orders of sale.

SEC. 188. Section fifteen hundred and nineteen of said Code is amended to read as follows:

Section Fifteen Hundred and Nineteen. 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 prop-

One petition, etc., when.

Same. erty, which may be sold as provided in section fifteen hundred and twenty-two. The Probate 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. 189. Section fifteen hundred and twenty-three of said Code is amended to read as follows:

Order to  
sell  
personal  
property.

Section Fifteen Hundred and Twenty-three. If claims against the estate have been allowed, and a sale of property is necessary for their payment, or 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, either in vacation or term, 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 interest 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.

SEC. 190. Section fifteen hundred and twenty-five of said Code is amended to read as follows:

What  
property to  
be sold  
first.

Section Fifteen Hundred and Twenty-five. If it appear that a sale is necessary for the payment of debts or the family allowance, or for the best interest of the estate and the persons interested in the property to be

sold, whether it is or is not necessary to pay the debts or family allowance, the Court or Judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, must be first sold, and the Court or Judge must so direct.

SEC. 191. Section fifteen hundred and twenty-six of said Code is amended to read as follows:

Section Fifteen Hundred and Twenty-six. 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 reasons shown, the Probate Court or Judge 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.

Personal  
property,  
how sold.

SEC. 192. Section fifteen hundred and thirty-six of said Code is amended to read as follows:

Section Fifteen Hundred and Thirty-six. 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

Real or  
personal,  
when.

the Probate Court; and an application for the sale of real property may also embrace the sale of personal property.

SEC. 193. Section fifteen hundred and thirty-seven of said Code is amended to read as follows:

Order, how  
obtained,  
etc.

Section Fifteen Hundred and Thirty-seven. To obtain an order for the sale of real property, he must present a verified petition to the Probate Court, or to the Judge at chambers, setting forth the amount of personal property 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 decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; 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. 194. Section fifteen hundred and thirty-nine of said Code is amended to read as follows:

Section Fifteen Hundred and Thirty-nine. A copy of the order to show cause must be personally served



on all persons interested in the estate, any general guardian of a minor so interested, and any legatee, or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper in the county as the Court or Judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

Hearing,  
notice, etc.

SEC. 195. Sections fifteen hundred and forty-six and fifteen hundred and fifty-nine are repealed.

Repealed.

SEC. 196. Section fifteen hundred and sixty-one of said Code is amended to read as follows:

Section Fifteen Hundred and Sixty-one. 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 the order of the Probate 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 is confirmed by the Court.

Sales  
without  
order.

SEC. 197. Section sixteen hundred and one of said Code is amended to read as follows:

Section Sixteen Hundred and One. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the Recorder of the county where the lands lie, and is prima facie evidence of the correctness of the proceed-

Convey-  
ances by  
execution,  
etc.

ings, and of the authority of the executor or administrator to make the conveyance.

SEC. 198. Section sixteen hundred and thirty-four of said Code is amended to read as follows:

Final  
settlement,  
etc.

Section Sixteen Hundred and Thirty-four. If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state these facts, and must be served, published, or waived in the same manner as provided in section fifteen hundred and thirty-nine of this Code, relating to sales of property; and, on confirmation of the final account, distribution and partition of the estate to all entitled thereto may be immediately had, without further notice or proceedings. If, from any cause, the hearing of the account or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

SEC. 199. Section sixteen hundred and thirty-seven of said Code is amended to read as follows:

Settlement  
conclusive,  
except.

Section Sixteen Hundred and Thirty-seven. The settlement of the account and the allowance thereof by the Court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of the account is prima facie evidence of its correctness.

SEC. 200. The following are added as new sections to said Code, and must be inserted in said Code after section sixteen hundred and thirty-eight, and design-

nated as section sixteen hundred and thirty-nine and section sixteen hundred and forty:

Section Sixteen Hundred and Thirty-nine. When-  
ever it appears to the Court on any hearing of an ap-  
plication for the sale of real property, that it would be  
for the interest of the estate that personal property of  
the estate, or some part of such property, should be  
first sold, the Court may decree the sale of such per-  
sonal property, or any part of it, and the sale thereof  
shall be conducted in the same manner as if the appli-  
cation had been made for the sale of such personal  
property, in the first instance.

Sale of  
personal  
property.

Section Sixteen Hundred and Forty. Pending the  
settlement of any estate on the petition of any party  
interested therein, the Probate Court may order any  
moneys in the hands of the executors or administra-  
tors 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 Judge.

Funds  
pending  
settlement.

SEC. 201. Section sixteen hundred and sixty-eight  
of said Code is amended to read as follows:

Section Sixteen Hundred and Sixty-eight. The  
order or decree may be made on the petition of the  
executor or administrator, or of any person interested  
in the estate. Notice of the application must be given  
by posting or publication, as the Court may direct, and  
for such time as may be ordered. If partition be ap-  
plied for as provided in this Chapter, the decree of  
distribution shall not divest the Court of jurisdiction  
to order partition, unless the estate is finally closed.

Decree of  
distribu-  
tion, etc.

SEC. 202. Section sixteen hundred and ninety-eight  
of said Code is amended to read as follows:

Section Sixteen Hundred and Ninety-eight. The

Discovery  
of property.

final settlement of an estate, as in this Chapter provided, shall not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper for any cause that letters should be again issued.

SEC. 203. Section seventeen hundred and four of said Code is amended to read as follows:

Orders and  
decrees.

Section Seventeen Hundred and Four. Orders and decrees made by the Probate Court, or the Judge thereof, 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, and upon the close of each term the Judge must sign the minutes.

SEC. 204. Section seventeen hundred and eighteen of said Code is amended to read as follows:

Appoint-  
ment of  
attorney,  
etc.

Section Seventeen Hundred and Eighteen. 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-resi-

dents, are unrepresented. The order must specify the same names of the parties 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 become necessary, the Probate 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. 205. Section seventeen hundred and nineteen of said Code is amended to read as follows:

Section Seventeen Hundred and Nineteen. When a judgment or decree is made, setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the Recorder of the county in which the property is situated.

Decrees,  
what to be  
recorded.

SEC. 206. The following is added as a new section to said Code, and must be inserted in said Code after section seventeen hundred and twenty-one, and designated as section seventeen hundred and twenty-two:

Section Seventeen Hundred and Twenty-two. 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 Probate 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

Service of  
process on  
guardian.

ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

SEC. 207. Section seventeen hundred and thirty-seven of said Code is amended to read as follows:

Estate  
moneys,  
escheats,  
etc.

Section Seventeen Hundred and Thirty-seven. 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 the Probate 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 the Probate Judge, and not otherwise, and to keep an account with each 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. The moneys thus deposited may, upon order of the Probate 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 Probate Court, and if any such moneys and effects escheat to the State they must be disposed of as other escheated estates.

SEC. 208. Section seventeen hundred and forty-seven of said Code is amended to read as follows:

Section Seventeen Hundred and Forty-seven. The Probate Judge of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both 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, in behalf of such minor. Before making the appointment, the Judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

Appoint-  
ment of  
guardians.

SEC. 209. The following is added as a new section to said Code, and must be inserted in said Code after section seventeen hundred and sixty-five, and designated as section seventeen hundred and sixty-six:

Section Seventeen Hundred and Sixty-six. Any person who has been declared insane, or the guardian or any relative of such person, within the third degree, or any friend, may apply by petition to the Probate Judge 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. Upon receiving the petition, the Judge must appoint a day for the hearing, 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 other cases in the Probate Court. The Judge shall cause notice of the trial to be given to the guardian of the petitioner,

Proceed-  
ings for  
restoration  
of insane,  
etc.

**Same.** 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 petitioner, and, in the discretion of the Judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and examined by the Judge of his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

SEC. 210. Section seventeen hundred and ninety-eight of said Code is amended to read as follows:

Petition for  
removal of  
non-resi-  
dent ward's  
property.

Section Seventeen Hundred and Ninety-eight. 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:

One—A transcript of the record of his appointment.

Two—That he has entered upon the discharge of his duties.

Three—That he is entitled, by the laws of the State of his appointment, to the possession of the estate of his 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, 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 con-



trary is shown, the Probate Judge 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. 211. Section eighteen hundred and twenty-eight of said Code is amended to read as follows:

Section Eighteen Hundred and Twenty-eight. There are several degrees of evidence: Evidence,  
degrees of.

One—Primary and secondary.

Two—Direct and indirect.

Three—Prima facie, partial, satisfactory, indispensable, and conclusive.

SEC. 212. Section eighteen hundred and twenty-nine of said Code is amended to read as follows:

Section Eighteen Hundred and Twenty-nine. Primary evidence is that kind of evidence which, under every possible circumstance, affords the greatest certainty of the fact in question. Thus, a written instrument is itself the best possible evidence of its existence and contents. Primary.

SEC. 213. Section eighteen hundred and thirty of said Code is amended to read as follows:

Section Eighteen Hundred and Thirty. Secondary evidence is that which is inferior to primary. Thus, a copy of an instrument or oral evidence of its contents is secondary evidence of the instrument and contents. Secondary.

SEC. 214. Section eighteen hundred and thirty-three of said Code is amended to read as follows:

Section Eighteen Hundred and Thirty-three. Prima facie evidence is that which suffices for the proof of a particular fact, until contradicted and overcome by Prima facie

other evidence. For example: the certificate of a recording officer is *prima facie* evidence of a record, but it may afterwards be rejected upon proof that there is no such record.

SEC. 215. Section eighteen hundred and forty-eight of said Code is amended to read as follows:

Rights,  
etc., of one  
not affected  
by another.

Section Eighteen Hundred and Forty-eight. The rights of a party cannot be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one cannot affect another.

SEC. 216. Section eighteen hundred and fifty-one of said Code is amended to read as follows:

Evidence  
relating to  
third  
persons.

Section Eighteen Hundred and Fifty-one. And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is *prima facie* evidence between the parties.

SEC. 217. Section eighteen hundred and fifty-five of said Code is amended to read as follows:

Contents  
of writing,  
how  
proved.

Section Eighteen Hundred and Fifty-five. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:  
One—When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

Two—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

Three—When the original is a record or other document in the custody of a public officer.

Four—When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute.

Five—When the original consists of numerous ac-

counts or other documents, which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in subdivisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one and two, either a copy or oral evidence of the contents.

SEC. 218. Section eighteen hundred and eighty of said Code is amended to read as follows:

Persons  
who cannot  
testify.

Section Eighteen Hundred and Eighty. The following persons cannot be witnesses:

One—Those who are of unsound mind at the time of their production for examination.

Two—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.

Three—Parties to an action or proceeding, or in whose behalf an action or proceeding is prosecuted, against an executor, or an administrator, upon a claim or demand against the estate of the deceased.

SEC. 219. Section eighteen hundred and ninety-three of said Code is amended to read as follows:

Section Eighteen Hundred and Ninety-three. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Public  
officers to  
give copies.

SEC. 220. Section nineteen hundred and one of said Code is amended to read as follows:

Section Nineteen Hundred and One. A copy of the written law or other public writing of any State or

Evidence  
of foreign  
law.

country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country, is admissible as evidence of such law or writing.

SEC. 221. Section nineteen hundred and six of said Code is amended to read as follows:

Same,  
judicial  
records.

Section Nineteen Hundred and Six. A judicial record of a foreign country may be proved by the attestation of the Clerk, with the seal of the Court annexed, if there be a Clerk and a seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the Chief Judge, or presiding magistrate, that the person making the attestation is the Clerk of the Court or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the Chief Judge or presiding magistrate must be authenticated by the certificate of the Minister or Ambassador, or a Consul, Vice Consul, or Consular Agent of the United States in such foreign country.

SEC. 222. Section nineteen hundred and eight of said Code is amended to read as follows:

Effect of  
judgment  
or final  
order.

Section Nineteen Hundred and Eight. The effect of a judgment or final order in an action or special proceeding before a Court or Judge of this State, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:

One—In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration, or the condition or relation of the person.

Two—In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

SEC. 223. Section nineteen hundred and eighteen of said Code is amended to read as follows:

Section Nineteen Hundred and Eighteen. Other official documents may be proved, as follows:

Manner of  
proving  
other  
official  
documents.

One—Acts of the Executive of this State, by the records of the State Department of the State; and of the United States, by the records of the State Department of the United States, certified by the heads of those departments respectively. They may also be proved by public documents printed by order of the Legislature or Congress, or either house thereof.

Two—The proceedings of the Legislature of this State, or of Congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the Clerk or printed by their order.

Three—The acts of the Executive, or the proceedings of the Legislature of a sister State, in the same manner.

Four—The acts of the Executive, or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the Executive of the United States.

Five—Acts of a municipal corporation of this State, or of a Board or department thereof, by a copy, certi-

**Same.** filed by the legal keeper thereof, or by a printed book published by the authority of such corporation.

Six—Documents of any other class in this State, by the original, or by a copy, certified by the legal keeper thereof.

Seven—Documents of any other class in a sister State, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the Secretary of State, Judge of the Supreme, Superior, or County Court, or Mayor of a city of such State, that the copy is duly certified by the officer having the legal custody of the original.

Eight—Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate, under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and the copy is duly certified by the officer having the legal custody of the original.

Nine—Documents in the departments of the United States Government, by the certificates of the legal custodian thereof.

SEC. 224. Section nineteen hundred and twenty of said Code is amended to read as follows:

Entries  
prima facie  
evidence.

Section Nineteen Hundred and Twenty. Entries in public or other official books or records, made in the performance of his duty by a public officer of this State, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

SEC. 225. Section nineteen hundred and twenty-three of said Code is amended to read as follows:

Contents of  
certificates,  
etc.

Section Nineteen Hundred and Twenty-three. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in sub-

stance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the Clerk of a Court having a seal, under the seal of such Court.

SEC. 226. Section nineteen hundred and twenty-four of said Code is amended to read as follows:

Section Nineteen Hundred and Twenty-four. The provisions of the preceding sections of this Article applicable to the public writings of a sister State, are equally applicable to the public writings of the United States, or a Territory of the United States.

Provisions,  
etc., States  
apply to  
Territories.

SEC. 227. Section nineteen hundred and twenty-six of said Code is amended to read as follows:

Section Nineteen Hundred and Twenty-six. An entry made by an officer, or Board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

Entries by  
officers, etc.

SEC. 228. Section nineteen hundred and thirty-one of said Code is amended to read as follows:

Section Nineteen Hundred and Thirty-one. A public seal in this State is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a sister State or foreign country, and there

Seal, and  
how made.

recognized as a seal, must be so regarded in this State.

SEC. 229. Section nineteen hundred and thirty-two of said Code is amended to read as follows:

*Of no effect.* Section Nineteen Hundred and Thirty-two. There shall be no difference hereafter, in this State, between sealed and unsealed writings. A writing under seal may therefore be changed, or altogether discharged by a writing not under seal.

SEC. 230. Section nineteen hundred and thirty-six of said Code is amended to read as follows:

*Books, &c., how far evidence.* Section Nineteen Hundred and Thirty-six. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

SEC. 231. Section nineteen hundred and forty of said Code is amended to read as follows:

*Writing, how proved.* Section Nineteen Hundred and Forty. Any writing may be proved either:

One—By any one who saw the writing executed; or,

Two—By evidence of the genuineness of the handwriting of the maker; or,

Three—By a subscribing witness.

SEC. 232. Section nineteen hundred and forty-four of said Code is amended to read as follows:

*Evidence of handwriting by comparison.* Section Nineteen Hundred and Forty-four. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the jury, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the Judge.

SEC. 233. Section nineteen hundred and forty-six of said Code is amended to read as follows:



Section Nineteen Hundred and Forty-six. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as prima facie evidence of the facts stated therein, in the following cases:

Entries of decedents, evidence by.

One—When the entry was made against the interest of the person making it.

Two—When it was made in a professional capacity and in the ordinary course of professional conduct.

Three—When it was made in the performance of a duty specially enjoined by law.

SEC. 234. Section nineteen hundred and forty-eight of said Code is amended to read as follows:

Section Nineteen Hundred and Forty-eight. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Private writing, how proved

SEC. 235. Section nineteen hundred and forty-nine of said Code is repealed.

Repealed.

SEC. 236. Section nineteen hundred and fifty of said Code is amended to read as follows:

Section Nineteen Hundred and Fifty. The record of a conveyance of real property, or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a Court, in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending, or where the Court is held in the same building with such office.

Removal of public records.

SEC. 237. The following is added as a new section to said Code, and must be inserted in said Code after section nineteen hundred and fifty, and designated as section nineteen hundred and fifty-one:

Instrument  
affecting  
real  
property,  
evidence  
by.

Section Nineteen Hundred and Fifty-one. Every instrument conveying or affecting real property, acknowledged, or proved, and certified, as provided in the Civil Code, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit, or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

SEC. 238. Section nineteen hundred and sixty-nine of said Code is amended to read as follows:

Wills to be  
written.

Section Nineteen Hundred and Sixty-nine. A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

SEC. 239. Section nineteen hundred and seventy of said Code is amended to read as follows:

Will, how  
revoked.

Section Nineteen Hundred and Seventy. A written will cannot be revoked or altered otherwise than as provided in the Civil Code.

SEC. 240. Section two thousand and eleven of said Code is amended to read as follows:

Filing  
evidence of  
publication

Section Two Thousand and Eleven. If such affidavit be made in an action or special proceeding pending in a Court, it may be filed with the Court or a

Clerk thereof. If not so made, it may be filed with the Clerk of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the Judge of the Court or Clerk having it in custody, is prima facie evidence of the facts stated therein.

SEC. 241. Section two thousand and thirteen of said Code is amended to read as follows:

Section Two Thousand and Thirteen. An affidavit taken in another State of the United States, to be used in this State, may be taken before a Commissioner appointed by the Governor of this State to take affidavits and depositions in such other State, or before any Notary Public in another State, or before any Judge or Clerk of a Court of record having a seal.

*Affidavit  
out of  
State, how  
taken.*

SEC. 242. Section two thousand and fourteen of said Code is amended to read as follows:

Section Two Thousand and Fourteen. An affidavit taken in a foreign country to be used in this State, may be taken before an Ambassador, Minister, Consul, Vice Consul, or Consular Agent of the United States, or before any Judge of a Court of record having a seal in such foreign country.

*In foreign  
country.*

SEC. 243. Section two thousand and twenty-four of said Code is amended to read as follows:

Section Two Thousand and Twenty-four. 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 Judge or Court, or County Judge, 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 officer issuing it. If

*Deposition  
out of  
State, how  
taken.*

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.

SEC. 244. Section two thousand and seventy-seven of said Code is amended to read as follows:

Rules for  
construing  
land de-  
scriptions.

Section Two Thousand and Seventy-seven. The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful and there are no other sufficient circumstances to determine it:

One—Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false, does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

Two—When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

Three—Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

Four—When a road, or stream of water not navigable, is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

Five—When tide water is the boundary, the rights of the grantor to ordinary high-water mark are included in the conveyance. When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low-water mark are included in the conveyance.

Six—When the description refers to a map, and that reference is inconsistent with other particulars, it controls them if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

SEC. 245. Section two thousand and eighty-four of said Code is amended to read as follows:

Section Two Thousand and Eighty-four. The applicant must produce to a District Judge, or to a County Judge, a petition, verified by the oath of the applicant, stating:

Petition to perpetuate testimony.

One—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,

Two—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 it 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,

Three—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 the 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

Order, etc.

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 depositions must be returned when taken.

SEC. 246. Section two thousand and eighty-five of said Code is amended to read as follows:

Taking  
depositions

Section Two Thousand and Eighty-five. The person appointed by the Judge to take the depositions is authorized, if a resident of this State, on receiving a copy of the order of the Judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the State, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice; to take the deposition of the witness named in the order of the Judge, or in the commission, or, if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

SEC. 247. Section two thousand and eighty-six of said Code is amended to read as follows:

Manner,  
etc.

Section Two Thousand and Eighty-six. The examination must be by question and answer, and if the testimony is to be taken in another State, it must be taken upon a commission to be issued by the Judge allowing the examination, under the seal of the Court of which he is Judge, and upon interrogatories, to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the Judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then

certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the Clerk of the county designated in the order of the Judge allowing the examination, who shall file the same when received. The Judge allowing the examination shall file with the Clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

SEC. 248. Section two thousand and eighty-seven of said Code is amended to read as follows:

Section Two Thousand and Eighty-seven. The petition and order, and papers filed by the Judge, as provided in section two thousand and eighty-six, or a certified copy thereof, are prima facie evidence of the facts stated therein to show compliance with the provisions of this Chapter.

Papers  
prima facie  
evidence.

SEC. 249. Section two thousand and eighty-eight of said Code is amended to read as follows:

Section Two Thousand and Eighty-eight. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witnesses, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

When  
used.

SEC. 250. Section two thousand and ninety-four of said Code is amended to read as follows:

Form of  
witness'  
oath.

Section Two Thousand and Ninety-four. An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between — and —, shall be the truth, the whole truth, and nothing but the truth, so help you God."

SEC. 251. Section twenty-one hundred and one of said Code is amended to read as follows:

Questions  
of fact,  
how tried.

Section Twenty-one Hundred and One. All questions of fact, where the trial is by jury, other than those mentioned in the next section, are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this Code.

SEC. 252. The following is added as a new section to said Code, and must be inserted in said Code after section two thousand one hundred and three, and designated [section] two thousand one hundred and four:

Moneys  
paid into  
Court.

Section Two Thousand One Hundred and Four. Whenever moneys are paid into or deposited in Court, the same shall be delivered to the Clerk in person, or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. He must, unless otherwise directed by law, deposit it with the County Treasurer, to be held by him subject to the order of the Court. The Treasurer shall keep each Fund distinct, and open an account with each. Such appointment shall be filed with the County Treasurer, who shall exhibit it, and give to each person applying for the same a certified copy of the same. It shall be in force until a revocation in writing is filed with the County Treasurer,



who shall thereupon write "Revoked," in ink, across the face of the appointment.

SEC. 253. All provisions of law inconsistent with the provisions of this Act, are hereby repealed; but no rights acquired or proceedings taken under the provisions repealed shall be impaired, or in any manner affected by this repeal; and whenever a limitation or period of time prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Act takes effect, and the same or any other limitation is prescribed by this Act, the time which shall have run when this Act takes effect shall be deemed part of the time prescribed by this Act.

Repeals,  
rights,  
limitations,  
etc.

SEC. 254. This Act takes effect on the first day of July, one thousand eight hundred and seventy-four.

[Chap. 383.]

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AN ACT TO AMEND SECTION FIFTY OF THE CODE OF  
CIVIL PROCEDURE.

[Approved March 30th, 1874.]

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

SECTION 1. Section fifty of said Code is hereby amended so as to read as follows:

Section Fifty. The April and October terms of this Court shall be held at the Capital of the State. If proper rooms in which to hold the Court, and for the accommodation of the officers thereof, are not provided for by the State, together with attendants, furniture, fuel, lights, and stationery suitable and sufficient for the transaction of business, the Court may direct the Sheriff of the county in which it is held to provide such rooms, attendants, furniture, fuel, lights,

Supreme  
Court;  
terms,  
where  
held.

Same.

and stationery, and the expenses thereof, certified by a majority of the Justices to be correct, must be paid out of the State Treasury. The January and July terms of this Court may be held at the City and County of San Francisco, provided the Board of Supervisors thereof, at the discretion of said Board, shall procure and maintain, at the expense of said city and county, rooms and furniture, acceptable to the Justices of said Court, for the accommodation of the business thereof, and of its respective officers, together with necessary attendants, fuel, and lights. And the Board of Supervisors of said city and county are hereby authorized to appropriate all necessary funds to defray the expenses aforesaid, payable out of the General Fund of said city and county. If the said Board of Supervisors shall accept the provisions of this Act, and procure the necessary rooms and furniture at said city and county, for the accommodation of said Court and its officers, then it shall be the duty of said Board to permanently maintain such rooms and furniture, together with the necessary attendants, fuel, and lights; and upon the failure of said Board so to do, after having accepted the provisions of this Act as aforesaid, the Court may direct the Sheriff of said city and county to provide such rooms, furniture, fuel, and lights, and the expenses thereof, certified by a majority of the Justices to be correct, shall be a charge against said city and county, and must be paid out of the General Fund thereof. Until such time as the Board of Supervisors of said city and county shall accept the provisions of this Act, the January and July terms of this Court shall continue to be held at the Capital of the State; *provided*, that in no event shall the State hereafter be put to any additional expense of any kind, character, or nature, by reason of the holding of any term or terms of said Court at said City and County of San Francisco.

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

SEC. 3. This Act shall take effect and be in force from and after its passage.

[Chap. 675.]

AN ACT TO AMEND SECTION FIFTY-EIGHT OF THE  
CODE OF CIVIL PROCEDURE.

[Approved February 5th, 1874.]

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

SECTION 1. Section fifty-eight of said Code is hereby amended so as to read as follows:

Section Fifty-eight. In the First Judicial District, terms of the District Court must be held as follows: In the County of San Luis Obispo, on the first Monday of January, April, July, and October; in the County of Santa Barbara, on the first Monday of February, May, August, and November; in the County of Ventura on the first Monday of March, June, September, and December.

Terms of  
Court, First  
District.

SEC. 2. This Act takes effect immediately.

[Chap. 65.]

AN ACT TO AMEND SECTION FIFTY-EIGHT OF THE  
CODE OF CIVIL PROCEDURE.

[Approved March 20th, 1874.]

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

SECTION 1. Section fifty-eight of said Code is hereby amended so as to read as follows:

Terms of  
Court, First  
District.

Section Fifty-eight. In the First Judicial District, terms of the District Court must be held as follows: In the County of Ventura on the first Monday of March, July, and November; in the County of Santa Barbara on the third Monday of March, July, and November; in the County of San Luis Obispo on the second Monday of May, September, and January.

SEC. 2. This Act takes effect on the first day of July, A. D. eighteen hundred and seventy-four.

[Chap. 348.]

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AN ACT TO AMEND SECTION SIXTY-SEVEN OF THE  
CODE OF CIVIL PROCEDURE.

[Approved January 29th, 1874.]

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

SECTION 1. Section sixty-seven of the Code of Civil Procedure is hereby amended so as to read as follows:

Same.  
Tenth  
District.

Section Sixty-seven. In the Tenth Judicial District, terms of the District Court must be held as follows: In the County of Colusa, on the fourth Monday of April, second Monday of August, and first Monday of December. In the County of Sutter, on the fourth Monday of February, third Monday of June, and second Monday of November. In the County of Yuba, on the third Monday of January, third Monday of May, and first Monday of October. In the County of Sierra, on the first Monday of April, second Monday of July, and the fourth Monday of October.

SEC. 2. This Act shall take effect on the date of its approval.

[Chap. 45.]

AN ACT TO AMEND SECTION SEVENTY OF THE CODE  
OF CIVIL PROCEDURE.

[Approved December 16th, 1873.]

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

SECTION 1. Section seventy of the Code of Civil Procedure of this State is hereby amended to read as follows:

Section Seventy. In the Thirteenth Judicial District, terms of the District Court must be held as follows: In the County of Tulare on the third Monday of January, May, and September; in the County of Fresno on the third Monday of February, June, and October; in the County of Merced on the third Monday of March, July, and November; in the County of Mariposa on the third Monday of April and August, and second Monday of December.

Terms of  
Court.  
Thirteenth  
District.

SEC. 2. This Act shall take effect immediately after its passage.

[Chap. 2.]

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AN ACT TO AMEND SECTION ONE HUNDRED AND FIFTEEN  
OF THE CODE OF CIVIL PROCEDURE.

[Approved February 28th, 1874.]

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

SECTION 1. Section one hundred and fifteen of the Code of Civil Procedure is amended to read as follows:

Justices'  
Courts;  
jurisdiction  
restricted.

Section One Hundred and Fifteen. The jurisdiction conferred by the last section shall not extend, however:

First—To a civil action in which the title or possession of real property is put in issue.

Same.

Second—Nor to an action or proceeding, against ships, vessels, or boats, when the suit or proceeding is for the recovery of seamen's wages for a voyage performed in whole or in part without the waters of this State.

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

[Chap. 150.]

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AN ACT TO AMEND SECTIONS TWO HUNDRED AND SEVENTY AND TWO HUNDRED AND SEVENTY-ONE OF, AND TO ADD SECTIONS TWO HUNDRED AND SEVENTY-TWO, TWO HUNDRED AND SEVENTY-THREE, AND TWO HUNDRED AND SEVENTY-FOUR TO, THE CODE OF CIVIL PROCEDURE.

[Approved March 30th, 1874.]

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

SECTION 1. Section two hundred and seventy of the Code of Civil Procedure is amended to read as follows:

Report of  
official  
reporter  
prima facie  
correct.

Section Two Hundred and Seventy. The report of the official reporter, when appointed and acting in accordance with the provisions of sections two hundred and seventy-two and two hundred and seventy-three of this Code, and not otherwise, 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.

SEC. 2. Section two hundred and seventy-one of said Code is amended to read as follows:

Compensa-  
tion, etc.

Section Two Hundred and Seventy-one. The official reporter shall receive as compensation for his services in civil proceedings, not exceeding ten dollars per day for

taking notes, and not exceeding twenty cents per hundred words for transcription. The shorthand 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 per diem, 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 expense thereof must be paid equally by the respective parties to the action, or either of them, in the discretion of the Court; and no verdict or judgment can 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. In no case shall a transcript be paid for, unless ordered by either the plaintiff or defendant, or by the Court, nor shall the reporter be required, in any civil case, to transcribe his notes, until the compensation therefor be tendered him, or deposited in Court for that purpose. The party ordering the reporter to transcribe any portion of the testimony or proceedings, shall pay the fees of the reporter therefor. In criminal cases, when the testimony has been taken down upon the order of the Court, the compensation of the reporter must be fixed by the Court, and paid out of the Treasury of the county in which the case is tried, upon the order of the Court.

SEC. 3. The following is added as a new section to

said Code, and must be inserted in said Code after section two hundred and seventy-one, and designated as section two hundred and seventy-two:

**Examination.**

Section Two Hundred and Seventy-two. No person shall be appointed to, or be retained in the position of official reporter of any Court in this State, 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 of said Court. The committee so selected shall, upon the request of the Judge of said Court, examine any person as to his qualifications whom said Judge may wish to appoint or retain as official reporter, and no person shall be appointed to, or retained in such position, whose qualifications said committee shall not have reported favorably. The test of competency before

**Test.**

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 forty words per minute for five consecutive minutes, upon matter not previously written by him, and transcribe the same into longhand writing with accuracy. If he pass said 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 in the records of the Court.

SEC. 4. The following is added as a new section to said Code, and must be inserted in said Code after section two hundred and seventy-two, and designated as section two hundred and seventy-three:

**Duties.**

Section Two Hundred and Seventy-three. The official reporter of any District Court must attend to the duties of his office in person, except when excused for a 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 <sup>Same.</sup> 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 Judge of said Court may appoint an official reporter pro tem., who shall perform the same duties and receive the same compensation as the official reporter, and whose report shall have the same legal effect as the report of the official reporter.

SEC. 5. The following is added as a new section to the said Code, and must be inserted in said Code after section two hundred and seventy-three and designated as section two hundred and seventy-four:

Section Two Hundred and Seventy-four. (A.) The official reporter of any Court, or official reporter pro tem., must, before entering on the duties of his office, take and subscribe the following oath: "I do swear (or affirm) 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 official reporter (or official reporter pro tem.) of the ——— Court, according to the best of my ability." Official  
oath.

SEC. 6. All provisions of law inconsistent with the provisions of this Act, are hereby repealed.

SEC. 7. This Act takes effect on the first day of July, one thousand eight hundred and seventy-four.

[Chap. 591.]

## AN ACT TO AMEND SECTION TWO HUNDRED AND SEVENTY-SIX OF THE CODE OF CIVIL PROCEDURE.

[Approved March 18th, 1874.]

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

SECTION 1. Section two hundred and seventy-six of the Code of Civil Procedure is hereby amended so as to read as follows:

Attorney's;  
qualifica-  
tion for  
admission.

Section Two Hundred and Seventy-six. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and undergo a strict examination in open Court as to his qualifications, by the Justices of the Supreme Court; *provided*, that the several County and District Courts of this State may admit applicants to practice as attorneys and counselors in their respective Courts.

[Chap. 306.]

## AN ACT TO AMEND SECTION TWO HUNDRED AND SEVENTY-SIX OF THE CODE OF CIVIL PROCEDURE.

[Approved March 30th, 1874.]

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

SECTION 1. Section two hundred and seventy-six of the Code of Civil Procedure is hereby amended so as to read as follows:

— Same.

Section Two Hundred and Seventy-six. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and undergo a strict examination, in open Court, as to his qualifications by the Justices of the Supreme Court; *provided*, that the several County and

District Courts of this State may admit applicants to practice as attorneys and counselors in their respective Courts.

[Chap. 587.]

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AN ACT TO AMEND SECTION FIVE HUNDRED AND TWENTY-NINE, TITLE SEVEN, OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA.

[Approved March 30th, 1874.]

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

SECTION 1. Section five hundred and twenty-nine, Title Seven, of the Code of Civil Procedure of California, is hereby amended so as to read as follows:

Section Five Hundred and Twenty-nine. On granting an injunction, the Court or Judge must require, except when the people of the State are 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 filing of the undertaking required 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.

Undertaking on injunction.

SEC. 2. This Act shall take effect immediately.

[Chap. 624.]

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AN ACT TO AMEND SECTION FIVE HUNDRED AND THIRTY-NINE, TITLE SEVEN, OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA.

[Approved March 30th, 1874.]

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

SECTION 1. Section five hundred and thirty-nine of the Code of Civil Procedure is hereby amended so as to read as follows:

Undertak-  
ing on  
attachment

Section Five Hundred and Thirty-nine. Before issuing the writ, the Clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. Within five days after service of the summons in the action, 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 Clerk or Judge shall issue an order vacating the writ of attachment.

SEC. 2. This Act shall take effect immediately.

[Chap. 636.]

AN ACT TO AMEND SECTIONS EIGHT HUNDRED AND FORTY-FIVE AND EIGHT HUNDRED AND FORTY-NINE OF AN ACT ENTITLED "AN ACT TO ESTABLISH A CODE OF CIVIL PROCEDURE."

[Approved March 28th, 1874.]

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

SECTION 1. Section eight hundred and forty-five of an Act entitled "An Act to establish a Code of Civil Procedure" is hereby amended to read as follows:

Section Eight Hundred and Forty-five. The time specified in the summons for the appearance of the defendant must be as follows:

Justices' Court; time in summons for defendant to appear.

First—If an order of arrest is indorsed upon the summons, forthwith.

Second—If the defendant is not a resident of the county in which the action is brought, not less than twenty nor more than thirty days from its date.

Third—In all other cases, not less than three nor more than twelve days from its date.

SEC. 2. Section eight hundred and forty-nine of the Code of Civil Procedure is hereby amended to read as follows:

Section Eight Hundred and Forty-nine. The summons may be served by a Sheriff or Constable of any of the counties of this State; *provided*, that when a summons, issued by a Justice of the Peace, is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the County Clerk of such county, to the effect that the person issuing the same was an acting Justice

Service of summons.

**Same.** of the Peace at the date of the summons, or the summons may be served by any male resident, over the age of twenty-one years, not a party to the suit, within the county where the action is brought, and must be served and returned, as provided in Title Five, Part Two, of this Code, or it may be served by publication; and sections four hundred and thirteen and four hundred and twelve, so far as they relate to the publication of summons, are made applicable to Justices' Courts, the word "Justice" being substituted for the word "Judge," whenever the latter word occurs.

[Chap. 523.]

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AN ACT TO AMEND AN ACT ENTITLED "AN ACT  
TO ESTABLISH A CODE OF CIVIL PROCEDURE."

[Approved February 16th, 1874.]

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

SECTION 1. That section nine hundred and forty-nine of an Act entitled "An Act to establish a Code of Civil Procedure" be and the same is hereby amended so as to read as follows:

Appeals;  
stay of  
proceed-  
ings, etc.

Section Nine Hundred and Forty-nine. In cases not provided for in sections nine hundred and forty-two, nine hundred and forty-three, nine hundred and forty-four, and nine hundred and forty-five, the perfecting of an appeal, by giving the undertaking, or making the deposit mentioned in section nine hundred and forty-one, stays proceedings in the Court below, upon the judgment or order appealed from, except where it directs the sale of perishable property; in which case the Court below may order the property to be sold, and the proceeds thereof to be deposited, to abide the judgment of the appellate

Court, and except, also, where it adjudges the defendant guilty of usurping or intruding into or unlawfully holding a public office, civil or military, within this State, and except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

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

[Chap. 90.]

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AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE  
RELATIVE TO LIENS OF MECHANICS AND OTHERS  
UPON REAL PROPERTY.

[Approved March 30th, 1874.]

*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 the Code of Civil Procedure is hereby amended so as to read as follows:

Section Eleven Hundred and Eighty-three. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, sub-contractor, architect, builder, or other person having charge of any mining, or of the construction, alteration, or repair, either in whole or in part, of any

Mechanic  
liens, upon  
what.

building or other improvement, as aforesaid, shall be held to be the agent or the owner, for the purposes of this Chapter.

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

How  
established

Section Eleven Hundred and Eighty-seven. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this Chapter, must, within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the County Recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person.

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

At instance  
of owner,  
what held  
to be, etc.

Section Eleven Hundred and Ninety-two. Every building or other improvement mentioned in the eleven hundred and eighty-third section of this Code, constructed upon any lands with the knowledge of the owner, or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed



shall be subject to any lien filed in accordance with Same. the provisions of this Chapter, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, or the intended construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to the effect, in some conspicuous place upon said land, or upon the building or other improvement situated thereon.

SEC. 4. Section eleven hundred and ninety-three of said Code is hereby amended so as to read as follows:

Section Eleven Hundred and Ninety-three. The contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this Chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which [such] lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

Contractor;  
liens  
for claims  
against,  
etc.

SEC. 5. Section eleven hundred and ninety-four of said Code is hereby amended so as to read as follows:

Order of  
liens.

Section Eleven Hundred and Ninety-four. In every case in which different liens are asserted against any property, the Court, in the judgment, must declare the rank of each lien or class of liens, which shall be in the following order, viz: First—All persons other than the original contractors and sub-contractors. Second—The sub-contractors. Third—The original contractors. And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

SEC. 6. Section eleven hundred and ninety-five of said Code is hereby amended so as to read as follows:

Joint  
actions,  
costs, etc.

Section Eleven Hundred and Ninety-five. Any number of persons claiming liens may join in the same action, and when separate actions are commenced the Court may consolidate them; the Court may also allow as part of the costs the moneys paid for filing and recording the lien and reasonable attorney's fee in the District and Supreme Court.

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

Attach-  
ments, etc.,  
against  
materials.

Section Eleven Hundred and Ninety-six. Whenever materials shall have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to

be applied to the construction, alteration, or repair of such building, mining claim, or other improvement.

[Chap. 586.]

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AN ACT AMENDATORY OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA, BY ADDING THERETO A SECTION, TO BE DESIGNATED ONE THOUSAND TWO HUNDRED AND SEVENTY-NINE.

[Approved March 13th, 1874.]

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

SECTION 1. Amend the Code of Civil Procedure by adding thereto a new section, to be designated as section one thousand two hundred and seventy-nine:

Section One Thousand Two Hundred and Seventy-nine. 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 County 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.

Changes of  
names;  
County  
Clerk to  
return, etc.

[Chap. 246.]

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AN ACT TO AMEND SECTION FIFTEEN HUNDRED AND FIVE OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA.

[Approved March 28th, 1874.]

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

SECTION 1. Section fifteen hundred and five of the Act entitled "An Act to establish a Code of Civil

Procedure," passed March eleventh, eighteen hundred and seventy-two, is hereby so amended as to read as follows:

Executions  
against  
estates, etc.

When any judgment has been rendered for or against the testator intestate in his lifetime, no execution shall issue thereon after his death, except as provided in section six hundred and eighty-six. A judgment against the decedent for the recovery of money must be presented to the executor or administrator like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

SEC. 2. This Act shall take effect immediately.

[Chap. 521.]

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AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE  
OF THE STATE OF CALIFORNIA.

[Approved March 24th, 1874.]

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

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

Compensa-  
tion,  
executor,  
etc.

Section Sixteen Hundred and Sixteen. 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 the Probate or other 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 Probate Court, he renounces all claim for compensation provided by the will.

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

Section Sixteen Hundred and Eighteen. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent; for all above that sum, and not exceeding 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 Probate Judge 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 that Public Administrators shall receive the same compensation and allowances as are allowed in this Title to other administrators.

Commissions,  
executor,  
etc.

SEC. 3. This Act shall take effect and be in force from and after its passage.

[Chap. 396.]



# PENAL CODE.





A C T S

AMENDATORY OF

THE PENAL CODE,

PASSED AT THE

TWENTIETH SESSION OF THE LEGISLATURE.

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AN ACT TO AMEND THE PENAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. Section seven of the Penal Code is amended to read as follows:

Section Seven. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signa-

Terms, etc.  
defined.

Terms, etc.,  
defined.

ture or subscription includes mark, when the person can[not] write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word “willfully,” when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Two—The words “neglect,” “negligence,” “negligent,” and “negligently,” import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Three—The word “corruptly” imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

Four—The words “malice” and “maliciously” import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

Five—The word “knowingly” imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

Six—The word “bribe” signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

Seven—The word “vessel,” when used with refer-

ence to shipping, includes ships of all kinds, steam-boats, canals, boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

Terms, etc.,  
defined.

Eight—The word “peace officer” signifies any one of the officers mentioned in section eight hundred and seventeen of this Code.

Nine—The word “magistrate” signifies any one of the officers mentioned in section eight hundred and eight of this Code.

Ten—The word “property” includes both real and personal property.

Eleven—The words “real property” are coextensive with lands, tenements, and hereditaments.

Twelve—The words “personal property” include money, goods, chattels, things in action, and evidences of debt.

Thirteen—The word “month” means a calendar month, unless otherwise expressed.

Fourteen—The word “will” includes codicils.

Fifteen—The word “writ” signifies an order or precept in writing, issued in the name of the people, or of a Court or judicial officer, and the word “process” a writ or summons issued in the course of judicial proceedings.

Sixteen—Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

Seventeen—Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

Eighteen—When the seal of a Court or public

Terms, etc.,  
defined.

officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

Nineteen—The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories.

SEC. 2. Section twenty-six of said Code is amended to read as follows:

Persons  
capable of  
committing  
crimes.

Section Twenty-six. All persons are capable of committing crimes except those belonging to the following classes:

One—Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

Two—Idiots.

Three—Lunatics and insane persons.

Four—Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.

Five—Persons who committed the act charged without being conscious thereof.

Six—Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

Seven—Married women (except for felonies) acting under the threats, command, or coercion of their husbands.

Eight—Persons (unless the crime be punishable

with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

SEC. 3. Section forty-three of said Code is amended to read as follows:

Section Forty-three. Every person who, after being required by the Board of Judges at any election, refuses to be sworn, or, being sworn, refuses to answer any pertinent question, propounded by such Board, touching the right of another to vote, is guilty of a misdemeanor.

Refusing to testify at elections.

SEC. 4. Section fifty-two of said Code is amended to read as follows:

Section Fifty-two. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the County Jail for the period of six months, or in the State Prison not exceeding two years.

Abetting offenses, etc.

SEC. 5. Section sixty-five of said Code is amended to read as follows:

Section Sixty-five. Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor.

Acting as officer without qualification.

SEC. 6. Section seventy of said Code is amended to read as follows:

Section Seventy. Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Extortion.

SEC. 7. Section ninety-five of said Code is amended to read as follows:

Influencing  
jurors, etc.

Section Ninety-five. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator, or umpire, or appointed a referee, in respect to his verdict in, or decision of any cause, or proceeding, pending, or about to be brought before him, either:

One—By means of any communication, oral or written, had with him except in the regular course of proceedings;

Two—By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;

Three—By means of any threat, intimidation, persuasion, or entreaty; or,

Four—By means of any promise, or assurance of any pecuniary or other advantage;

—Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State Prison not exceeding five years.

SEC. 8. Section ninety-six of said Code is amended to read as follows:

Misconduct  
of jurors.

Section Ninety-six. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

One—Makes any promise or agreement to give a verdict or decision for or against any party; or,

Two—Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State Prison not exceeding five years.

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

Section One Hundred and Sixteen. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury box or otherwise, or extracts any name therefrom, or destroys the jury box or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

Adding  
names to  
jury list.

SEC. 10. Section one hundred and thirty-seven of said Code is amended to read as follows:

Section One Hundred and Thirty-seven. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony.

Bribing  
witnesses.

SEC. 11. Section one hundred and thirty-eight of said Code is amended to read as follows:

Section One Hundred and Thirty-eight. Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a felony.

Witness  
receiving  
bribes.

SEC. 12. Sections one hundred and fifty-one and one hundred and fifty-two of said Code are repealed.

Repealed.

SEC. 13. Section one hundred and seventy-seven of said Code is amended to read as follows:

Offenses,  
when mis-  
demeanors.

Section One Hundred and Seventy-seven. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

SEC. 14. Section one hundred and eighty-two of said Code is amended to read as follows:

Conspiracy

Section One Hundred and Eighty-two. If two or more persons conspire:

One—To commit any crime;

Two—Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;

Three—Falsely to move or maintain any suit, action, or proceeding;

Four—To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,

Five—To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws;—They are punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

SEC. 15. The following is added as a new section to said Code, and must be inserted in said Code after section one hundred and eighty-four, and designated section one hundred and eighty-five:

Wearing  
masks, etc.

Section One Hundred and Eighty-five. It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of:

One—Evading or escaping discovery, recognition,



or identification in the commission of any public offense.

Two—Concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

SEC. 16. Section one hundred and eighty-nine of said Code is amended to read as follows:

Section One Hundred and Eighty-nine. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree.

Degrees of murder.

SEC. 17. Section two hundred and three of said Code is hereby amended to read as follows:

Section Two Hundred and Three. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

Mayhem.

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

Section Two Hundred and Twelve. The fear mentioned in the last section may be either:

Fear as means of robbery.

One—The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or,

Two—The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

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

Punish-  
ment for  
dueling.

Section Two Hundred and Twenty-seven. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the State Prison or in the County Jail not exceeding one year.

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

Same.

Section Two Hundred and Twenty-eight. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, shall, in addition to the punishment prescribed in the last section, be forever disqualified from holding any office, or from exercising the elective franchise in this State, and shall be declared so disqualified in the judgment upon conviction.

SEC. 21. Section two hundred and forty-three of said Code is amended to read as follows:

Battery,  
how  
punished.

Section Two Hundred and Forty-three. A battery, or an assault and battery, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the County Jail not exceeding one year.

SEC. 22. Section two hundred and forty-five of said Code is amended to read as follows:

Assault  
with  
deadly  
weapon.

Section Two Hundred and Forty-five. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the State Prison, or in a County Jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

SEC. 23. Section two hundred and forty-eight of said Code is amended to read as follows:

Section Two Hundred and Forty-eight. A libel is Libel defined. a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule.

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

Section Two Hundred and Sixty-six. Every person Enticing, etc. who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the State Prison not exceeding five years, or by imprisonment in a County Jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

SEC. 25. Section three hundred and eleven of said Code is amended to read as follows:

Section Three Hundred and Eleven. Every person Exposing person, lewd pictures, etc. who willfully and lewdly, either:

One—~~Exposes~~ his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

Two—Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself

Same. to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

Three—Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

Four—Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

Five—Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby;

—Is guilty of a misdemeanor.

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

Keeping  
disorderly  
houses, etc.

Section Three Hundred and Sixteen. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

SEC. 27. The following is added as a new section to said Code, and must be inserted in said Code after section three hundred and sixteen, and designated section three hundred and seventeen:

Unlawful  
advertisements.

Section Three Hundred and Seventeen. Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means

for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony.

SEC. 28. Section three hundred and forty-eight of said Code is amended to read as follows:

Section Three Hundred and Forty-eight. Every Captain or other person having charge of any steam-boat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony.

Mismanagement of steam-boats.

SEC. 29. Section three hundred and forty-nine of said Code is amended to read as follows:

Section Three Hundred and Forty-nine. Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

Steam boilers.

SEC. 30. Section three hundred and seventy of said Code is amended to read as follows:

Section Three Hundred and Seventy. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable en-

Public nuisance defined.

joyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

SEC. 31. Section three hundred and seventy-one of said Code is amended so as to read as follows:

Same. Section Three Hundred and Seventy-one. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

SEC. 32. Section three hundred and seventy-nine of said Code is amended to read as follows:

Unlicensed piloting. Section Three Hundred and Seventy-nine. Every person, not the master or owner, or not authorized to act as pilot under the laws of this State, who pilots or offers to pilot any vessel to or from any port of this State for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor.

SEC. 33. Section three hundred and eighty-one of said Code is amended to read as follows:

Using substances to increase weight. Section Three Hundred and Eighty-one. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package,

with intent thereby to sell the goods therein or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense.

SEC. 34. The following is added as a new section to said Code, and must be inserted in said Code after section three hundred and ninety-nine, and designated section four hundred:

Section Four Hundred. Every person who deliberately aids or advises, or encourages another to commit suicide, is guilty of a felony. Encouraging suicide.

Section Four Hundred and Eighty-one. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation any such counterfeit or altered ticket, check, or order, coupon, receipt for fare or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the State Prison, or in the County Jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. Counterfeiting tickets, etc.

Section Four Hundred and Eighty-two. Every person who, for the purpose of restoring to its original appearance and nominal value, in whole or in part, removes, conceals, fills up, or obliterates the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare or pass, issued by any railroad company, or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessee thereof, or any other person, or who, with Obliterating cancellations, etc.

like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored in whole or in part, is punishable by imprisonment in the County Jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

**Repealed.** SEC. 35. Section five hundred and eighty-two of said Code is repealed.

SEC. 36. Section six hundred and two of said Code is amended to read as follows:

**Trespass on  
freeholds.**

Section Six Hundred and Two. Every person who willfully commits any trespass, by either:

One—Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another; or,

Two—Carrying away any kind of wood or timber lying on such lands; or,

Three—Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

Four—Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,

Five—Digging, taking, or carrying away from any land in any of the cities of the State, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

Six—Putting up, affixing, fastening, printing, or painting upon any property belonging to the State, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement,



or designation of or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device, intended to call attention thereto;  
—Is guilty of a misdemeanor.

SEC. 37. The following is added as a new section to said Code, and must be inserted in said Code after section six hundred and fifty-three, and designated section six hundred and fifty-four:

Insulting  
school  
teachers.

Section Six Hundred and Fifty-four. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor.

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

Section Six Hundred and Seventy-five. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.

Civil death,  
limitations  
as to.

SEC. 39. The following is added as a new section to said Code, and must be inserted in said Code after section six hundred and seventy-seven, and designated section six hundred and seventy-eight:

Section Six Hundred and Seventy-eight. Whenever in this Code the character or grade of an offense, or its punishment, is made to depend upon the value of property, such value shall be estimated exclusively in United States gold coin.

Values to  
be in gold  
coin.

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

Section Eight Hundred and Forty-four. To make an arrest, a private person, if the offense be a felony,

Arrests,  
entries for.

and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

SEC. 41. Section eight hundred and ninety-six of said Code is amended to read as follows:

Challeng-  
ing Grand  
Juror.

Section Eight Hundred and Ninety-six. A challenge to an individual Grand Juror may be interposed for one or more of the following causes only:

First—That he is a minor.

Second—That he is an alien.

Third—That he is insane.

Fourth—That he is a prosecutor upon a charge against the defendant.

Fifth—That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

Sixth—That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the Court upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him.

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

Section Eight Hundred and Ninety-seven. The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the Court. How made, etc.

SEC. 43. Section nine hundred and three of said Code is amended to read as follows:

Section Nine Hundred and Three. The following oath must be administered to the Foreman of the Grand Jury: Oath to Foreman.

“You, as Foreman of the Grand Jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this State, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows and of the Government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other Grand Juror may have said, nor the manner in which you or any other Grand Juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.”

SEC. 44. Section nine hundred and fifty-four of said Code is amended to read as follows:

Section Nine Hundred and Fifty-four. The indictment 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. Indictment to charge one offense.

SEC. 45. Section nine hundred and sixty-seven of said Code is amended to read as follows:

Allegations  
of embezzlement,  
etc.

Section Nine Hundred and Sixty-seven. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat and 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.

SEC. 46. Section nine hundred and sixty-nine of said Code is amended to read as follows:

Previous  
convictions

Section Nine Hundred and Sixty-nine. In charging in an indictment the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny, it is sufficient to state, "That the defendant, before the commission of the offense charged in this indictment, was in (giving the title of the Court in which the conviction was had) convicted of a felony (or attempt, etc., or of petit larceny)." If more than one previous conviction be charged in the indictment, the date of the judgment upon each conviction shall be stated, and not more than two previous convictions shall be charged in any one indictment.

SEC. 47. Section nine hundred and seventy-one of said Code is amended to read as follows:

Accessory;  
distinctions  
abrogated.

Section Nine Hundred and Seventy-one. 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 indicted, tried, and punished as principals, and no additional facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

SEC. 48. Section nine hundred and seventy-two of said Code is amended to read as follows:

Section Nine Hundred and Seventy-two. An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried, and though the principal may have been acquitted. Trial of.

SEC. 49. Section nine hundred and eighty-five of said Code is amended to read as follows:

Section Nine Hundred and Eighty-five. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the Court to which the indictment is presented, 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. Increasing  
bail after  
indictment.

SEC. 50. The following is added as a new section to said Code, and must be inserted in said Code after section ten hundred and twenty-four, and designated section ten hundred and twenty-five:

Section Ten Hundred and Twenty-five. When a defendant, who is charged in the indictment with having suffered a previous conviction, pleads either guilty or not guilty of the offense for which he is indicted, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer shall be entered by the Clerk in the minutes of the Court, and shall, unless withdrawn by consent of the Court, be conclusive of the fact of his having suffered such previous conviction in all subse- Previous  
conviction,  
trial of.

**Same.**      quent proceedings. If he answer that he has not, his answer shall be entered by the Clerk in the minutes of the Court, and the question whether or not he has suffered such previous conviction shall be tried by the jury which tries the issue upon the plea of "not guilty," or in case of a plea of "guilty," by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads "not guilty," and answers that he has suffered the previous conviction, the charge of the previous conviction shall not be read to the jury, nor alluded to on the trial.

**SEC. 51.** Section ten hundred and twenty-eight of said Code is amended to read as follows:

**Transmission of indictment.**

Section Ten Hundred and Twenty-eight. When an indictment is found in the County Court for treason, misprision of treason, murder, or manslaughter, it must be transmitted by the Clerk to a District Court of the county for trial, except when the indictment is found against a person holding the office of District Judge.

**SEC. 52.** Section ten hundred and twenty-nine of said Code is amended to read as follows:

**Same.**

Section Ten Hundred and Twenty-nine. All indictments found against a County Judge must also be transmitted to a District Court of the county for trial.

**SEC. 53.** Section ten hundred and forty-eight of said Code is amended to read as follows:

**Order of trials.**

Section Ten Hundred and Forty-eight. The issues on the calendar must be disposed of in the following order, unless for good cause the Court shall direct an indictment to be tried out of its order:

First—Indictments for felony, when the defendant is in custody.

Second—Indictments for misdemeanor, when the defendant is in custody.

Third—Indictments for felony, when the defendant is on bail.

Fourth—Indictments for misdemeanor, when the defendant is on bail.

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

Section Ten Hundred and Fifty-two. When an indictment 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 of the same or of the next term.

Postponement of trial.

SEC. 55. Section ten hundred and seventy of said Code is amended to read as follows:

Section Ten Hundred and Seventy. If the offense charged be punishable with death, or with imprisonment in the State Prison for life, the defendant is entitled to twenty and the State to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the State to five peremptory challenges.

Peremptory challenges.

SEC. 56. Section ten hundred and seventy-three of said Code is amended to read as follows:

Section Ten Hundred and Seventy-three. Particular causes of challenge are of two kinds:

Particular causes of challenge.

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

Second—For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the

substantial rights of either party, which is known in this Code as actual bias.

SEC. 57. Section ten hundred and seventy-four of said Code is amended to read as follows:

Implied  
bias.

Section Ten Hundred and Seventy-four. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

First—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.

Second—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.

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

Fourth—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.

Fifth—Having served on a trial jury which has tried another person for the offense charged in the indictment.

Sixth—Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

Seventh—Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

Eighth—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. 58. Section ten hundred and seventy-six of said Code is amended to read as follows:

Section Ten Hundred and Seventy-six. In a challenge for implied bias, one or more of the causes stated in section ten hundred and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section ten hundred and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the Court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the Court or of the phonographic reporter.

Stating  
causes of  
challenge.

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

Section Ten Hundred and Seventy-eight. If the facts are denied, the challenge must be tried by the Court.

Trial of  
challenge.

SEC. 60. Sections ten hundred and seventy-nine and ten hundred and eighty of said Code are repealed.

Repealed.

SEC. 61. Section ten hundred and eighty-three of said Code is amended to read as follows:

Section Ten Hundred and Eighty-three. The Court must allow or disallow the challenge, and its decision must be entered in the minutes of the Court.

Decision.

**Repealed.** SEC. 62. Sections ten hundred and eighty-four and ten hundred and eighty-five of said Code are repealed.

SEC. 63. Section ten hundred and ninety-three of said Code is amended to read as follows:

**Order of trial.**

Section Ten Hundred and Ninety-three. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the Court:

First—If the indictment be for felony, the Clerk must read it, and state the plea of the defendant to the jury, and in cases where the indictment charges a previous conviction and the defendant has confessed the same, the Clerk in reading such indictment shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

Second—The District Attorney, or other counsel for the people, must open the cause and offer the evidence in support of the indictment.

Third—The defendant, or his counsel, may then open the defense, and offer his evidence in support thereof.

Fourth—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.

Fifth—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.

Sixth—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 testi-

mony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter.

SEC. 64. The following is added as a new section to said Code, and must be inserted in said Code after section eleven hundred and thirty, and designated section eleven hundred and thirty-one:

Section Eleven Hundred and Thirty-one. Upon a trial for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment, 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.

When allegations of embezzlement sustained.

SEC. 65. Section eleven hundred and thirty-eight of said Code is amended to read as follows:

Section Eleven Hundred and Thirty-eight. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into Court. Upon being brought into Court, the information required must be given in the presence of,

Return of jury for information.

or after notice to, the District Attorney, and the defendant or his counsel, or after they have been called.

SEC. 66. Section eleven hundred and fifty-one of said Code is amended to read as follows:

Verdict.

Section Eleven Hundred and Fifty-one. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

SEC. 67. Section eleven hundred and fifty-eight of said Code is amended to read as follows:

Finding on  
charge of  
previous  
conviction.

Section Eleven Hundred and Fifty-eight. Whenever the fact of a previous conviction of another offense is charged in an indictment, the jury, if they find a verdict of guilty of the offense for which he is indicted, 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. 68. The following is added as a new section to said Code, and must be inserted in said Code after section eleven hundred and sixty-six, and designated section eleven hundred and sixty-seven:

Section Eleven Hundred and Sixty-seven. If the jury render a verdict of acquittal on the ground of insanity, the Court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The Court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the District Attorney to conduct the proceedings, and counsel may appear for the defendant. The Court may direct the Sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the Sheriff to the State Insane Asylum. If the jury find the defendant sane, he shall be discharged.

Continued  
insanity.

SEC. 69. Section eleven hundred and seventy of said Code is amended to read as follows:

Section Eleven Hundred and Seventy. On the trial of an indictment exceptions may be taken by the defendant to a decision of the Court:

Excep-  
tions;  
grounds  
for.

First—In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.

Second—In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

Third—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. 70. Section eleven hundred and seventy-one of said Code is amended to read as follows:

Section Eleven Hundred and Seventy-one. Where a party desires to have the exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the District Attorney, to the

Settling  
bill of.

Judge for settlement, within ten days after the trial of the cause, unless further time is granted by the Judge, or by a Justice of the Supreme Court, or within that period the draft must be delivered to the Clerk of the Court for the Judge. When received by the Clerk, he must deliver it to the Judge, or transmit it to him at the earliest period practicable. When settled the bill must be signed by the Judge, and filed with the Clerk of the Court.

SEC. 71. Section eleven hundred and seventy-four of said Code is amended to read as follows:

Same.

Section Eleven Hundred and Seventy-four. Where a party desires to have the exceptions mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the adverse party, to the Judge, for settlement, within ten days after the order or ruling complained of is made, unless further time is granted by the Judge, or by a Justice of the Supreme Court, or within that period the draft must be delivered to the Clerk of the Court for the Judge. When received by the Clerk, he must deliver it to the Judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the Judge, and filed with the Clerk of the Court. If the Judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same. The application may be made in the mode and manner and under such regulations as that Court may prescribe; and the bill, when proven, must be certified by the Chief Justice as correct, and filed with the Clerk of the Court in which the action was tried, and when so filed it has the same force and effect as if settled by the Judge who tried the cause. If the Judge who

presided at the trial ceases to hold office before the bill is tendered or settled, he may, nevertheless, settle such bill, or the party may, as provided in this section, apply to the Supreme Court to prove the same.

SEC. 72. Section eleven hundred and eighty of said Code is amended to read as follows:

Section Eleven Hundred and Eighty. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment.

New trials,  
effect of  
granting.

SEC. 73. Section eleven hundred and ninety-one of said Code is amended to read as follows:

Section Eleven Hundred and Ninety-one. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the Court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the Court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed.

Appoint-  
ing time for  
judgment.

SEC. 74. Section twelve hundred and seven of said Code is amended to read as follows:

Section Twelve Hundred and Seven. 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:

Entry of  
judgment,  
roll, etc.

First—The indictment and a copy of the minutes of the plea or demurrer.

Second—A copy of the minutes of the trial.

Third—The charges given or refused and the indorsements thereon; and

Fourth—A copy of the judgment.

SEC. 75. Section twelve hundred and forty-three of said Code is amended to read as follows:

Effect of  
appeal.

Section Twelve Hundred and Forty-three. An appeal to the Supreme Court from a judgment of conviction stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the Clerk of the Court in which the conviction was had, a certificate of the Judge of such Court, or of a Justice of the Supreme Court, that, in his opinion, there is probable cause for the appeal, but not otherwise.

SEC. 76. Section twelve hundred and eighty-eight of said Code is amended to read as follows:

Sections  
applicable  
to bail.

Section Twelve Hundred and Eighty-eight. The provisions contained in sections twelve hundred and seventy-nine, twelve hundred and eighty, and twelve hundred and eighty-one, in relation to bail before indictment, apply to bail after indictment.

SEC. 77. The following is added as a new section to said Code, and must be inserted in said Code after section twelve hundred and eighty-eight, and designated section twelve hundred and eighty-nine:

Increase,  
etc., of  
bail.

Section Twelve Hundred and Eighty-nine. After a defendant has been admitted to bail upon an indictment, the Court in which the indictment 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.

SEC. 78. Section thirteen hundred and twenty-two of said Code is amended to read as follows:

Section Thirteen Hundred and Twenty-two. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

Witnesses;  
husband  
and wife,  
when.

SEC. 79. Section thirteen hundred and twenty-three of said Code is amended to read as follows:

Section Thirteen Hundred and Twenty-three. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him nor be used against him on the trial or proceeding.

Defendant.

SEC. 80. Section thirteen hundred and fifty-seven of said Code is amended to read as follows:

Section Thirteen Hundred and Fifty-seven. The Commissioner, unless otherwise specially directed, may execute the commission as follows:

Execution  
of commis-  
sion to take  
testimony.

First—He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

Second—He must cause the examination of the witness to be reduced to writing and subscribed by him.

Third—He must write the answers of the witness as near as possible in the language in which he gives

Same. them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

Fourth—If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

Fifth—If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the Commissioner.

Sixth—The Commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.

Seventh—If there be a direction on the commission to return it by mail, the Commissioner must immediately deposit it in the nearest Post Office. If any other direction be made by the written consent of the parties, or by the Court or Judge, on the commission, as to its return, the Commissioner must comply with the direction.

A copy of this section must be annexed to the commission.

SEC. 81. Section thirteen hundred and sixty-eight of said Code is amended to read as follows:

Question of  
sanity, etc.

Section Thirteen Hundred and Sixty-eight. When an indictment 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 of the indictment, or the pronouncing of the judgment, must be suspended until the question is determined by their verdict, and the trial jury may be

discharged or retained, according to the discretion of the Court, during the pendency of the issue of insanity.

SEC. 82. Section thirteen hundred and seventy of said Code is amended to read as follows:

Section Thirteen Hundred and Seventy. If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may 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,  
etc.

SEC. 83. Section fourteen hundred and twenty-nine of said Code is amended to read as follows:

Section Fourteen Hundred and Twenty-nine. 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.

Plea on  
examination.

SEC. 84. Section fourteen hundred and forty-five of said Code is amended to read as follows:

Section Fourteen Hundred and Forty-five. When the defendant pleads guilty, or is convicted, either by the Court, or by a jury, the Court must render judgment thereon of fine or imprisonment, or both, as the case may be.

Rendering  
judgment.

SEC. 85. Section fourteen hundred and forty-nine of said Code is amended to read as follows:

Fixing  
time for  
rendering.

Section Fourteen Hundred and Forty-nine. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the Court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the Court may hold the defendant to bail to appear for judgment.

SEC. 86. Section fourteen hundred and seventy-three of said Code is amended to read as follows:

Writ of  
habeas  
corpus.

Section Fourteen Hundred and Seventy-three. Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

SEC. 87. Section fifteen hundred and seventy of said Code is amended to read as follows:

Disposition  
of fines, etc.

Section Fifteen Hundred and Seventy. All fines and forfeitures collected in any Court, except Police Courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred, and after such costs are paid, the residue must be paid to the County Treasurer of the county in which the Court is held.

Repealing  
clause, etc.

SEC. 88. All provisions of law inconsistent with the provisions of this Act are repealed, except as to offenses committed before this Act takes effect, and as to such offenses and for the punishment of parties guilty thereof, the repealed provisions shall continue in force.

SEC. 89. This Act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

[Chap. 614.]

AN ACT TO AMEND SECTIONS SEVENTEEN, ONE THOUSAND TWO HUNDRED AND FIVE, AND ONE THOUSAND FOUR HUNDRED AND FORTY-SIX OF THE PENAL CODE.

[Approved March 7th, 1874.]

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

SECTION 1. Section seventeen of the Penal Code is hereby amended so as to read as follows:

Section Seventeen. A felony is a crime which is punishable with death or by imprisonment in the State Prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the State Prison, is also punishable by fine or imprisonment in a County Jail, in the discretion of the Court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the State Prison.

Felony,  
etc.,  
defined.

SEC. 2. Section twelve hundred and five of the Penal Code is hereby amended so as to read as follows:

Section One Thousand Two Hundred and Five. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of imprisonment, which must not exceed one day for every dollar of the fine.

Imprison-  
ment for  
fine.

SEC. 3. Section fourteen hundred and forty-six of the Penal Code is hereby amended so as to read as follows:

Section One Thousand Four Hundred and Forty-six. A judgment that the defendant pay a fine may also

Judgment,  
fine, and  
imprison-  
ment.

direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every dollar of the fine.

[Chap. 196.]

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AN ACT TO ADD ANOTHER SECTION TO THE PENAL CODE.

[Approved March 23d, 1874.]

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

SECTION 1. The following is added as a new section to the Penal Code, and must be inserted in said Code after section sixty-one, and designated as sixty-two:

Printing,  
etc.,  
irregular  
tickets.

Section Sixty-two. Every person who prints any ticket not in conformity with section one thousand one hundred and ninety-one of the Political Code, or who circulates or gives to another any ticket, knowing at the time that such ticket does not conform to the provisions of section one thousand one hundred and ninety-one of the Political Code, is guilty of a misdemeanor.

[Chap. 379.]

---

AN ACT TO ADD ANOTHER SECTION TO THE PENAL CODE.

[Approved March 30th, 1874.]

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

SECTION 1. An additional section is hereby added to the Penal Code, to be known as section eighty-nine, and to read as follows:

Section Eighty-nine. Every person who obtains or seeks to obtain money or other thing of value from

another person, upon a pretense, 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. If, upon the trial of an indictment found under the provisions of this section, the accused is examined as a witness in his own behalf, evidence may then be given that he has committed acts in violation of the provisions of this section other than the acts charged in the indictment. Upon the trial no person otherwise competent as a witness shall be disqualified from testifying as such concerning the offense charged, on the ground that such testimony may criminate himself; but no prosecution can afterward be had against him for any offense concerning which he testified.

Lobbying,  
and  
penalty for.

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

[Chap. 673.]

---

AN ACT TO AMEND SECTION ONE HUNDRED AND NINETY OF THE PENAL CODE.

[Approved March 28th, 1874.]

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

SECTION 1. Section one hundred and ninety of the Penal Code is hereby amended so as to read as follows:

Section One Hundred and Ninety. Every person guilty of murder in the first degree shall suffer death, or confinement in the State Prison for life, at the discretion of the jury trying the same; or, upon a plea of guilty, the Court shall determine the same; and every person guilty of murder in the second degree is

Murder,  
degrees,  
penalty,  
etc.

punishable by imprisonment in the State Prison not less than ten years.

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

[Chap. 508.]

---

AN ACT TO ADD A SECTION, TO BE NUMBERED SECTION TWO HUNDRED AND NINETY-SEVEN, TO "AN ACT TO ESTABLISH A PENAL CODE," APPROVED FEBRUARY FOURTEENTH, EIGHTEEN HUNDRED AND SEVENTY-TWO.

[Approved March 30th, 1874.]

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

SECTION 1. There shall be a new section added to an Act entitled "An Act to establish a Penal Code," approved February fourteenth, eighteen hundred and seventy-two, following section two hundred and ninety-six thereof, and to be numbered section two hundred and ninety-seven, so as to read as follows:

Interring  
remains in  
city, etc.,  
limits.

Section Two Hundred and Ninety-seven. Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this State, or within the corporate limits of the City and County of San Francisco, except in a cemetery, or place of burial now existing under the laws of this State, and in which interments have been made, or that is now or may hereafter be established or organized by the Board of Supervisors of the county, or city and county, in which such city or town, or city and county is situate, shall be guilty of a misdemeanor.



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

[Chap. 657.]

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AN ACT TO AMEND SECTIONS THREE HUNDRED AND SIX AND THREE HUNDRED AND SEVEN OF THE PENAL CODE.

[Approved March 10th, 1874.]

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

SECTION 1. Section three hundred and six of the Penal Code is hereby amended so as to read as follows:

Section Three Hundred and Six. Every person who causes, procures, or employs any female to play for hire, drink, or gain upon any musical instrument in any drinking saloon, ballroom, dance cellar, public garden, or any public highway, common, or street, or on a ship, steamboat, or railroad car, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding three months, or by both. And any female so playing upon any musical instrument whatsoever, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding one month, or by both.

Causing females to play, etc., in saloons, etc.

Female playing.

SEC. 2. Section three hundred and seven of the Penal Code is hereby amended so as to read as follows:

Section Three Hundred and Seven. Every person who causes or procures or employs any female to dance, promenade, or otherwise exhibit herself for hire, drink, or gain in any drinking saloon, dance cellar, ballroom, public garden, public highway, or any place of a similar or immoral character, is punishable by a fine not exceeding five hundred dollars, or by imprisonment

Employing same, etc., for hire, etc.

Female  
dancing,  
etc.

in the County Jail not exceeding three months, or by both. And every female so dancing, promenading, or exhibiting herself, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding one month, or by both.

[Chap. 221.]

---

AN ACT TO AMEND AN ACT ENTITLED AN ACT TO AMEND SECTIONS THREE HUNDRED AND SIX AND THREE HUNDRED AND SEVEN OF THE PENAL CODE, APPROVED MARCH TENTH, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-FOUR.

[Approved March 30th, 1874.]

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

SECTION 1. Section three hundred and six of the Penal Code, as amended by an Act entitled an Act to amend sections three hundred and six and three hundred and seven of the Penal Code, approved March tenth, one thousand eight hundred and seventy-four, is hereby amended so as to read as follows:

Same.

Section Three Hundred and Six. Every person who causes, procures, or employs any female, for hire, drink, or gain, to play upon any musical instrument, or to dance, promenade, or otherwise exhibit herself, in any drinking saloon, dance cellar, ballroom, public garden, public highway, common, park, or street, or in any ship, steamboat, or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use, as a beverage, of any intoxicating, spirituous, vinous, or malt liquors; or who shall allow the same in any premises under his control, where intoxicating, spirituous, vinous, or malt liquors are sold or used, when two or more persons are present, is punishable by a fine of not less than fifty nor more

than five hundred dollars, or by imprisonment in the County Jail not exceeding three months, or by both; and every female so playing upon any musical instrument, or dancing, promenading, or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding one month, or by both.

SEC. 2. Section three hundred and seven of the Penal Code, as amended by an Act entitled an Act to amend sections three hundred and six and three hundred and seven of the Penal Code, approved March tenth, one thousand eight hundred and seventy-four, is hereby repealed. Repealed.

[Chap. 628.]

---

#### AN ACT TO ADD ANOTHER SECTION TO THE PENAL CODE.

[Approved March 24th, 1874.]

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

SECTION 1. An additional section is added to the Penal Code, to be inserted therein after section three hundred and thirty-five, to be known as section three hundred and thirty-six, and to read as follows:

Section Three Hundred and Thirty-six. Every owner, lessee, or keeper of any house used in whole, or in part, as a saloon or drinking place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. Allowing minors to play, etc.

[Chap. 409.]

AN ACT TO AMEND SECTION THREE HUNDRED AND  
NINETY-SEVEN OF THE PENAL CODE.

[Approved March 26th, 1874.]

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

SECTION 1. Section three hundred and ninety-seven  
of the Penal Code of the State of California is hereby  
amended to read as follows:

Selling  
liquors to  
drunkards,  
etc.

Section Three Hundred and Ninety-seven. Every  
person who sells or furnishes, or causes to be sold or  
furnished, intoxicating liquors to any habitual or com-  
mon drunkard, or Indian, is guilty of a misdemeanor.

[Chap. 438.]

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AN ACT TO AMEND THE PENAL CODE OF THE STATE  
OF CALIFORNIA.

[Approved February 4th, 1874.]

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

SECTION 1. The following section shall be inserted  
in the said Penal Code, after section three hundred  
and ninety-nine, and shall be designated as section  
four hundred:

Exhibiting  
deformities

Section Four Hundred. Every person exhibiting  
the deformities of another, or his own deformities, for  
hire, is guilty of a misdemeanor; and every person  
who shall, by any artificial means, give to any person  
the appearance of a deformity, and shall exhibit such  
person for hire, shall be guilty of a misdemeanor.

[Chap. 55.]

## AN ACT TO AMEND SECTION FOUR HUNDRED AND SIXTY-SIX OF THE PENAL CODE.

[Approved March 3d, 1874.]

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

SECTION 1. Section four hundred and sixty-six of the Penal Code is hereby amended so as to read as follows:

Section Four Hundred and Sixty-six. Every person having upon him or in his possession a picklock, crow, keybit, or other instrument or tool with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this Code shall be deemed to be a building within the meaning of this section.

Burglars' tools, etc., in possession.

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

[Chap. 178.]

## AN ACT TO AMEND SECTION FOUR HUNDRED AND NINETY-SIX OF THE PENAL CODE:

[Approved February 28th, 1874.]

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

SECTION 1. Section four hundred and ninety-six of the Penal Code is amended so as to read as follows:

Buying,  
etc., stolen  
property.

Section Four Hundred and Ninety-six. Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding six months, or by both; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen, unless such property is sold by said minor at a fixed place of business carried on by said minor or his employer.

SEC. 2. This Act shall take effect immediately after its passage.

[Chap. 151.]

## AN ACT TO AMEND SECTION SIX HUNDRED AND THIRTY-TWO OF THE PENAL CODE.

[Approved March 18th, 1874.]

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

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

Section Six Hundred and Thirty-two. Every person who, in the Counties of Santa Clara, Santa Cruz, San Mateo, Monterey, Alameda, Marin, Placer, Nevada, Plumas, or Sierra, at any time takes or catches any trout, except with hook and line, is guilty of a misdemeanor.

Catching trout, except by hook.

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

[Chap. 305.]

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AN ACT TO AMEND SECTION SIX HUNDRED AND THIRTY-FOUR OF THE PENAL CODE.

[Approved March 30th, 1874.]

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

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

Section Six Hundred and Thirty-four. Every person who, between the first day of August and the first day of November in each year, takes or catches any salmon, is guilty of a misdemeanor; the possession of any salmon during said period shall be prima facie evidence of a violation of this section. Any person catching, or having in possession, or offering for sale, shad, within three years from the passage of this Act, shall be guilty of a misdemeanor.

Catching salmon, etc.

SEC. 2. This Act shall take effect immediately.

[Chap. 651.]

AN ACT TO AMEND THE PENAL CODE BY ADDING A SECTION, TO BE DESIGNATED SECTION SEVEN HUNDRED AND NINETY-FIVE, RELATING TO THE TRIAL OF CERTAIN CASES.

[Approved March 7th, 1874.]

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

SECTION 1. The following new section shall be added to the Penal Code of the State of California, and shall be inserted in said Code immediately after section seven hundred and ninety-four, and shall be known as section seven hundred and ninety-five:

Jurisdiction in certain cases.

Section Seven Hundred and Ninety-five. The jurisdiction of a violation of sections four hundred and twelve, four hundred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is, in any county:

First—In which any act is done towards the commission of the offense; or,

Second—Into, out of, or through which the offender passed to commit the offense; or,

Third—Where the offender is arrested.

[Chap. 229.]

AN ACT TO ADD A NEW SECTION TO THE PENAL CODE.

[Approved February 24th, 1874.]

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

SECTION 1. The following is added as a new section to the Penal Code, and must be inserted in said Code



after section fifteen hundred and eighty-six, and designated as section fifteen hundred and eighty-seven:

Section Fifteen Hundred and Eighty-seven. The Board of Directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other supplies for the prison, for any period of time not exceeding one year; and such contract shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and price. Each bid shall be accompanied by a bond, in such penal sum as said Board shall determine, with good and sufficient sureties, conditioned for the faithful performance of the terms of such contract. Notice of the time, place, and conditions of letting of each contract shall be given, for at least four consecutive weeks, in two daily newspapers in the Cities of San Francisco and Sacramento, and also four insertions in a weekly paper published in the county in which the prison is situated. If all the bids made at such letting are deemed unreasonably high, the Board may, in their discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts may be had; and in the meantime the Board may contract with any one whose offer may be regarded just and proper; but no contract thus made shall be let to run more than sixty days, or shall in any case extend beyond the public letting. No bids shall be accepted, and a contract entered into in pursuance thereof, when such bid is higher than any other bid made at the same letting for the same article, and where a contract can be had at such lower bid. When two or more bids for the same article are equal in amount, the Board may select the one which, all things considered, may by them be thought best for the interests of the State, or may divide the contract between the bidders, as in their

Contract-  
ing for  
prison  
supplies.

Same. discretion may seem proper and right; *provided*, no contract shall be given, or purchase made, where either of the Board, or any of the officers of the prison, is interested. All contracts or purchases made in violation of this section, shall be void.

[Chap. 125.]

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NOTE.

Words in brackets [ ] in the text of the printed statutes are not in the enrolled laws; words in parenthesis ( ) are in the originals.

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